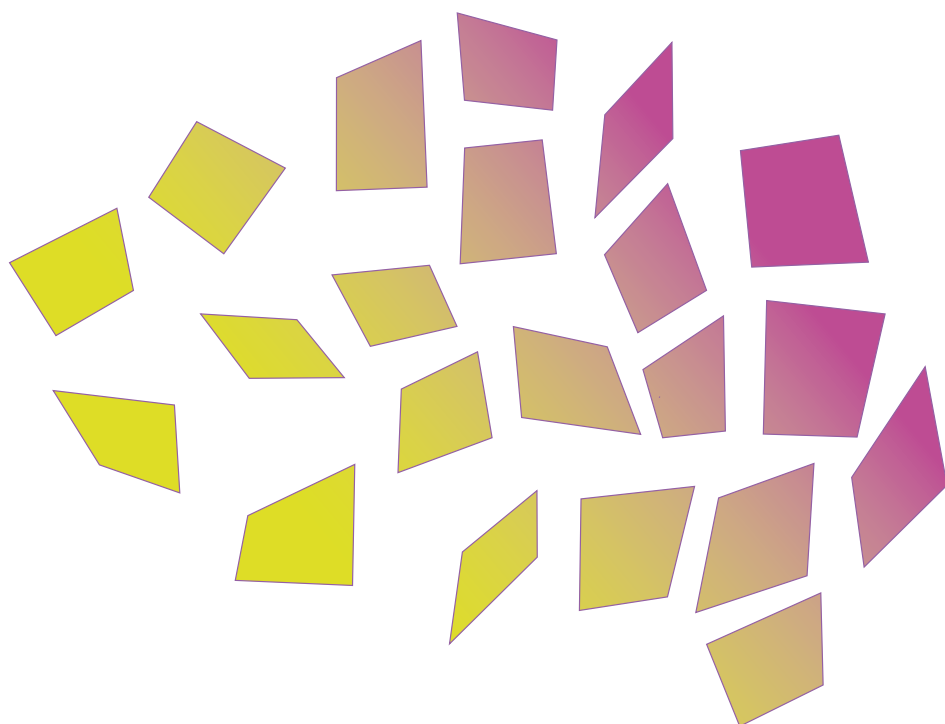




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National cases and good practices on equal pay

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National cases and good practices on equal pay

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1 Introduction

According to Article 157 of the Treaty on the Functioning of the EU (TFEU)¹ the EU Member States have to ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. Here, pay means ‘the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.’ The concept of pay includes not only basic pay, but also, for example, overtime supplements,² special bonuses paid by the employer,³ travel facilities,⁴ compensation for attending training courses and training facilities,⁵ termination payments in case of dismissal⁶ and occupational pensions.⁷ The principle of equal pay is further elaborated in Recast Directive 2006/54 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, in particular in Article 4.⁸ This Article stipulates: ‘For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated. In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.’ Since the 1970s, the Court of Justice of the EU (CJEU) has in numerous judgments interpreted these provisions, in its answers to preliminary questions of national courts. The principle of equal pay between men and women is at the core of the EU gender equality legislation and in relation to pay, both unlawful direct and indirect sex discrimination are prohibited.⁹

In 2013, the European Commission published a report to the Council and the European Parliament on the application of Directive 2006/54.¹⁰ In this report, specific attention is paid to the definition of pay and the application of the equal pay provisions in practice at national level in the EU Member States. In a Commission Staff Working Document, accompanying this report, additional information on pay issues is provided in four annexes.¹¹ Annex 1 addresses issues related to gender-neutral job evaluations and classifications schemes. In Annex 2, the relevant case law of the Court of Justice of the EU (CJEU) and its predecessor the European Court of Justice (ECJ)¹² is discussed. Some (landmark) cases of national courts – an overview based on information provided by the European Network of Legal Experts in the Field of Gender Equality – are briefly described in Annex 3. Finally, Annex 4 provides some examples of good practices on equal pay at national level.¹³

The present report is an update of the information provided in Annex 3 and Annex 4 respectively, on national cases and good practices on equal pay between women and men in 31 countries. The scope of the report is the EU-28 member states as well as the three EEA countries: Iceland, Norway and Liechtenstein. The report consists of two main parts: national cases are described in Section 2 and Section 3 provides examples of good practices at national level. Section 2 does not only provide information on

1 Ex Article 119 EEC Treaty, ex Article 141 EC.

2 See, for example: CJEU 6 December 2007, C-300/06, (*Voß*), ECLI:EU:C:2007:757.

3 See, for example: CJEU 21 October 1999, C-333/97, (*Lewen*), ECLI:EU:C:1999:512.

4 See, for example: CJEU 9 February 1982, case 12/81, (*Garland*), ECLI:EU:C:1981:44.

5 See, for example: CJEU 4 June 1992, C-360/90 (*Bötel*), ECLI:EU:C:1990:246.

6 See, for example: CJEU 27 June 1990, C-33/89, (*Kowalska*), ECLI:EU:C:1990:265.

7 See, for example: CJEU 13 May 1986, case 170/84, (*Bilka*), ECLI:EU:C:1986:204 and CJEU 17 May 1990, C-262/88, (*Barber*), ECLI:EU:C:1990:209.

8 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), OJ 2006, L 204/23.

9 See for an overview of EU gender equality law: European network of legal experts in gender equality and non-discrimination, Burri, S. *EU Gender equality law- update 2018*, European Commission, Luxembourg: Publications Office of the European Union, 2018, available at: <https://www.equalitylaw.eu/downloads/4767-eu-gender-equality-law-update-2018-pdf-444-kb>, accessed 7 January 2019.

10 COM (2013) 861.

11 SWD (2013) 512, final. Both documents were published on 6 December 2013.

12 In this report, the cases will be mostly reported as CJEU cases.

13 This overview is based on information provided by what was then the European Network of Legal Experts in the Field of Gender Equality and the European Network of Experts on Gender Equality (ENEGE).

court cases in a chronological order (Section 2.1), but also on some decisions of other bodies, such as equality bodies (Section 2.2). The cases described provide some good illustration of the national case law on equal pay, even if the list of cases is not exhaustive for each country. The cases are grouped by theme – where the main theme has been decisive – and by country, in alphabetical order of the official country codes. However, the cases often concern various issues, for example the concept of pay, indirect sex discrimination and sanctions.

In Section 3.1, examples of good practices at national level are described for each country. In addition, a comparative analysis is offered in Section 3.2, including some assessments of the practices by the independent national gender experts of the European network of legal experts in gender equality and non-discrimination. Finally, some conclusions wrap up this report. The cut-off date of this report is 1 September 2018.

Annex I provides a list of the EU gender equality directives. A list of the CJEU cases on equal pay between men and women is provided in Annex II. Finally, a selected bibliography in Annex III includes relevant reports on the topic published by the European network of legal experts in gender equality and non-discrimination and its predecessors, as well as additional literature and reports. The thematic reports and the country reports produced by the national gender experts of the network provide a rich source of information on gender equality issues at national level, including equal pay.¹⁴

14 See for more information in particular the website of the Network: <https://www.equalitylaw.eu/>, the website of the European Commission: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality_en and the EU Bookshop: <https://publications.europa.eu/en/web/general-publications/publications>, accessed on 17 January 2019.

2 National cases

2.1 National courts

2.1.1 Landmark cases

Belgium (BE)

Due to the scarcity of case law concerning equal pay, 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 of Brussels¹⁵ found that the employer’s pay system was opaque and simply referred to the CJEU’s decision in Case 109/88 *Danfoss*¹⁶ to conclude that there had been gender discrimination.

Greece (EL)

A landmark judgment on equal pay for men and women is the Supreme Civil and Penal Court, Civil Section (Full Court) (SCC) judgment No. 3/1995, which concerned the concept of pay and in particular family allowances paid by the employer. A female employee claimed the family allowance paid by her employer under the internal rules of the undertaking at a percentage of the basic salary. This was paid to all male employees who were married and had children without any further condition, but female employees were subjected to two conditions: that their husband be unable to maintain himself due to invalidity or illness, and that the children be maintained by the mother. The SCC relied on the constitutional norm set out in Article 22(1)(b) of the Greek Constitution, on equal pay in the light of, and in conjunction with, ILO Convention No. 100 on equal remuneration and Article 119 TEC (now Article 157 TFEU), as interpreted by ECJ in its case law, which required a levelling-up solution.¹⁷ It held that the concept of ‘pay’ includes family allowances paid by the employer, since they are paid in respect of the employment relationship. The SCC thus reversed its previous case law, where it had not found discrimination in this respect, having applied the breadwinner concept.

2.1.2 Some follow-up cases after preliminary questions to the CJEU

Austria (AT)

Having been amended pursuant to the preliminary ruling of the CJEU in *Hlozek*,¹⁸ the Austrian Decree of Supreme Court 17 March 2005, 8 ObA 139/04 f now provides that transitional payments (*Überbrückungsgeld*) made on the basis of a severance scheme that had been agreed upon by the collective parties in an enterprise, following a merger and subsequent dismissals, were to be considered as pay. They nevertheless did not amount to an occupational pension within the meaning of the relevant national legislation. The domestic court held that different (lower) payments made to a male employee had not constituted discrimination on the ground of sex, because of the different legal age of retirement for women and men and the higher risk of unemployment for women.

Greece (EL)

CJEU judgment *Nikoloudi* (C-196/02)¹⁹ dealt with the exclusion of part-time cleaners of the Greek telecommunication company, Organismos Tilepikinonion Ellados (OTE), from the possibility of being appointed as permanent members of staff by a collective agreement provision that was ostensibly neutral as to the worker’s sex. The CJEU ruled that to the extent that this exclusion affected a category

15 Judgment of 19 October 2014, *Chroniques de droit social/Sociaalrechtelijke Kronieken*, 2015, p. 16, with J. Jacquemain’s case note.

16 CJEU 17 October 1989, C-109/88 (*Danfoss*), ECLI:EU:C:1989:383.

17 This judgment is mentioned in CJEU, C-187/98 (*Commission v. Greece*), ECLI:EU:C:1999:535.

18 CJEU 9 December 2004, C-19/02 (*Hlozek*), ECLI:EU:C:2004:779.

19 CJEU 10 March 2005, C-196/02 (*Nikoloudi*), ECLI:EU:C:2005:141.

of workers, which, under national rules having the force of law, was composed exclusively of women, it constitutes direct discrimination on the ground of sex within the meaning of Directive 76/207.²⁰ According to the CJEU, should the premise that only part-time female cleaners had been denied the possibility of being appointed as established members of staff prove incorrect, and should a much higher percentage of women than men have been affected by the provisions of the specific collective agreements, excluding part-time temporary staff from being appointed as established staff, as a result of those agreements, would constitute indirect discrimination.

After the CJEU judgment, the *Amaroussion* Justice of the Peace, by its judgment No. 251/2006, found that the domestic applicant Mrs Nikoloudi had been the victim of sex-based discrimination in pay and awarded her the pay differential she had claimed.

A recent case was inspired by the CJEU judgment in *Nikoloudi* (C-196/02).²¹ It concerned the decision of a private bank to close down the cleaners department in order to outsource cleaning activities. This resulted in the redundancy of 64 cleaners, 63 of whom were women. Of these cleaners, 62 accepted the employer's offer to resign in order to be paid a bonus, which amounted to double or triple the legal compensation for redundancy. The remaining four female cleaners who declined the offer were dismissed. One of them brought the case before the First Instance Court of Athens alleging, inter alia, that she was the victim of direct (or indirect) sex discrimination. According to the claimant, her employment in a predominantly female-dominated profession was terminated without any possibility of a transfer to another job, whereas predominantly male departments, such as those of blue-collar workers or clerks, were given the option to transfer to other jobs within the bank.

By its judgement No. 2323/12.12.2018, the First Instance Civil Court of Athens (labour disputes section) found that the provision of the internal rules of the bank, as modified in June 2014, which excluded cleaners (the word in Greek is used in the female gender given that it is a predominantly female profession) from the possibility of being transferred to other jobs, while workers in predominantly male departments, such as blue-collar workers or clerks, were offered that possibility, constituted indirect sex discrimination in breach of Act 3896/2010,²² which implemented Directive 2006/54/EC.

However, the court did not find that the termination of the employment contract *per se* constituted (direct or indirect) sex discrimination. The reasoning of the First Instance Civil Court of Athens was as follows: the termination was due to the implementation of the entrepreneurial decision of the bank to close down the cleaners department and not to any other ground which would amount to or could be deemed sex discrimination. This wording shows that the court was in search of an eventual 'fault' on the part of the employer, which it did not find. Nonetheless, the termination was found null and void for being in breach of other national law provisions, which are not of interest under EU law and in the present context.

According to the Greek expert, following the aforementioned CJEU preliminary ruling in *Nikoloudi* this is the only Greek judgment applying the notion of indirect discrimination on the ground of sex in private sector employment. Therefore, this judgment is of great importance. However, it is obvious that the court subjected the finding of discrimination to the requirement of fault, which is contrary to the ECJ case law in the cases *Draehmpaehl*²³ and *Dekker*.²⁴

Although a big step forward, this judgment shows the lack of sensibility of judges to the concepts of EU anti-discrimination law, in particular the concepts of indirect discrimination and the non-requirement of

20 Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions OJ 1976, L 39/40.

21 CJEU 10 March 2005 *Nikoloudi v Organismos Tilepikinonion Ellados AE* Case C-196/02, ECLI:EU:C:2005:141.

22 Greece, Act 3896/2010, 'Implementation of the Principle of Equal Treatment of Men and Women in Matters of Employment and Occupation. Harmonisation of Existing Legislation with Directive 2006/54/EC of the European Parliament and the Council,' OJ A 207/08.12.2010.

23 ECJ, 22 April 1997 *Draehmpaehl v Urania Immobilienservice OHG*, Case C-180/95, ECLI:EU:C:1997:208.

24 ECJ, 8 November 1990 *Dekker v Stichting Vormingscentrum voor Jong Volwassenen* Case C-177/88, ECLI:EU:C:1990:383.

fault. It also shows that the concept of indirect discrimination is still unclear, which explains the scarcity (almost non-existence) of relevant case law in employment in the private sector in Greece.

It should be also noted that the applicant requested the reversal of the burden of proof to the employer, but the court neither replied to this request nor applied the provisions of EU law pertaining to the shifting of the burden of proof.

Finland (FI)

Judgments of the Labour Court TT:2011:107-108. The Labour Court requested the CJEU for preliminary rulings in two cases, in which employers had refused pay when a person began maternity leave directly after having been on home-care leave. In its preliminary rulings (joined cases C-512/11 and C-513/11),²⁵ the CJEU held that the employee is entitled to pay during maternity leave even when she starts maternity leave without returning to work from previous family-related leave. The Labour Court decided the domestic cases accordingly, in *Labour Court TT:2014:115-117*. The Labour Court has competence for cases related to collective agreements. Similar cases may be ruled by general courts, and finally by the Supreme Court, when the claim involves violation of the Act on Equality.²⁶ In the Supreme Court case *KKO:2017:25*, the employer had refused pay during maternity leave to a person who had returned to work from home-care leave, and started a new maternity leave before having worked for six months between the family-related leaves, which was a condition required under the local collective agreement. The Supreme Court ruled that the employer had violated the prohibition of indirect sex discrimination, as discrimination based on care of children is defined as indirect discrimination under Section 7(3) of the Act on Equality between Women and Men. The employer was ordered to pay compensation to the employee.

France (FR)

After the CJEU considered in the *Griesmar* case (C-366/99)²⁷ that the French legislation on pensions granting advantages to female civil servants was unlawful, in the *Leone* case (C-173/13)²⁸ it stated that the new law could be challenged, ruling that ‘a service credit scheme for pension purposes such as the one at issue in the main proceedings gives rise to indirect discrimination in terms of pay as between female workers and male workers, contrary to that article, unless it can be justified by objective factors unrelated to any discrimination on grounds of sex, such as a legitimate social policy aim, and is appropriate to achieve that aim and necessary in order to do so, which requires that it genuinely reflect a concern to attain that aim and be pursued in a consistent and systematic manner in the light thereof’.²⁹ Subsequently, by an Assembly decision of 27 March 2015 (*Quintanel*), the Council of State considered that the proof of legitimate motive had been shown, and validated the law, recalling, moreover, that it had been amended again so as to cancel such benefits in the future.³⁰

Ireland (IE)

Following the CJEU’s judgment in *Kenny v Minister for Justice and Law Reform* (Case C-427/11),³¹ the matter was remitted to the High Court under the name of *Kenny v The Department of Justice, Equality and Law Reform*.³² The claimants were 14 clerical officers employed by the Department of Justice, Equality and Law Reform who were assigned clerical duties in *An Garda Síochána* (the police force). They brought a claim for equal pay and the comparators were members of the force who were assigned to

25 CJEU 13 February 2014, C-512/11 (*TSN*) and C-513/11 (*TYN*); ECLI:EU:C:2014:73.

26 Finland, Act on Equality between Women and Men (1986/609).

27 CJEU 29 November 2001, C-366/99 (*Griesmar*), ECLI:EU:C:2001:648.

28 CJEU 17 July 2014, C-173/13 (*Leone*), ECLI:EU:C:2014:2090.

29 Ibid, para. 79.

30 No. 312426: <http://www.conseil-etat.fr/Decisions-Avis-Publications/Decisions/Selection-des-decisions-faisant-l-objet-d-une-communication-particuliere/CE-ass.-27-mars-2015-M.-A>, accessed 16 October 2018.

31 CJEU 28 February 2013, C-427/11 (*Kenny*), ECLI:EU:C:2013:122. For a complete commentary on this case see F. Meenan *Enforcement of the Principle of Equal Pay*, available at: <https://www.equalitylaw.eu/downloads/3950-paper-frances-meenan-workshop-equal-pay-pdf-385-kb>, (November 2016), accessed 19 October 2018.

32 [2014] IEHC 11, Judgment of Mr. Justice McCarthy of 13 January 2014. For clarification: this case originated in an appeal on a point of law from a determination of the Labour Court of 27 July 2007 (EDA 13/2007).

perform certain clerical and administrative duties. Following the CJEU's judgment, the High Court remitted the matter to the Labour Court stating that the Labour Court should adopt the following approach (in summary): that the Labour Court should choose comparators drawn from the generality of all those engaged in clerical work for or as members of the police force; then the Labour Court should address the issue of whether or not the work performed by the claimants is like work; if the work is like work, the Labour Court should address the issue as to whether or not the difference in pay is objectively justified. This will not involve consideration of the reasons for the assignment of members of the police force to certain posts. Industrial relations issues cannot of themselves be the sole basis justifying a differential in pay, but regard may be had to industrial issues as one of a number of factors. In addition, consideration must be given to the context of the generality of those engaged in clerical work; this will extend to taking into account the nature of not only the clerical work but all police work, including any incident of service in the police force. The matter is presently (October 2018) before the Labour Court and is to include submissions as to how it should proceed in the selection of comparators. The most recent decision of the Labour Court was November 2015.³³

United Kingdom (UK)

Powerhouse Retail Ltd & Ors v Burroughs & Ors [2006] IRLR 381 (following the CJEU's decision in *Preston*, C-78/98³⁴), for the purposes of an equal pay claim relating to occupational pensions, time began to run on the date of the transfer of the undertaking in which the claimants worked, rather than the date on which a claimant's employment ceased. This case concerned claims which had been brought against the eventual employer by claimants whose contracts of employment had been subject to transfers covered by the Acquired Rights Directive.³⁵

2.1.3 Preliminary questions from national courts

France (FR)

PRAXAIR n° C-486/18: The case concerned a claim by a French female worker for a recalculation of the redundancy payment and the redeployment leave allowance paid to her by her employer while she was on parental leave. The Court of Cassation asked the CJEU three questions about Clause 2,(4) and (6) of the framework agreement on parental leave.³⁶ The main question was whether the clause must be interpreted as precluding the application to an employee who is on part-time parental leave at the time of their dismissal of a provision of domestic law, such as Article L. 3123-13 of the then-applicable Labour Code, which states: 'The severance pay and compensation for retirement of the employee who has been employed on a full-time and part-time basis in the same undertaking shall be calculated in proportion to the periods of employment completed under either of these two bases since their entry into the undertaking'³⁷ The case is pending in front of the CJEU.

2.1.4 The concept of pay

Hungary (HU)

Judgment of Supreme Court Kfv.IV.37.332/2007/5: A female employee in a manual job earned less than her male co-workers in the same position. The employer defended the wage difference with reference to different job tasks and also to the fact that the employee had been granted a housing loan, which,

33 *Department of Justice, Equality and Law Reform v CPSU* EDA1518. This decision was essentially a case-management conference.

34 CJEU 16 May 2000, C-78/98 (*Preston*), ECLI:EU:C:2000:247.

35 Council Directive 77/187 of 14 February 1977 aims at the approximation of the laws of Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (as amended by Directive 98/50/EC of 29 June 1998; consolidated in Directive 2001/23 of 12 March 2001).

36 Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, OJ 1996, L 145/4.

37 Soc. 11 July 2018, No. 16-27825: <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000037384075&fastReqId=15379098&fastPos=2>, accessed 16 October 2018.

according to the employer, was paid as partial compensation for the wage difference. The employer referred to the interpretation of 'pay' by the CJEU, claiming that all benefits have to be considered 'pay' in this context. A detailed analysis of the scope of the job (its nature, quality and quantity, the required skill, effort, experience and responsibility) revealed that the work of the female employee was comparable with that of her male co-workers, in spite of some differences in their tasks. Furthermore, the Supreme Court established that the housing loan could not be taken into consideration when comparing hourly wages, because it was not proved that it was granted as compensation for lower wages. The case law of the CJEU brings into the concept of pay only those benefits that provide effective material advantage (it referred to cases C-12/81 *Garland*, C-262/88 *Barber*), whereas a housing loan was not such a benefit, as it had to be paid back.

Latvia (LV)

The Supreme Court's decision in case C-694/2010 (15 December 2010)³⁸ states that there is no explicit notion of 'equal pay' provided by law – Article 59 of the Labour Law does define the notion of 'pay' in its general meaning, but not in the meaning of equal pay. It states that pay is regularly paid remuneration for work, which also includes bonuses and other kinds of remuneration in connection with employment as provided by normative acts, collective agreements or employment agreements. The Supreme Court held that compensation for unfair dismissal is to be considered as a component of 'pay' in the meaning of equal pay on the basis of the decision of the CJEU in *Seymour-Smith*.³⁹ The case concerned the calculation of compensation for idle time in case of unfair dismissal and following reinstatement. In particular, the claimant was on parental leave shortly before her dismissal. Article 75 of the Labour Law regulates the calculation of average salary for various situations, including compensation for idle time. It states that, in case an employee has not been in active employment during the period taken into account for the calculation of the average salary (the 6 months preceding the respective events), the statutory minimum pay must be considered as the average monthly salary. The Supreme Court, following the findings of the CJEU, held that an employee in case of unfair dismissal should be entitled to the compensation for idle time corresponding to his or her normal salary.

In case SKC-1683/2014 (27 March 2014), the Supreme Court had to decide on the employer's right to reclaim payments made to an employee. The Senate of the Supreme Court held that the concept of pay under Article 59, i.e. the concept of pay within the meaning of national law, also includes severance pay in case of dismissal.⁴⁰ Such a finding was based on the CJEU decision in *Barber*,⁴¹ although the case in question was not itself connected with discrimination and fell outside of the scope of EU law in general.⁴²

United Kingdom (UK)

In *Hayward v Cammell Laird Shipbuilders Ltd* [1988] IRLR 247, the applicant was employed at a shipyard canteen as a cook and was classified as unskilled for the purposes of pay. She claimed that she was doing work of equal value to male comparators who were shipyard workers paid at the higher rate for skilled tradesmen in the yard. The House of Lords ruled that the principle of equal pay required equality in relation to each element of pay rather than (as the employers here argued), the overall package paid to men and women respectively.

38 Decision of the Supreme Court (15 December 2010) in Case No. SKC-694/2010, available in Latvian on <http://www.at.gov.lv/files/uploads/files/archive/departments/2010/694-10.pdf>, accessed 13 June 2017.

39 CJEU 9 February 1999, C-167/97 (*Seymour-Smith*), ECLI:EU:C:1999:60.

40 Decision of the Senate of the Supreme Court in case No. SKC-1683/2014, not published.

41 CJEU 17 May 1990, C-262/88 (*Barber*), ECLI:EU:C:1990:209.

42 See also: Decision of the Senate of the Supreme Court in case No. SKC-2274/2016, available in Latvian in the database <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi>, accessed on 17 January 2019.

2.1.5 Direct and indirect sex discrimination

*Austria (AT)*⁴³

In a Decree of Constitutional Court 11 December 1998, G 57/98, *Pharmazeutische Gehaltskasse*, the applicant was a part-time employed pharmacist (as opposed to self-employed pharmacists) to whom a specific statutory pension scheme with the nature of a collective agreement applied. The Court, applying Article 119 TEEC directly and referring inter alia to the CJEU's judgment in *Hill/Stapleton*,⁴⁴ found that taking into account periods of full-time and part-time employment differently for advancement (and therefore pay including contributions to a pension scheme) constituted indirect sex discrimination.

Decree of the Supreme Court 1 December 2004, 9 Ob A 90/04g concerned a claim for a hardship allowance brought by two female claimants working with computer screens (visual display unit work). The provision of the collective agreement granting the hardship allowance only applied to employees working normal working hours (i.e. full-time) and not to others (e.g. part-timers). The Court found that this amounted to indirect sex discrimination against women as the enterprise concerned employed more women than men in part-time arrangements.

Decree of Supreme Court 29 March 2012, 9 Ob A 58/11m concerned the claim of a female flight attendant (cabin crew) for Austrian Airlines and Lauda Air that women were discriminated against by a provision that excluded periods of maternity leave from the calculation of seniority (which itself gave rise to promotions and other advantages). The Court stated, however, that the collective agreement, by not including periods of maternity leave into the seniority regime, did not constitute (indirect) pay discrimination within the meaning of Article 141(1) TEC.⁴⁵

Decree of Supreme Court 9 May 2007, 9 O A 41/06d concerned the claim of a female teacher against the calculation scheme of her remuneration level in that it took only limited account her previous part-time employment. The decision states that, when taking previous periods of occupation into account for determining pay and other entitlements of public employees, imposing certain time limits and the less favourable assessment of part-time work are discriminatory. The Supreme Court, amending the decision of the second instance court, adjudicated the accordingly higher pay to the complainant.

Decree of Supreme Court 29 June 2005, 9 Ob A 6/05f concerned a hospital nurse and contractual employee of the *Land Upper Austria*, who contested the calculation of her severance payment. She argued that the exclusion of periods of non-permanent part-time work in the calculation of the payment discriminated against women because most part-time employees are women. The Court held that the complainant was not discriminated against by a statute that did not include such part-time employment periods in the assessment basis for the calculation of a severance payment.⁴⁶

Germany (DE)

Federal Labour Court, judgment of 20 August 2002, 9 AZR 353/01: The female applicant claimed her entitlement to vacation benefits as, due to collective agreement regulations, she lost them because she took maternity leave before giving birth. The court held that the specific regulation of the collective agreement was unconstitutional and could not be justified by the freedom of collective bargaining because of the pressure exerted on pregnant employees to abandon their right to maternity protection before the birth.

Federal Constitutional Court, judgment of 18 June 2008, 2 BvL 6/07, and Federal Administrative Court, judgment of 12 December 2012, 2 B 90/11: The courts decided that statutory reductions of retirement

43 All decisions can be found at <https://www.ris.bka.gv.at/> accessed on 17 January 2019.

44 CJEU 17 June 1998, C-243/95 (*Hill*), ECLI:EU:C:1998:298.

45 See also CJEU 7 June 2012, C-132/11 (*Tyrolean Airways*), ECLI:EU:C:2012:329.

46 § 56 Abs 9 Upper Austrian State Law on Contractual Staff (*Oberösterreichisches Landes-Vertragsbedienstetengesetz*).

pensions due to former part-time work violated the constitutional as well as EU law prohibiting sex and pay discrimination. Thus, the courts followed the ruling of the CJEU in joined cases C-4/02 *Schönheit* and C-5/02 *Becker*.

Federal Labour Court, judgment of 14 July 2015, 3 AZR 594/13: The case concerned the calculation of an occupational pension for a female part-time employee employed by a trade union. The court ruled that the occupational pension must be calculated in such a way that it is granted in the amount corresponding to the exact proportion of the female part-time employee's working time to the working time of a comparable full-time employee. Otherwise, there would be discrimination against part-time workers and thus indirect discrimination against women, which would violate Article 157 TFEU, among other legal provisions.

Federal Labour Court, judgment of 26 September 2017, 3 AZR 733/15: The case concerned a statutory state provision for occupational pension schemes for employees of the German state of Hamburg, which provided that the lower pension would be suspended if an employee was entitled to both a survivor's pension and a retirement pension under the statutory provisions of the state of Hamburg. The court decided that it could not be ruled out that more female than male former employees of Hamburg would be adversely affected by this regulation, thus, causing a violation of Article 157 TFEU, and called on the State Labour Court to again carefully examine whether there was indirect discrimination on the grounds of sex/gender. The Federal Labour Court referred to various CJEU rulings, among them the cases C-443/15 *Parris*, C-427/11 *Kenny*, C-385/11 *Elbal Moreno*, C-285/02 *Elsner-Lakeberg*, C-379/99 *Menauer*, C-400/93 *Royal Copenhagen*, C-200/91 *Coloroll*, C-43/75 *Defrenne*.

Administrative Court of Freiburg, judgment of 22 February 2018, 5 K 4853/16: The case concerned the crediting of parental leave to the calculation of pension rights for civil servants. Whereas twelve months of parental leave are credited under the statutory pension scheme, only six months are credited under the civil service pension scheme. The court ruled that there was no infringement of the constitutional prohibition of sex/gender discrimination or of Article 157 TFEU because any indirect discrimination was justified by reference to objective factors, in this case the actual period of service. The court referred to the decision of the CJEU in case C-236/98 *JämO*.

Greece (EL)

The Athens Court of Appeal's judgment *No. 3693/2018* concerned the non-recognition of the time of non-paid parental leave (1 year, 5 months and 1 day) of a female private-bank employee as working time for the purpose of the calculation of the pay (the pay system was set in pay grades on the basis of seniority), although this period had been recognised as insurable time by the social security scheme through payment of both the employer's and the employee's contribution by the employee. Although it did not explicitly identify it as direct discrimination, the Court of Appeal found that this practice was contrary to Act 3896/2010 and Article 21(1) Constitution protecting maternity and awarded to the female employee the loss of pay (EUR 6 118.12 for the last 5.5 years of service).

Spain (ES)

In judgment of the Constitutional Court of 1 July 1991 *No. 145/1991*, the Court considered that certain professional classifications constituted indirect discrimination on grounds of sex because, although the collective agreement had valued the physical effort required in the category occupied mostly by men, it did not value other factors which were required in the category occupied mostly by women in the same way. This interpretation has been followed in other subsequent judgments of the Constitutional Court itself⁴⁷ and in other rulings of the ordinary courts.

47 See for instance, Sentence 58/1994, 28 February 1994.

Sentence of the Supreme Court of 18 July 2011 No. 133/2010 concludes that one of the factors that has the strongest influence on the difference in pay between men and women is discrimination in career development. The Supreme Court established that a system of promotion that lacked even minimal transparency led to women stagnating in lower ranks, according to statistical analysis, and that this constituted indirect discrimination.

Finland (FI)

In judgment of the Labour Court *TT 1998-34*, the Labour Court was asked to rule on whether a clause in a collective agreement was discriminatory. The clause stated that maternity and parental leave periods were not to be taken into account as time that entitled a person to additional pay on the basis of work experience, although military service periods were taken into account. The Court held that the clause was discriminatory and as such null and void. The Court referred to cases *Nimz* and *Gillespie*, and used the *Bilka* test in assessing whether there was indirect discrimination.⁴⁸

France (FR)

Even if indirect discrimination is prohibited, there are very few cases in France on this issue. The case in the judgment of the Court of Cassation of 3 July 2012 No. 10-2301 is the second in which the Court of Cassation applied the concept of indirect discrimination. This decision is based on Article 157 TFEU as it concerns an occupational pension scheme in which the benefits for part-time workers were lower than those for full-time workers. The Court of Cassation found that a measure based on part-time work, which concerned mainly women and could not be justified, was discriminatory.

A case decided by the Versailles Court of Appeal on 1 December 2016 was approved by the Court of Cassation on 20 September 2018 n° S 17-11.836 not published. It concerned a high-level senior employee who complained of a difference in remuneration, for lack of advancement unlike her colleagues. After having worked for six full-time years, she subsequently alternated full-time and part-time periods, with part-time no less than 80 % or 90 %. She found that she was not getting the deserved advancement or classification, despite all her applications. The Court of Appeal held that the evaluation interview was the normal mode of promotion in this company and that the employee did not benefit from the process, so that she could argue sex discrimination. The Court concluded that evidence justifying the career delay had not been produced. The Court of Cassation agreed.

In Court of Cassation 12 July 2017 No. 15-26.262, according to the Court of Cassation, a bonus paid to women excluding men on Women's Day does not constitute discrimination. The Court even describes this as positive action. According to the Court 'this measure in a collective bargaining agreement concerning Women's Day which benefits solely women is justified by its goal of equal opportunity by compensating the factual inequalities faced by women'.⁴⁹

Hungary (HU)

*Case of the Equal Treatment Authority EBH2018. M.24.*⁵⁰ The applicant, a male human resources specialist was hired to replace a female employee who was on maternity leave. He claimed that his predecessor in the job with whom he had similar duties, previously had earned more than the applicant, and upon her return, the wage gap would have been even higher due to the mandatory pay rise set forth by the Labour Code.⁵¹ In 2012 both the applicant and the female co-worker acquired the same specific vocational qualification which was required by the employer. The female employee had held a college degree in human resources since 2005, while the applicant graduated in 2014. The applicant resigned in April 2015

48 CJEU 13 May 1986, Case 170/84 (*Bilka*), ECLI:EU:C:1986:204; CJEU 7 February 1991, C-184/89 (*Nimz*), ECLI:EU:C:1991:50 and CJEU 13 February 1996 C-342/93 (*Gillespie*), ECLI:EU:C:1996:46.

49 See: https://www.courdecassation.fr/jurisprudence_2/chambre_sociale_576/2015_12_37299.html, accessed 16 October 2018.

50 Uniformity decision adopted by the Curia, binding for the lower courts.

51 Act No I of 2012, Section 59.

when his claim for equal wages was rejected by the employer and brought a court action for the wage difference to be paid. The Labour Court partially decided in favour of the applicant, while the appeal court rejected his claim, arguing that the applicant did not specifically claim that the alleged discrimination was on the ground of sex, therefore the regulations of equal pay norms are not applicable. Proceeding upon the claimant's petition for judicial review, the Curia rejected his claim and upheld the decision of the appeal court. The Curia argued that according to the Act on Equal Treatment,⁵² the appeal court was right when it rejected the claim in the absence of a specific statement on the ground of discrimination. The Curia added that although having a college degree was not a requirement by the employer and therefore it had no relevance that the applicant had obtained his diploma several years later than his female colleague, and that only the specific vocational qualification mattered for the job, work experience allows employees to perform their duties better, therefore it is a lawful justification for wage difference and thus, the employer could freely decide whether to reward work experience with higher wages (see Case C-17/05 *B. F. Cadman vs. Health and Safety Executive*).

*Judgment of the Curia of Hungary Mfv. I.10.646/2012/4.*⁵³ The employer only granted a year-end bonus to employees who did not take any sick leave in the given calendar year. The Curia stated that a bonus is a payment award that is in the discretion of the employer and that employees have no automatic right to receive it. The employer distinguished between employees in an objective manner, which was relevant for the performance of duties, in accordance with the Act on Equal Treatment.⁵⁴ The difference in wages was due to the actual work performance and work load.

This case concerned discrimination on the ground of health. However, the same reasoning might appear in gender cases where the same kind of interpretation of employers' discretion could be problematic; for example parental sick leave (provided by the Act on Health)⁵⁵ is mostly taken by mothers,⁵⁶ which could lead to indirect discrimination against women. Although the latter issue was not the subject of the case, the judgment (if used as a precedent) may open avenues that do not conform to the ECJ interpretation regarding the gender equality principle.

Ireland (IE)

The judgment of the Supreme Court in *National University of Ireland Cork v Ahern* [2005] 2 IR 577 involved a claim brought by 42 male security service operatives employed by the appellant. The equality officer and the Labour Court had found that they were discriminated against, relying on two switchboard operators, employed on a job-sharing capacity, as comparators. The case ultimately came before the Supreme Court. The Supreme Court found that in considering whether there were grounds other than sex justifying the different rates of pay, the Labour Court had failed to properly consider the circumstances surrounding the different rates of pay. The Court ultimately accepted the appellant's contention that the different rates of pay were not based on grounds of sex, but were justified by a policy of facilitating the family obligations of employees.

In the decision of the Equality Tribunal in *Dunne v The Irish Prison Service* DEC-E2015-097; [2017] ELR 96, the complainants were female prison officers, employed in an all-male prison. The complainants submitted that they had been discriminated against on the grounds of gender and equal pay in comparison to their male colleagues in the context of a night shift quota, which attracted an additional night allowance in the nature of pay. The female prison guards alleged that they were financially disadvantaged as although they wished to work nights, they were prevented from doing so by reason of the gender quota. It was alleged that the discrimination stemmed from the introduction of a gender quota, setting a maximum

52 Act No. CXXV of 2003 Section 8.

53 The full case is not publicly available, only a summary is accessible.

54 Act No. CXXV of 2003, Section 7 para 2 point b).

55 Act No. LXXXIII of 1997 para 44 points b-e.

56 As indirect evidence for this statement, the data and analysis of the Central Office of Statistics (from 2017) may be cited: the proportion of employees who are temporarily unable to work is the highest among women aged 30-39 (almost twice as high as the male group), see: <https://www.ksh.hu/docs/hun/xftp/idoszaki/pdf/tappenz16.pdf>, accessed 11 December 2018.

limit on the number of female prison guards who could be on duty during a night shift. The quota system was specific to the prison in question and was introduced by the chief officer for security reasons. The complainants submitted that the quota was discriminatory as there was neither objective justification nor consistency in its implementation. The respondents also relied on the defence in Sections 27(1)(a)(i) and (ii) of the Employment Equality Acts that the measure was essential in order to guard, escort and control prisoners and to quell violent disturbances while protecting the privacy and decency of the prisoners. The Equality Tribunal considered that the practice of applying the night quota, which directly resulted in female officers losing out on a night duty allowance is discriminatory on the face of it. However, the Equality Tribunal held against the complainants as there was a legal requirement to have a gender quota in place to ensure that there are sufficient male officers on duty at all times and to comply with the prison rules. The specific nature of work of prison warders and the conditions in which such duties are performed justifies the exclusion of women from posts in male prisons and men from posts in female prisons. These factors justify the reserving of night duties primarily to men in male prisons. The quota is proportionate to secure the privacy and decency of prisoners as required by the legislation.⁵⁷

Poland (PL)

In the Supreme Court judgment of 8 January 2008, *II PK 116/07*, the case of *Grażyna P*, the claimant (a mother of five children) claimed damages for discrimination based on sex, age and family status. In her opinion, one of the signs of discrimination included the significant differences in remuneration between her and her colleagues. The employer argued that unfavourable remuneration of the claimant was partly the result of her frequent use of parental leave. The courts of first and second instance found that by differentiating the situation of the claimant in terms of pay, the defendant applied legally acceptable criteria. These judgments were overruled by the Supreme Court, recognising a cassation claim, arguing that ‘the exercise of powers conferred by law in connection with the birth and upbringing of the child cannot be regarded as an objective reason for determining a lower remuneration compared to other employees’.

The Constitutional Tribunal judgment of 9 July 2012, *P 59/11*, initiated by a legal question of the District Court in Białystok, concerned a case heard by the District Court in Białystok in which an employee claimed her right to an additional month's salary (so called thirteenth salary), guaranteed to employees of the public sector according to the Act of 12 December 1997.⁵⁸ It was denied by the employer who stated that she had not met the required period of continuous work during a calendar year (which was six months), due to the use of maternity leave.

The Court decided to refer the case to the Constitutional Court with a legal question, whether Article 2 Paragraph 3 of the Act of 12 December 1997 dealing with an exception to the requirement to work for the employer for at least six months in a given calendar year insofar as it ignored the period of maternity leave as such exception, is in conformity with the Constitution. The Tribunal in its ruling first confirmed that the additional month's salary in the public sector remains within the wider concept of remuneration, due to the fact that it is closely related to the employment relationship, and has no discretionary character with regard to the employer. The Tribunal further held that Article 2 Paragraph 3 of the Act of 12 December 1997 was incompatible with Article 32.1 prohibiting discrimination, in connection with Article 71.2 of the Polish Constitution, granting the mother the right to special assistance from public authorities before and after birth. This was insofar as Article 2 Paragraph 3 ignored the period of maternity leave as allowing for the acquisition of the right to the additional month's salary in the amount proportional to the length of time worked in the situation when, throughout the calendar year, the employee did not perform work for six months.

57 The *Commission v France* Case 318/86 [1988] E.C.R. 3559; [1989] 3 C.M.L.R. 663 applied.

58 Act of 12 December 1997 on additional monthly salary received once a year by employees of the public sector. JoL No. 160, item. 1080, as amended.

United Kingdom (UK)

In *Ratcliffe & Ors v North Yorkshire CC* [1995] IRLR 439, the House of Lords ruled that the employers could not justify pay differentials between workers in predominantly female and those in predominantly male jobs to the extent that such differences resulted from the application of stereotypical assumptions about the role of women in the workplace.

In *Glasgow City Council v Marshall & Ors* [2000] IRLR 272, the House of Lords ruled that employers were not under any obligation to justify differences in pay between men and women doing work of equal value if the claimants could not prove that the employer's grounds for paying women less discriminated indirectly on grounds of sex. However, if the discrimination had been direct, the employer would not have been able to uphold it as justifiable.

In *Council of the City of Sunderland v Brennan & Ors* [2012] IRLR 507, the Court of Appeal, considering the decision of the House of Lords in *Marshall*, pointed out that it would be difficult for an employer to demonstrate that pay practice which had a significantly disparate impact on men and women did not involve indirect sex discrimination.

2.1.6 Equal work or work of equal value*Belgium (BE)*

A furniture factory had classified its blue-collar workers in four categories; all female workers belonged to the third one. However, one of them took legal action, claiming that she was performing the same tasks as the men of the first category, who were entitled to a higher remuneration. After hearing a number of workers as witnesses, the Labour Court in Bruges concluded that the claim was valid and that the employer had been discriminating against women; as provided by Article 23(1) of the Gender Act of 10 May 2007, fixed damages equalling six months' pay were granted to the claimant.⁵⁹ When the employer appealed, the Labour Court of Appeal in Ghent (division of Bruges) completely upheld this ruling.⁶⁰

Cyprus (CY)

Judgment of the Supreme Court in Case no. 5/62 Jenny Xinari V The Republic of Cyprus 3 R.S.C.C. 98: Up to 1955, a husband and his wife, both working in the public service, were both entitled to a cost of living allowance. In 1955, the relevant regulation changed, with the result that the allowance was restricted to the officer drawing the higher of the two salaries. The applicant was appointed to the public service in 1956 and until 1961, when she married a public officer, she received the allowance. After her marriage, the allowance was given to her husband, because he was paid a higher salary. The applicant alleged that the decision to deprive her of the allowance was null and void on the basis of Article 28 of the Constitution. The Court held that the notion of 'equal pay for equal work' was an integral part of the principle of equality safeguarded by Article 28 and declared the new regulation as unconstitutional and awarded the applicant back pay in compensation.

Judgment of the Supreme Court in Case no 541/86 page 3005 Melpo Gregoriou V Municipality of Nicosia 12 September 1991: The applicant was an employee of Nicosia Municipality and in her application to the Supreme Court, she alleged that the decision of the Municipality not to approve her claim to be put on the same salary scale as her male colleagues who had the same job was null and void. The Supreme Court found in her favour and based its decision on Article 28 of the Constitution. It declared the Municipality's decision null and void. The Supreme Court recognised that the constitutional principle of equality guarantees substantive equality.

59 Judgment of 25 June 2013, *Algemene Rol* No. 07/127676/A, unreported. That the expert only heard about this case four years later is caused by the haphazard way in which case law is made available (with the sole exceptions of decisions of the Constitutional Court, the *Conseil d'État/Raad van State* -higher administrative court- and, not exhaustively, the Court of Cassation).

60 Judgment of 5 December 2014, *Algemene Rol* No. °2013/AR/197, unreported.

Germany (DE)

Federal Labour Court, judgment of 23 August 1995, 5 AZR 942/93: The applicant, a female packer, called for remuneration equal to that of her male colleagues doing the night shifts. The court held that the working activities of the female applicant and her male colleagues were not comparable. For a definition of work of equal value, the court mentioned the requirements for work performance, such as necessary previous knowledge, skills and abilities with respect to their manner, variety and quality. The application was rejected due to the variety of professional duties performed by the male colleagues. Nonetheless, the court itself deplored the lack of objective criteria for definitions of work of 'equal value'. The question of definition has been developed by further case law and with the General Equal Treatment Act entering into force in 2006.

Federal Labour Court, judgment of 25 January 2012, 4 AZR 147/10: This case concerned the allegedly unfair remuneration of the two groups of employees (clinical chemists and medical doctors) in relation to a job classification system which separated both groups of employees working in a public hospital. The court decided that neither Article 157 TFEU nor Sections 1 or 7 of the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz, AGG*) provide for the general principle of 'the same pay for the same work'. The court clarified that the principle of equal pay only applies in cases of sex discrimination. The ruling was confirmed by the *Federal Administrative Court, judgment of 9 April 2013, 2 C 5/12*.

State Labour Court of Baden-Württemberg, judgment of 21 October 2013, 1 Sa 7/13: The court confirmed that Article 157 TFEU does not provide for 'the same pay for the same work' but only applies in cases of sex/gender discrimination. Discrimination would presuppose that there is a causal link between less favourable treatment and sex/gender, such as the fact that the less favourable treatment is gender-related and motivated by a connection to sex/gender. The difference in remuneration between the claimant and a male colleague doing the same or equivalent work was explained by a previous court settlement in favour of this colleague. Therefore, the State Labour Court decided that there was no sex/gender discrimination as the higher salary for the male colleague was not motivated by his sex/gender. However, the court failed to explain why motivations should be relevant at all. In the case of equal or equivalent work by men and women, any difference in treatment must be justified by an objective reason. In the case in question, this reason could only be an *acquis* acquired legitimately through a court settlement, but the court failed to clarify to what extent the *acquis* could be regarded as legitimately acquired when taking into account the principle of equal pay.

Labour Court of Berlin, judgment of 1 February 2017, 56 Ca 5356/15: The case concerned a female freelancer working for a public service broadcaster in the position of a senior editor on a full-time basis, with defined duties and receiving a fixed monthly remuneration who discovered that her male colleagues doing the same or equivalent work were being paid significantly more than herself. The defendant employer confirmed that male colleagues doing equivalent work were paid a higher salary than the claimant but denied discrimination. The pay difference was explained by different collective agreements for freelancers and permanent employees, on the one hand, and differences in seniority (the period of employment for the same employer) between the claimant and other (male) freelancers, on the other. The Labour Court of Berlin decided that the female freelancer had not been discriminated against on the ground of sex. The court stated that Article 157 TFEU would not require equal pay for equal work but prohibits sex discrimination. The court could not identify any discrimination on the ground of sex, but rather justified differentiations due to seniority and the different contract arrangements for freelancers and permanent employees. Unequal pay for the same or equivalent work could not in itself indicate discrimination. As there was no discrimination, the court rejected the claimant's request for information about the pay structure and the salaries of other male colleagues performing equivalent work. During the public hearing, the judge explained that higher remuneration would mainly depend upon negotiating skills, which are supposedly more pronounced in men, and contractual freedom and that maternity and childcare periods would often lead to shorter periods of employment by women, less seniority and, thus,

lower wages without any discrimination being involved. The case is now pending before the State Labour Court of Berlin (4 Sa 567/17).

Spain (ES)

In the judgment of the Supreme Court of 14 May 2014, No. 2328/2013, the TS considered, in relation to a hotel, that the maids (predominantly women) were performing work of equal value to that of the bartenders (mostly men), for which they deserved equal pay. The jobs were considered to be of equal value because both were in Level IV of the wage structure set out in the applicable collective agreement.

France (FR)

In a judgment of the Court of Cassation of 12 February 1997, No. 95-41694, the Court was faced with an equal pay claim from a female mushroom packer comparing her work with more highly paid male packers. The Court stated that it was clear that women packers were systematically paid less than their male equivalents. For the Court of Cassation, men and women were doing the same work and the employer could not produce any objective reasons for paying them differently.

A judgment of the Court of Cassation of 6 July 2010, No. 09-40021, considered a case in which a female employee held a position as ‘Human Resources, Legal and Office Department Manager’. Following her dismissal, the employee decided to file a claim for back pay on the grounds that there had been discrimination against her. The employee provided evidence that her salary, despite equal classification, and more seniority than her direct male colleagues, was substantially lower than that of her male colleagues. For the court, the functions of the employee and those of her direct colleagues were identical as to hierarchical level, classification and responsibilities. Moreover, their importance was comparable with regard to the functioning of the company, as each of the managerial positions required comparable qualifications and involved a comparable level of stress. The Court of Cassation concluded that the employees performed work of equal value.

A judgment of the Court of Cassation of 22 October 2014, No. 13-18362, was on the case of an employee of the Chamber of Commerce who complained of a lower salary than her male colleague. The Court of Appeal of *Aix en Provence* rejected her application on the ground that she was promoted more swiftly than two male colleagues, that her staff was smaller and that her powers delegated by management were limited. The Court of Cassation overturned this decision. Indeed, it held that the Court of Appeal should have carried out an analysis of the situation, the professional duties, and the responsibilities of the employee to compare them with those of the other members of the steering Committee who all fell under group III, and check, as it was argued, if the duties exercised were not of equal value to those of the person concerned. It therefore required concrete and thorough investigation on the scope of the job. In this case, the Defender of Rights intervened alongside the employee.⁶¹

The case law of the Court of Cassation has recently evolved regarding the principle of equal pay in general, known as ‘equal pay for equal work’. On the one hand, the employer cannot unilaterally establish differences between employees in the same situation.⁶² However, on the other hand, the difference in remuneration between employees is presumed to be justified according to the principle of equal pay for equal work when it is provided for by a collective agreement (rather than set unilaterally by the employer).⁶³ This case law, however, is not applicable in the event that the difference is found to constitute discrimination. However, no decision pertaining to this particular case has been issued on this point so far.⁶⁴

61 <https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000029632781&fastReqId=1472760383&fastPos=6&oldAction=rechExpJuriJudi>, accessed 16 October 2018.

62 Soc. 14 September 2016, No. 15-11.386, FS-P+B+R+I: <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000033125173&fastReqId=14937698&fastPos=1>, accessed 16 October 2018.

63 Soc. 27 January 2015, No. 13-22179: <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000030174876&fastReqId=316175162&fastPos=1>, accessed 16 October 2018.

64 Soc. 17 January 2018, No. 16-19949.

Croatia (HR)

In cases decided by the Municipal Labour Court in Zagreb, *Pr-8076/13*, the County Court in Zagreb, *Gžr-330/14* and the Constitutional Court of the Republic of Croatia, *US-III-7490/2014*, the same title of the job or position was found not to automatically give the right to the same salary as that received by another worker employed with the same job title, because salary is a category depending on the actual work and responsibility of each worker performed at his/her workplace. Not all cases of different treatment in comparison with another worker represent discrimination, but only that which places another person at a disadvantage in comparison with other workers in a comparable situation, based on specific discriminatory grounds.

Cases decided by the Municipal Labour Court in Zagreb, *Pr-1433/12*, the County Court in Zagreb, *Gžr-2213/14*, and the Constitutional Court of the Republic of Croatia, *U-III-1711/2015*, involved a female worker claiming that she was paid less for the same work performed in the same duration as her younger male colleague, and that she was discriminated against based on sex and age. The lower and appellate courts dismissed the claim and appeal, and the Constitutional Court found that there was no discrimination because '[...] the difference in salary for the same workplace does not by itself constitute infringement of the principle of equal treatment, when it results from correction of salary (based on performance, work quality, additional tasks, etc.) in accordance with employer's decision and employment contract'. It seems, however, that the court of first instance (the Municipal Labour Court in Zagreb) established the facts based on differences in employees' tasks contained in the written employment contracts concluded by the applicant and the comparator, without actually determining whether these different tasks were performed in practice. The appellate court and the Constitutional Court accepted the factual findings by the court of first instance without any objections.

In a case decided by the Constitutional Court of the Republic of Croatia, *U-III/579/2008*, a female public servant claimed that she actually performed the tasks of a job with a higher salary coefficient, even though she was formally employed as a public servant with the assigned lower salary coefficient due to her lower level of formal professional qualifications. The Constitutional Court confirmed that there was neither discrimination nor a breach of the constitutional guarantee of equality before the law, because she was assigned to a job adequate to her level of professional qualifications. In addition, the claimant did not succeed in proving that she actually performed the tasks of a higher skilled worker.

Hungary (HU)

*Judgment of the Curia of Hungary*⁶⁵ *Kfv. 39.148/2011/7*: The applicant, a female manual worker who worked at an establishment for four years claimed that her male co-workers in the same position earned 70 % and 100 % more respectively. She first launched a procedure at the Equal Treatment Authority (ETA), where the ETA found the employer violated the equal pay regulations set forth in (the former) Labour Code⁶⁶ and imposed a fine of HUF 500 000 (approx. EUR 1 500). The respondent filed a claim to the Municipal Court against the administrative decision arguing that the male employees had been working for the establishment for 11 and 13 years respectively. The Court held that even though the male employees had longer work experience at the respondent's establishment, this fact does not establish an objective criteria and does not justify such a gap between wages, as previously they had performed different duties, and they had only one-and-a-half years of experience in the said job, which is comparable with that of the applicant. The 70-100 % wage difference therefore violated the right to equal pay. The Curia upheld the decision of the lower court.

Case of the Equal Treatment Authority EBH2014. M.8:⁶⁷ The applicant, a female swimming pool lifeguard, claimed that her male co-workers performing the exact same duties earned more than her. The Curia

65 Since 2012, the official name of the highest judicial authority in Hungary is the Curia of Hungary (*Kúria*); its former name was the Supreme Court of Hungary (*Legfelsőbb Bíróság*).

66 Act No XXII of 1992 Section 142/A.

67 Uniformity decision adopted by the Curia, binding for the lower courts.

upheld the decision of the appeal court and stated in its decision that all employees concerned in the legal suit had been responsible for the same tasks, and the defendant had been unable to justify the unequal pay of the employees on grounds of alleged differences in the quality and quantity of their work, responsibility, working conditions, their efforts or any other circumstances. Other qualifications obtained by the male employees were not necessary for the said duties, therefore they are irrelevant and do not establish a legitimate differentiation in wages.

Ireland (IE)

In *Golding v. The Labour Court* [1994] ELR 153, the High Court examined the reasons to be given by the Labour Court where a finding is made against claimants. The 12 applicants' claim for equal pay in respect of a male comparator was rejected by the equality officer and the Labour Court. On application for judicial review of the decision, the High Court held that a determination by the Labour Court must give sufficient reasons for the court's decision, so that the parties can see if there is a point of law on which to appeal to the High Court. There is no prescribed format for the determination.

The judgment of the High Court in *Flynn v. Primark* [1997] ELR 218 concerned female appellants who brought an equal pay claim relying on male storemen as their comparators. The Labour Court found that while the appellants were performing like work, the difference in pay was on grounds other than sex, as the pay rates were arrived at by different industrial processes. The High Court held that the Labour Court should have considered whether the differences were justified on economic grounds and not merely a means of reducing the pay of workers of one sex; also the fact that the difference in rates of pay was achieved by different industrial routes does not objectively justify the practice. Further, findings of fact should be presented explicitly, and not by implication.

The judgment of the High Court in *C & D Food Ltd. v. Cunnion* [1997] 1 IR 147 involved a claim by female workers for equal pay in respect of male workers in another pay grade. The High Court found that although an employer may genuinely believe that the value of work being carried by employees in one occupation is higher than the value of work carried out by others, he cannot justify a pay difference based solely on his belief. The fact that both men and women must be recruited to the same job at the same wage is a matter to be taken into account in determining the relative value of the different tasks in the workplace, and the employer's belief, held in good faith, is not sufficient as a basis for conclusions. The legislation did not require all of the claimants' work to be identical to that of the comparator.

Luxembourg (LU)

A judgment of the Court of Appeal (Labour Court) of 7 December 2015, No. 39457 concerned an employee who claimed the payment of a bonus arguing that she was a victim of discrimination because her male colleagues were granted a higher bonus. The Court first ruled on the legal nature of the bonus and stated that a bonus, even granted in a discretionary manner, is part of the remuneration that could be subject to a court control regarding the criteria of non-discrimination for reasons of gender. Secondly, the Court recalled that Article L.244-3 of the Labour Code stated that, if a person establishes in court facts assuming the existence of direct or indirect discrimination, the defender must prove that there has not been a violation of the principle of equal treatment.

In the case at issue, the Court recognized that a male employee and the claimant were in a comparable situation, because they carried out the same job whereas the male employee was granted a higher bonus than the female claimant. As a consequence, the Court ruled that the claimant had provided proof assuming the existence of direct discrimination. It also stated that the employer could refute the claimant's allegation by demonstrating that the pay gap was justified by gender-neutral criteria like a higher level of education in the banking sector, greater work experience and a significant increase of the

performance of the department. The Court concluded that the reasons alleged by the employer were justified.⁶⁸

The judgment of the Court of Appeal (Labour Court) of 14 July 2016, *No. 41026* concerned a black woman, who claimed damages arguing worse treatment regarding wages and other advantages compared to the male colleagues she replaced. The Court recalled that Article L.253-2 (1) of the Labour Code stated that, if a person establishes in Court facts assuming the existence of direct or indirect discrimination, the defender must prove that there has not been a violation of the principle of equal treatment. First of all, the Court had to determine whether the situation of the claimant was comparable to the situation of her male colleagues and that the violation of the principle of equal treatment was based on grounds listed in Article L.251-1 (1) of the Labour Code. An employee may only require receiving the same remuneration as her colleagues if she performs equal work or at least 'work of equal value'. The central element of comparison is the actual work done by the employee.

The Court ruled that the claimant did not perform work of equal value in comparison with her male colleagues. She was responsible for day-to-day accounting management, whereas her colleagues were involved in the development of financial strategies and in active financial participation management. As a consequence, the claimant did not establish the presumption that she had been discriminated against, thus failing to transfer the burden of the proof to the employer.⁶⁹

Latvia (LV)

In case *SKC-792/2017* (27 April 2017), the Supreme Court provided guidelines on how the comparison between jobs has to be made in order to assess compliance with the general principle of equal pay by citing CJEU case law in the field of equal pay between men and women, for example *Ten Oever*⁷⁰ and *Barber*.⁷¹ The Supreme Court held that in order to assess the absence of unequal treatment with regard to the obligation to provide equal pay, the national court must assess the worker's professional qualification (for example, education and skills necessary to perform a job), the character of a job and the related working conditions. Then all factors must be compared with other colleagues, including those with longer seniority. In such a way it is possible to establish if a claimant performed same/similar work or work of equal value and if his remuneration corresponds with his qualification and character of the work performed.

Poland (PL)

The Supreme Court judgment of 22 February 2007, *I PK 242/06, Maria S. vs. The Municipal Office in J* concerned a claimant, a female legal adviser employed in the municipal office, who claimed that her employer discriminated against her on the grounds of sex. She received less remuneration than a male legal advisor working in the same team, despite the fact that they performed the same work. The employer argued that the claimant's salary remained within remuneration brackets, set by provisions of law. He also indicated that her salary was lower than her colleague's because the claimant had less service experience, a lower standard of education (she had not attended any specialisation courses apart from her legal apprenticeship) and handled fewer cases. In two instances, the courts found that those reasons were sufficient to justify the difference in remuneration. They therefore found no sex discrimination in this case.

The claimant disagreed with those judgments and filed a cassation claim to the Supreme Court. The Supreme Court found unequal treatment of employees in the workplace, however based on a reason other than sex. In the court's opinion, the differences in remuneration resulted from the fact that the claimant was hired earlier than her male colleague. The court decided that it was not a case of discrimination

68 <http://www.itm.lu/files/live/sites/itm/files/faq/jurisprudence/CA39457.pdf>, accessed on 17 January 2019.

69 <http://www.itm.lu/files/live/sites/itm/files/faq/jurisprudence/CA41026.pdf>, accessed on 17 January 2019.

70 CJEU 6 October 1993, C-109/91 (*Ten Oever*), ECLI:EU:C:1993:833, Paragraph 13.

71 CJEU 17 May 1990, C-262/88 (*Barber*), ECLI:EU:C:1990:209.

based on sex because other female legal advisers, who joined the team later than the claimant, received pay that was equal to that of their male colleague. Nevertheless, the court argued that her employer should still prove that the wage difference between the claimant and her male colleague was motivated by objective reasons if he did not want the differentiation to be qualified as discrimination. The Supreme Court also explained, referring to the case law of the CJEU, that if the employer took into account criteria such as the length of service and qualifications when establishing the remuneration, s/he must prove that the particular skills and professional experience have special significance for the fulfilment of the concrete obligations conferred on the employee.

Sweden (SE)

Judgment of the Labour Court 1996 No. 41 concerned the Örebro County and the health sector with regard to whether there was discrimination in paying a midwife less than a hospital technician. The Labour Court did not exclude the possibility that the work of a midwife and a hospital technician could be compared and found to be of equal value, but in the case at stake, it did not find the method used by the Equality Ombudsman to be sufficient to prove this. No discrimination was found.

Judgment of the Labour Court 2001 No. 13 also concerned the Örebro County and the health sector. This, too, concerned alleged pay discrimination, with a midwife being paid more/less than a hospital technician. In this case, the midwife and the technician were found to perform work of equal value following an assessment in terms of knowledge and skills, responsibility, effort and working conditions (now part of the definition of work of equal value according to the 2008 Discrimination Act). There was therefore apparently a *prima facie* case of pay discrimination.

The Labour Court, however, accepted the employer's 'excuse' that the technician's higher wages were due to the market. The technicians had alternative job options at significantly higher wages, an acceptable reason to pay hospital technicians somewhat more. There was therefore no discrimination. Compare also the 'parallel' Labour Court Case 2001 No. 76 (a nurse and a hospital technician were compared and their work was found to be of equal value). The court found that there was no pay discrimination in this case either.

Slovenia (SI)

Order No. Pdp 591/2012 from 11/7/2012 of the Higher Labour and Social Court concerned a claim by an employee for equal pay with a co-worker in a higher pay grade. The Higher Labour and Social Court found that the employee and his co-workers were performing same duties and like work, but were not paid equally. The Court found pay discrimination and decided to grant the employee the difference in pay for the period paid at a lower rate.

United Kingdom (UK)

In *Fearnon & Ors v Smurfit Corrugated Cases (Lurgan) Ltd* [2009] IRLR 132, Northern Ireland's Court of Appeal ruled that an industrial tribunal had erred in law when rejecting an equal pay claim because the comparator's wages had been set higher in 1988, when his then employer had been taken over. From that date, the comparator's annual pay rise had been the same as that of other staff in percentage terms, maintaining a differential. The Court ruled that the industrial tribunal was not entitled to accept that the reasons for the initial red-circling resulting in a differential were justified indefinitely, though there had been proper reasons for a differential in 1988.

2.1.7 Scope of comparisons in claims concerning equal pay for work of equal value

Finland (FI)

In its judgment *TT: 2002-7-10*, the Labour Court considered a collective agreement applicable to judges following which judges who had previously been in the same pay category were placed in two different

categories. A judge placed in a lower pay category indicated another judge placed in a higher category as a comparator in the framework of an equal pay claim. In this context, the Labour Court held that the burden of proof may be shifted onto the defendant if the claimant can present at least one comparator of the opposite sex who receives higher pay for equal work, irrespective of whether there are both women and men in lower and higher pay brackets doing equal work.

Croatia (HR)

Supreme Court of the Republic of Croatia's case *Rev-135/09* is one of the rare examples of a 'real' equal pay case based on sex discrimination. It concerned a female claimant employed as a manager in a private company, who claimed that she was paid less than male managers of different sectors in the same company. The Supreme Court accepted the findings of lower courts that the same job title or position does not automatically entail the right to the same salary, but that the salary depends on actual tasks performed and obligations of each particular worker, as defined in the employment contract. Comparison with other managers revealed that not all of them had a salary as high as the claimant claimed that she was entitled to, and the comparison with the previous manager (also female) employed in the same position revealed that she was paid the same amount of salary as the claimant. A comparison with another female manager in the company had revealed that she was paid more than the claimant because she had higher professional qualifications. All these comparisons actually revealed that the claimant's work, skills and obligations were not comparable with other managers and that there was no discrimination.

Ireland (IE)

The judgment of the High Court in *Irish Crown Cork Co. v. Desmond* [1993] ELR 180 concerned a claim by 52 female employees for equal pay with a comparator in a higher pay grade. The Labour Court found that the comparator performed some duties which required greater skill than the women employees' duties. When he had performed these duties for an extended period, he was paid in the highest pay grade. The Labour Court discounted the periods during which the comparator had been paid in Grade 1 (the lowest grade) and found that during such periods, the comparator and the female members of staff had been performing like work. On appeal to the High Court, the Labour Court was found to be entitled to disregard the periods when the comparator was paid in the highest grade in assessing like work. The High Court found that the Labour Court had erred in not considering whether the difference in pay was attributable to grounds other than gender.

The judgment of the High Court in *Minister for Transport, Energy and Communications v Campbell* [1996] ELR 106 concerned the defence of 'red circling' brought by the appellant in an appeal before the Labour Court. The case involved a number of female 'communications assistants' who argued that they were entitled to receiving the same rate of pay as two male 'radio assistants'. The comparators had been assigned lighter duties on the grounds of ill health, but had retained the same rate of pay. The High Court held obiter that in arriving at a conclusion as to whether persons were being genuinely reassigned to protected pay posts on compassionate health grounds, the Labour Court was entitled to take account of all the facts surrounding the reassignment.

In the judgment of the High Court in *Brides v Minister for Agriculture, Food and Forestry* [1998] 4 IR 250, female applicants employed in the Department of Agriculture sought to rely on a male comparator employed by Teagasc, a statutory body, for an equal pay claim. The High Court held that the scope of the direct applicability of the right to equal pay under Community law extended to cases where there was discrimination in respect of like work within the same establishment or service. The relevant comparator had to be real and have a tangible connection with the type of work performed by the claimant. The principle of equal pay was not one that extended to cases where the relevant comparator was not employed by the same or an associated employer. The claimant and comparator did not work for the same employer.

United Kingdom (UK)

In *British Coal Corporation v Smith & Ors* [1996] IRLR 404, the House of Lords ruled that for the purposes of an equal pay claim, the claimants could compare themselves with men who worked at a different establishment. This was because the same national collective agreement applied to all who worked for the establishment, whatever the location, albeit with minor local variations as a result of localised bargaining.

In *Robertson & Ors v DEFRA* [2005] IRLR 363, the Court of Appeal ruled that civil servants working in the Department for Environment Food and Rural Affairs (DEFRA) were not entitled to compare themselves with those working for the Department of the Environment Transport and the Regions for the purposes of an equal pay claim under ex-Article 119 TEEC. Both were employed by the Crown, but terms and conditions of employment had been negotiated at departmental level. The Court of Appeal ruled that the pay of claimants and their comparators could not be attributed to a single source even though they had the same employer.

In *North & Ors v Dumfries and Galloway Council* [2013] IRLR 737, the Supreme Court considered the proper scope of comparators in equal pay claims, most such claims requiring an actual comparator. The Equality Act provides that a claimant may use as her comparator an employee (of the opposite sex) who is employed by the employer or an associated employer at the same establishment or at an establishment at which 'common terms and conditions of employment are observed either generally or for employees of the relevant classes'. In *North* the Supreme Court ruled that, where claimants seek to rely on comparators employed at a different establishment, the legislation does not require there to be a 'real possibility' of the comparators doing the same, or broadly similar, jobs at the claimants' place of work.

The claimants were employed by the local authority at schools as classroom assistants, learning assistants and nursery nurses while their comparators were employed by the authority elsewhere as road workers, grounds men, refuse collectors, refuse lorry drivers and leisure attendant. The men's terms and conditions were set by the Green Book, the collective agreement for manual workers, while the women's were set by a collective agreement known as the Blue Book. The Court was satisfied that, had the men been employed in the women's establishments, their terms and conditions would have been controlled by the Green Book, and that they were suitable comparators (subject to the establishment of equal value with the claimants' jobs) regardless of the fact that there was no 'real possibility' that the men could be employed at the claimants' establishment to do the same or broadly similar jobs to the ones they had at their current place of work. The Supreme Court further held that, had they taken the view that domestic legislation required such a possibility, the relevant provision would have to have been disapplied to achieve conformity with EU law (in particular, the decision in *Lawrence*, Case C-320/00.⁷²

In *Glasgow City Council and ors v UNISON Claimants and anor*, 2014 CSIH 27, the Court of Session (Inner House) held that an employment tribunal erred in finding that a limited liability partnership (LLP) was not a 'company' for the purposes of an equal pay comparison under S.1(6) of the Equal pay Act 1970 (now in the Equality Act 2010). This meant that claimants from Glasgow City Council who had been transferred to LLPs over which the Council maintained close control could compare their pay with that of men who remained in the Council. The Court of Session also held that the tribunal had erred in its approach to whether the Council was a 'single source' for the purpose of Art 157 of the Treaty on the Functioning of the EU.

Asda Stores Ltd v Brierley CA [2019] EWCA Civ 44 the Court of Appeal: the case concerns an equal pay claim by thousands of female supermarket staff wanting to compare themselves with men working in a network of warehouses and distribution centres. The latter are operating under a different management structure. In this appeal by Asda Stores Ltd, the Court of Appeal held that common terms were observed and that, although satisfied under national laws, the claimants would also be entitled to draw a comparison

72 CJEU 17 September 2002, C-320/00 (*Lawrence*), ECLI:EU:C:2002:498.

under EU law as there was a 'single source'. Hence, the claims can proceed. The Court of Appeal explained the established test for 'common terms' necessary for a claim under the Equality Act 2010 579: Lord Justice Underhill summarised the existing authorities⁷³ and dispelled any confusion around whether and with whom comparisons should be made for the purpose of 579(4) of the Equality Act.⁷⁴ The Court of Appeal explained the test in hypothetical terms and stated that it was unnecessary for claimants to provide evidence of actual terms of employment vis-à-vis their comparators.

The *Asda* case is part of the first mass equal pay claim to be heard against a private employer. Thousands of employees who work for Asda's supermarkets are claiming that they should be paid at the same rate as Asda's (predominantly male) warehouse staff. The value of the claim could exceed £100 million, and so the company (owned by Walmart) is keen to contest every point. The Asda Stores claim has raised interesting concerns about the reliance on Article 157 TFEU in equal pay claims post-Brexit. EU rights will, according to the Withdrawal Act, be preserved after exit day. However, it will in the longer term require tidying up so that the single-source case law is brought within the scope of the Equality Act.

2.1.8 Job classification systems

Austria (AT)

In the Supreme Court's decree of 14 September 1994, 9 Ob A 801/94, following the application of the Austrian Confederation of Trade Unions on behalf of the Trade Union Metal, Mining and Energy against the Syndicate of Power Utilities, the Court made a declaration concerning job classification criteria. In the case at hand, all workers to whom the collective agreement for power supply undertakings (*Elektrizitätsversorgungs-unternehmungen*) of 13 July 1990 applied, and who were classified in Group V of this collective agreement were to be upgraded to Group IV as from 13 July 1990 or the respective later commencement of their employment. Furthermore, the upgraded workers were entitled to the correspondingly higher wages from 2 February 1991. The criteria of Group IV referred to 'supporting staff for heavy work', requiring physical performance though not special training, while Group V was defined as 'supporting staff for easy tasks' and fully consisted of women. These were considered discriminatory job classification criteria analogous to the *Rummler* case⁷⁵ (*Leichtlohngruppe*); even if the then-pertinent legislation did not explicitly refer to indirect discrimination the principle of indirect discrimination was clearly implied and thus had to be implemented.⁷⁶

Germany (DE)

State Labour Court of Rhineland-Palatinate, judgment of 11 October 2018, 5 Sa 455/15: This case concerned a factory in which shoes were manufactured and in which female production workers were paid less than male production workers for decades until 31 December 2012. As of 1 January 2013, all production employees, male and female, received the same salary. Then, in 2014, a new remuneration system was introduced which created 5 different levels of pay for different working activities; 84 % of the male production employees, but only 28 % of the female production employees, fulfilled the requirements of the advantageous pay level 03 or higher. Nevertheless, the court ruled that there was no pay discrimination and thus, no violation of Article 157 TFEU, because the defendant employer had explained in detail how, in a longer process with external experts, the various pay levels were differentiated on the basis of specific activities and work tasks in the manufacturing process without any regard to the sex/gender of the employees involved.

73 See *Leverson v Clwyd County Council* [1989] AC 706, *British Coal Corporation v Smith* [1996] ICR 515 and *North v Dumfries and Galloway Council* [2013] UKSC ICR 993.

74 Confounded by a re-wording of that section from that which was found in the original Equal Pay Act of 1970 (s1(6)), following the enactment of the Equality Act in 2010.

75 CJEU 1 July 1986, Case 237/85 (*Rummler*), ECLU:EU:C:1986:277.

76 Commented by R. Kirschbaum in DRdA 1995, 21; cf. §3 Abs 2 Equal Treatment Act OJ No. 410/1990, re-promulgated as §11 OJ No. I 66/2004. The pertinent parliamentary materials refer to Article 1 Paragraph 2 of Directive 75/117/EEC and quote, in order to exemplify discriminatory criteria, the judgment in C-237/85 *Gisela Rummler*.

Croatia (HR)

Supreme Court of the Republic of Croatia, *Revr-1676/09*, concerned the matter of salary in public services that is determined under special laws, with job classification systems and salary coefficient determined in accordance with professional qualifications. The female claimant in this case asserted that she had been paid less for work of equal value, when she actually performed tasks of a higher-skilled worker. The Court concluded that since the determination of salaries in the public services is prescribed by law (categories and coefficients), the respondent could only pay the claimant in accordance with her qualifications, because it would otherwise contravene the explicit and legally binding rule. The performance of actual tasks by the claimant is relevant only where there is no legally prescribed salary classification system. Otherwise, employers will be found in breach of a specific obligation arising from binding legislation or subordinate regulations if they disregard the salary classification system.

Slovenia (SI)

In *Order No. VIII Ips 306/2009 from 19/04/2011*, the Supreme Court held that the complainant that had concluded an employment contract for the duty of guardian of the telecommunication infrastructure, but was performing different duties, was entitled to rights which are determined by law and collective agreement for this duty, although the claimant did not meet the conditions of appropriate education.

2.1.9 Burden of proof and time limits*Germany (DE)*

Federal Labour Court, judgment of 10 December 1997, 4 AZR 264/96: The applicant, a female social worker, alleged a violation of the prohibitions of gender and pay discrimination by higher wages and better working conditions for technical workers guaranteed by a collective agreement for the public services. The court held that the claim was unfounded as the applicant could not establish facts leading to the conclusion that the job classification criteria for the two groups of employees were arbitrary.

Federal Labour Court, judgment of 26 September 2017, 3 AZR 733/15: In a case of possible indirect discrimination in the pension scheme for employees of the state of Hamburg, the Federal Labour Court again explained the burden of proof regulations. In principle, the burden of proof lies with the person asserting a claim based on gender-specific pay discrimination. If, however, the first appearance is in favour of discrimination, the employer must prove that there are objective reasons for the difference in remuneration found. The discrimination or the first appearance can be statistically proven, but can also be based on other indications. The court considered it possible that a regulation providing that the lower pension would be suspended if an employee was entitled to both a survivor's pension and a retirement pension under the statutory provisions of the state of Hamburg could have affect a significantly higher number of female employees whose entitlement to a retirement pension is suspended than male employees whose entitlement to a widower's pension is suspended, because experience shows that the employment histories of women (with part-time work, periods of leave due to family care responsibilities, lower remuneration for work) mean that they have a lower income more often than men do and therefore a lower occupational pension provision. The Federal Labour Court held that if the applicant has argued that the general considerations concerning the employment histories of women also apply to the defendant state of Hamburg and that this gives rise to a prima facie case of discrimination on the ground of sex/gender, the burden of proof would then be shifted to the defendant. The Federal Labour Court referred to the CJEU rulings in the cases C-427/11 *Kenny*, C-385/11 *Elbal Moreno*, C-300/06 *Voß*, C-381/99 *Brunnhöfer*, C-127/92 *Enderby*.

State Labour Court of Berlin, judgment to be expected in February 2019, 4 Sa 567/17: In February 2017, the lower court had decided that a female freelancer for a public service broadcaster being paid significantly less than her male colleagues doing the same or equivalent work was not discriminated against because the pay difference could be explained by different collective agreements for freelancers and permanent employees, on the one hand, and differences in seniority (the period of employment for

the same employer) between the claimant and other (male) freelancers, on the other. As no discrimination could be found, the lower court had rejected the claimant's request for information about the pay structure and the salaries of further male colleagues performing equivalent work. However, in July 2017, the Pay Transparency Act entered into force (see Section 3.2.2). Under Sections 10-16 of the Act, employees are entitled to obtain information on the gross remuneration of their fellow employees doing the same work or work of equal value and up to two remuneration components. The claimant asserts her right to information under the new legislation. However, it is disputed whether she is an employee or at least a person to be treated as an employee according to the rulings of the CJEU. In December 2018, the State Labour Court surprisingly postponed the pronouncement of its judgment until 5 February 2019.

France (FR)

When the employee submits that the proof of the inequalities of remuneration is held by a third party, it is up to him/her to ask the judge to request the evidence and the latter can then draw the consequences of the refusal of the other party.⁷⁷ However at least some evidence should be offered, and the victim cannot suffice with mere assertions. The claims of the employee who compared himself to two other workers of the company but failed to produce any evidence relating to the situation of these employees are dismissed.⁷⁸

Ireland (IE)

The determination of the Labour Court in *Irish Ale Breweries Ltd. v. O'Sullivan* [2007] ELR 150 examined the burden of proof in identifying a comparator. The claimant sought to rely on a comparator who was not known to her. The company failed or refused to supply her with information regarding the duties and remuneration of a possible comparator. The Labour Court found that while the obligation of proving like work usually fell on the claimant, an overly rigid application of this principle could impair the protection that the Act offered. The Court found that it should proceed on the basis of a rebuttable inference that the claimant and the comparator were engaged in like work. As no evidence was put forward to rebut this, the Court found in favour of the claimant.

The judgment of the High Court in *King v. Minister for Finance* [2010] IEHC 307 examined the weight to be attributed to statistical evidence in an equal pay claim. The High Court considered an appeal on a point of law from the Labour Court on the grounds that the erroneous calculation in determining the ratio of women to men was erroneous. Appeals to the High Court can only be submitted on a point of law and this was held not to be a point of law. The High Court approved the Labour Court determination stating that there was an inherent vulnerability in statistics established at a fixed time or period which would be influenced by purely fortuitous factors. The Labour Court, as a specialised tribunal, was entitled to reach the conclusion that there were indeed such factors to be taken into account. The High Court endorsed the view that 'statistics are but an aspect for consideration and would not in any event be decisive in themselves'.

In the decision of the Labour Court in *Health Service Executive v 248 Named Complainants* EDA132, [2013] ELR 206, the complainants were a group of female assistant directors of public health nursing (predominantly female) as compared with a group of assistant directors of nursing who had a slightly higher number of male comparators but the difference was so small as to be effectively gender-neutral. By agreement between the parties the only matter to be determined by the Court was whether or not the complainants had established a prima facie case of indirect pay discrimination. The principle that the Labour Court considered was that gender discrimination is binary in nature and where grades of pay are involved, a predominantly female grade must be compared with a predominantly male grade in order to establish a prima facie case of discrimination. The Acts have no effect where the pay of a woman is

77 Soc. 12 June 2013, No. 11-44458: <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000027551551&fastReqId=2027338825&fastPos=3>, accessed 16 October 2018.

78 See for example Soc. 22 June 2016 No. 14-29607: <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000032783104&fastReqId=1723289064&fastPos=1>, accessed 16 October 2018.

compared with that of another woman or the pay of a predominantly female grade is compared with that of a grade that is gender-neutral. Statistical analysis is a tool that is designed to assist the court to reveal discrimination which is not immediately apparent.

In the Labour Court determination in *Nationalist & Leinster Times Limited v Ashmore* EDA133, [2013] ELR 216, the complainant was a typesetter and involved in the printing of the newspaper and the respondent was a regional newspaper. The complainant and the male comparator were involved in like work within the statutory meaning. The complainant worked part-time whereas the male comparator worked full-time. The complainant was paid less per hour as her male comparator received an additional element of pay known as the 'in-house rate' in addition to the basic industry rate for the printing sector which the complainant did not receive. Furthermore, the complainant alleged that her male comparator received a higher employer pension-contribution rate. The complainant's claim for equal pay involved two aspects of equal pay. The first was that there is a difference in overall pay between her and the male comparator. The second was that there is a difference in pension contributions on the part of the respondent to the complainant and the male comparator. The complainant appealed the decision of the Equality Officer that she had failed to establish a *prima facie* claim of discrimination or regarding equal pay. The Labour Court was required to establish whether the complainant was entitled to equal pay, pro rata to her hours of work. The Labour Court determined that in a claim for equal pay, evidence showing that more men than women are in receipt of higher pay for like work does not, in itself, establish *prima facie* indirect discrimination. It is permissible if it is genuinely the result of a factor unrelated to that of gender. In order to establish a claim for equal pay in a claim of indirect discrimination on grounds of gender, it must be demonstrated that the cause of the difference in pay has such a disparate effect between men and women as to infer that an ostensibly gender-neutral determinative of pay is in reality discriminatory as it leads to unequal pay for equal work. Statistics are not decisive in themselves; they are only one aspect to be taken into account when considering whether a putative gender-neutral requirement is in fact indirectly discriminatory. The statistical evidence in this case was unreliable and of little or no probative value. It was for the complainant to establish, on credible evidence, the factual basis on which an inference of discrimination can properly be drawn.⁷⁹ The pay difference was based entirely on the date of commencement of employment and was equally applicable to men and women. In the absence of a finding of indirect discrimination, this was a complete defence as it was based on a ground other than gender by reason of Section 19(5) of the Employment Equality Acts 1998–2011. The rate of pension contributions made by the respondent is determined solely on the basis of the pension scheme in which the employees are enrolled and apply equally to men and women.

Netherlands (NL)

The Court of Appeal of 's Hertogenbosch ruled in 2013 in an equal pay case that the employer had not clarified why the work experience of the male comparator was of more value than the work experience of the female employee.⁸⁰ Also the employer had failed to make transparent why a reduction in the hours of the male employee justified a higher hourly wage. The fact that the employer was not transparent about his motives to pay the male worker a higher salary than his female colleague therefore led the Court to rule that the employer had discriminated against the woman and had to pay her the same salary as to the man.

Poland (PL)

In a ruling of 17 April 2018 (case No. PK A 37/17) the Supreme Court rejected a cassation claim in the following matter. The claimant was employed in private company E as a store manager in a branch marked as category 'mega'. The company had rules of remuneration, divided into categories, depending on the size of the branch. The claimant found out that the previous store manager of this branch and persons in such positions in other stores received higher wages, although her work was evaluated positively. She

⁷⁹ CJEU 21 July 2011, C-104/10, (*Kelly*), ECLI:EU:C:2011:506 and CJEU 19 April 2012, C-415/10, (*Meister*), ECLI:EU:C:2012:217.

⁸⁰ Court of Appeal of 's-Hertogenbosch, 13 November 2012, JAR 2013/13 and 5 March 2013, JAR 2013/106, ECLI:NL:GHSHE:2013:BZ3454.

made her superiors aware of the disproportion in wages, yet her salary was not adjusted. Eventually, she decided to renounce her employment contract and filed a suit for reimbursement of the difference in her wage, accusing the employer of having discriminated against her with regard to sex. The court of first instance in a ruling of 2 February 2016 found the claim to be justified, awarding her damages for discrimination according to Article 18^{3d} Labour Code (LC), in the amount which exclusively included the difference in remuneration. This ruling was unsuccessfully appealed by the defendant company to the District Court, which in a ruling of 6 October 2016 decided that the awarded sum was justified. However, since the claimant failed to make probable to the court of first instance that sex was the ground of discrimination, the legal basis for such award should be different, namely Article 18 Paragraph 3 LC (providing for invalidity of contractual provisions less favourable to the employee than provisions of labour law).

The cassation claim from this ruling was lodged to the Supreme Court by the defendant company. The Supreme Court found the cassation to be ill-founded and rejected it. In justification of this decision the Supreme Court noted that the state of facts on which the claim was based was of a complex nature, meaning that the obligations of the defendant resulting from the claimant's demands had the nature of an alternative obligation (either to compensate for discriminatory practice or for other violation of the rule of equal treatment).

At the same time the Supreme Court in its reasoning introduced a 'clarification of the foreground of the ruling' which summarised the current case law of the Supreme Court on the issue as follows: An employee claiming damages due to violation of the equal treatment obligation (prohibition of discrimination) first has to make probable (likely), that he has been discriminated against in employment, with respect to one or more grounds indicated in Article 11³ Labour Code⁸¹ and Article 18^{3a} LC.⁸² Then the employer would be obliged, by the shifted burden of proof, to prove that his different treatment was based on objective reasons. If the employer failed to prove this, the employee would be entitled to special damages (in the amount not smaller than the minimal remuneration) provided for in Article 18^{3d} LC.⁸³ If the claimant fails to make probable (likely) that unequal treatment has resulted from grounds prohibited by antidiscrimination provisions of Labour Code mentioned above, only the provisions on equal treatment of employees are subject to violation, regulated in Article 11² LC,⁸⁴ without violating the prohibition of discrimination provided for in Article 11³ LC. In such case, the particular damages may be claimed with reference to Article 417 Civil Code in connection with Article 300 LC,⁸⁵ allowing to claim payment for missing parts of the salary. According to this theory, the non-discrimination rule should be seen as a qualified form of violation of the equal treatment rule.

United Kingdom (UK)

In *Abdullah & Ors v Birmingham City Council* [2013] IRLR 38, the Supreme Court held that employees who wished to claim equal pay were not required to do so in the employment tribunal (and therefore subject

81 Article 11³ LC states: 'Any discrimination in employment, direct or indirect, in particular on the ground of: age, disability, race, religion, nationality, political opinion, membership of a trade union, ethnic origin, belief (creed), sexual orientation, as well as employment for a specified (definite) or unspecified (indefinite) period of time or full-time or part-time employment – is inadmissible.'

82 18^{3a} LC reads as follows: § 1. Employees should be treated equally in relation to establishing and terminating an employment relationship, employment conditions, promotion conditions, as well as access to training in order to improve professional qualifications, in particular regardless of sex, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, creed, sexual orientation, as well as regardless of employment for a definite or indefinite period of time or full-time or part-time employment. § 2. Equal treatment in employment means that there must be no discrimination whatsoever, directly or indirectly, on the grounds referred to in § 1.

83 Pursuant to Article 18^{3d} LC, a person regarding whom an employer has violated the principle of equal treatment in employment has the right to compensation in at least the amount of the minimum remuneration for work, determined in separate provisions.

84 Art. 11² LC reads as follows: 'Employees have equal rights for the same performance of the same obligations: it relates, in particular, to equal treatment of men and women in employment'.

85 Pursuing Article 417 Civil Code 'The debtor shall be obliged to redress the damage arising from non-performance or from improper performance of an obligation, unless the non-performance or the improper performance are an outcome of circumstances which the debtor shall not be liable for', while Article 300 LC refers to respective provisions of the Civil Code.

to strict time constraints) but could chose instead to do so by way of a claim for breach of contract in the civil courts, where there is a six-year time limit.

In *HBJ Claimants v Glasgow City Council* [2017] CSIH 56, the Court of Session held that an employment tribunal had erred when finding that an employer's method of job evaluation was valid for the purposes of the Equal Pay Act 1970 as the onus was on the employer to show that it was valid. In the absence of any independent expert to support the methodology used, the Court of Session held that the tribunal was obliged to conclude that it was invalid.

2.1.10 Compensation

Greece (EL)

Recently, two judgments of the SCC applied the gender equality principle in a contradictory way.

A case handled by the Supreme Civil and Penal Court, Civil Section, *No. 214/2017*, concerned a supplementary compensation equal to nine-months of wages paid by an employer of the private sector (Greek Telecommunications Organisation – OTE) to female employees retiring after 25 years of service, but to male employees retiring after the completion of 30 years of service according to the provisions of an enterprise collective agreement. The SCC found that this compensation falls within the concept of 'pay'. Applying Articles 4(1) and (2) (equality before the law and gender equality) and 116 of the Constitution and Act 3896/2010⁸⁶ transposing Directive 2006/54, the SCC found that the above-mentioned discriminatory provision to the detriment of male employees should be deemed to have been abolished as contrary to Article 30(2) Act 3896/2010 and that the more favourable provision for female employees applied to male employees as well (levelling-up approach). Consequently, the compensation in question was awarded to male employees retiring after 25 years of service (as it was provided for women).

In two other cases handled by the Supreme Civil and Penal Court, Civil Section, *Nos. 603/2017 and 604/2017*, these judgments failed to apply the levelling-up norm, in contrast to the judgment described above. These cases concerned the distribution of the capital of a group insurance scheme following the transfer of a bank and the refusal of its successor employer to continue this voluntary practice. The relevant capital was distributed to the employees according to their pensionable age, which according to the insurance contract was set for male employees at 65 and for female employees at 60. The SCC found that the distributed capital fell within the concept of 'pay'. However, according to the Court, the above-mentioned discriminatory provision of the insurance contract, which was to the detriment of women, as it provided a lower pensionable age for them, should be deemed abolished as contrary to the constitutional norms of Articles 4(1) and (2) (equality before the law, gender equality), 22(1b) (equal pay) and 116, Article 119 TEC and Act 1414/1984.⁸⁷ Consequently, it could not be applied in favour of male employees (levelling-down approach).

United Kingdom (UK)

In *Reading BC v James and Ors* [2018] IRLR 790 (EAT), the EAT held that a group of female employees' contractual right to equal pay under the Equality Act 2010 was not affected by the promotion of their comparator. Once the conditions for the operation of the equality clauses are satisfied, the equality clause takes and amends the female employees' contracts so as to equalise them with the chosen comparator.

⁸⁶ Act 3896/2010, 'Implementation of the Principle of Equal Treatment of Men and Women in Matters of Employment and Occupation. Harmonisation of Existing Legislation with Directive 2006/54/EC of the European Parliament and the Council', OJ A 207/08.12.2010.

⁸⁷ Act 1414/1984, 'Implementation of the Principle of Equal Treatment of the Sexes in Employment Relationships' transposing Directives 75/117/EEC and 76/207/EEC, OJ A 10/2.1984.

2.1.11 Protection against victimisation

Poland (PL)

In the Supreme Court judgment of 25 May 2011, *II PK 304/10, Bartłomiej S. vs. K-T Limited*, the claimant was employed as a sales specialist at the defendant company K-T Limited. The claimant received information concerning the pay of his co-workers by mistake, but alarmed by high differences in the wages he decided to distribute this information among his colleagues, in order to clarify the differences. The direct supervisor could not explain the discrepancies of remuneration between the individual employees. The defendant company, however, had an unwritten rule forbidding the disclosure of employees' remuneration details, of which the claimant was aware. The claimant's contract of employment was terminated without notice.

In this case the Supreme Court found that disclosing information covered by the so-called 'salaries confidentiality clause' in order to prevent unfair treatment and wage-related forms of discrimination could not in any way serve as ground for termination of the employment contract with the claimant. With reference to Article 18.1e of the Labour Code, the Court emphasised that 'the exercise by an employee of the rights resulting from violations of the principle of equal treatment in employment, including the attempt to investigate or to provide any form of support to other employees, aimed at preventing the potential application of wage discrimination by the employer, cannot constitute a reason for termination by the employer of the contract of employment, nor a dissolution without notice, regardless of the way the employee accessed the information, that may indicate a violation of the principle of equal treatment in employment or application of wage discrimination'.

2.2 Cases decided by other bodies

In some countries, no or very few cases on equal pay between female and male workers have been dealt with by the national courts, but such cases have been handled by the equality body or the Labour Inspectorate. The cases described here can be seen as examples.

2.2.1 National equality bodies

Bulgaria (BG)

Legal practice on ensuring equal pay is being developed by the Commission for Protection against Discrimination. The Commission is the preferred forum for women who seek protection against unequal pay.

The *Devnya Cement* case was decided by the *Second specialised panel of the Commission* and was confirmed by the Supreme Administrative Court.⁸⁸ The Commission found continuous unequal treatment of the applicant, a female worker at Devnya Cement, in terms of unequal pay for work of equal value, compared to her male colleagues. The Commission declared that the practice constituted both a violation of Article 14 Paragraph 1 (the equal pay provision) of the Law on Protection against Discrimination (LPAD), and direct discrimination based on sex within the meaning of Article 4 Paragraph 2 of the law. The defendant could not justify before the Commission the difference in monthly pay of BGN 45 (around EUR 23), vis-à-vis the applicant and to her detriment, compared to her male colleagues. The Commission ordered Devnya Cement to discontinue the practice of unequal treatment based on sex in the enterprise, and to amend the Collective Agreement so as to include guarantees on equal pay, based on sex and on all other grounds, as required by Article 14 Paragraph 1 and 2 of the Anti-Discrimination Law.

⁸⁸ Decision of the Commission for Protection against Discrimination No 29/4. 07. 2006, confirmed by Decision No 10594/ 1. 11. 2007 of the Supreme Administrative Court.

Denmark (DK)

The Danish Equality Board's *case 2017-6810-22191* concerned a male employee who found that the parental leave policy at his workplace was a violation of the right to non-discrimination on grounds of gender as well as a violation of the Equal Pay Act. According to the policy, the entitlement to compensation related to parental leave for mothers was calculated on the basis of seniority whereas the compensation for fathers was a fixed amount. Accordingly, mothers potentially had a higher compensation level than fathers. The Equality Board found this to be a violation of the right to equal pay.

The Danish Equality Board's *case 2015-6810-03775* concerned a female store manager who was placed in another store after returning from parental leave. The store was situated in an area with fewer customers. Accordingly, it became more difficult to comply with the goals set in the employment contract which resulted in an economic bonus. According to the employment contract, a bonus would be awarded when the turnover in the store reached a certain amount. Because of the difficulties in obtaining a bonus, the female store manager found the placement in the new store after the return from parental leave to constitute a violation of her right to equal pay. The Equality Board found that the placement in a different store was in accordance with her employment contract and therefore was not a violation of the right to equal pay even though it became more difficult for her to be awarded a bonus.

The Danish Equality Board's *case 2014-6810-07992* concerned a female health consultant who was employed on a temporary contract at a local health centre. A total of 13 health consultants were employed at the centre, the vast majority of whom were female. The complainant was working in a smaller unit with only two consultants, one man and one woman. The complainant was assigned salary level 4. The other consultants in her unit were both assigned a higher salary level. The complainant found her assignment to the lower salary level to constitute a violation of the right to equal pay. The Equality Board referred to the fact that the health centre had a majority of female consultants and accordingly found that the assignment to salary levels was not related to gender and therefore did not constitute a violation of the right to equal pay.⁸⁹

Iceland (IS)

There have been no cases concerning equal pay before the Supreme Court in recent years. The Gender Equality Complaints Committee dealt with three such complaints in 2017 (10/2017; 3/2017; 5/2017), one in 2016 (3/2016); one in 2015 (4/2015) and one in 2014 (1/2014).

In Case 3/2017 the Committee found in favour of the claimant and ruled (2:1) that the party against whom the complaint was directed (Rio Tinto hf., a big corporation) had not been able to submit adequate reasons to justify the difference in pay to the claimant and the co-worker she compared herself with. The company was hence found in breach of Article 25(1) of the Gender Equality Act No. 10/2008 prohibiting discrimination regarding terms.⁹⁰ The Committee ruled on a similar basis in Case 5/2017.⁹¹

In Case 3/2016, a woman complained about receiving lower wages than a man with the same job title. The Committee ruled that the party which the complaint was directed against had demonstrated that the difference in wages was based on objective reasons other than gender. However, the Committee found that the respondent had not been able to demonstrate that the number of paid overtime hours that the co-worker (a man) received during the period in question was based on other factors than gender. The respondent was found in breach of Article 25(1) of Gender Equality Act No. 10/2008.

89 These cases were published on the Danish Equality Board database. See [https://ast.dk/naevn/ligbehandling/naevnet/afgoelser/afgoelser-fra-ligebehandlingsnaevnet/](https://ast.dk/naevn/ligbehandling/naevnet/afgoelser/afgoelser-fra-ligebehandlingsnaevnet), accessed on 17 January 2019.

90 Case No. 3/2017, *A v. Rio Tinto Iceland hf.*, <https://www.stjornarradid.is/gogn/urskurdir-og-alit-/LisasticSearch/Search/?SearchQuery=&Ministries=&Committee=K%C3%A6runefnd+jafnr%C3%A9ttism%C3%A1la&Year=>, accessed on 22 Oct 2018.

91 <https://www.stjornarradid.is/gogn/urskurdir-og-alit-/LisasticSearch/Search/?SearchQuery=&Ministries=&Committee=K%C3%A6runefnd+jafnr%C3%A9ttism%C3%A1la&Year=>, accessed on 22 Oct 2018.

Malta (MT)

One of the duties and powers of the National Commission for the Promotion of Equality (NCPE) is to carry out investigations on cases of discrimination, which fall under their remit, including discrimination on the basis of sex.

In 2015 the NCPE carried out an investigation on the basis of a complaint submitted by a female employee alleging that she was receiving lower wages than the male employees who were in a similar or same rank and had similar responsibilities. It was noted that while all the wages for managers in the company were different, the gap between the wages of the men was smaller than the one between the average male manager and the wages of the complainant. Following the opinion issued in relation to this complaint, NCPE was informed that negotiations between the employer and the complainant resulted in a substantial increase in salary when compared to that of her male counterparts.

Netherlands (NL)

In the years 2014-2018 the National Institute of Human Rights (NIHR) published four – not legally binding – opinions in cases on equal pay. In all four cases, the NIHR ruled that the fact that either a man or a woman received a lower pay than his/her comparator did not constitute discrimination, because the employer had a valid reason for doing so.⁹²

In Case 2014-48, a woman of Surinam descent complained that she received a lower salary than two colleagues: one of them male, the other female. The NIHR ruled that the employer, an accounting firm, had made it clear that the difference in pay was caused by the 'weight of the job' and by the fact that the employer did not want to reduce the pay of an employee who was demoted to a lower position, and that it was not based on race or sex.

In Case 2015-5, a woman received a lower salary than her colleague. Both of them worked for a company that developed a mobile laboratory for diagnosing animals. The NIHR found that the employer had proved that the man had very specific and scarce knowledge that was very important for the company and that there were only few people with this type of knowledge on the labour market. This explained the difference in salary.

The third case, 2015-35, concerned the National Police. A male officer complained that his female successor was graded higher than he was. The NIHR concluded that, when the woman succeeded the man, she carried out the same tasks as he had before, but that soon afterwards the job became a more difficult one and the level at which the woman worked became higher than before. This was also in line with the intentions of the police force when hiring the woman. When advertising for the job, the police force had asked for a higher educational level and level of experience than before.

The last case, 2018-30, concerned a female marketing manager who stated that she was paid less than male colleagues who carried out the same work. However, the NIHR ruled that the job of the woman was not of equal value compared to the more difficult jobs of the male colleagues.

2.2.2 Ministry and Labour Inspectorates

Cyprus (CY)

Under the Industrial Relations Code, the Ministry mediates in disputes under collective agreements in the private sector between employees and employers.

92 The opinions can be found at the NIHR's website: <http://www.mensenrechten.nl>, accessed on 17 January 2019.

Estonia (EE)

The Labour Dispute Committee of the Labour Inspectorate decides several cases regarding pay discrimination claims every year. If discrimination is suspected, a petitioner has to submit an application to the Labour Dispute Committee (except from state duty) or bring an action to the court within 30 days. The Committee decides on financial claims which do not exceed EUR 10 000.

The Labour Inspectorate prepared a statistical overview of discrimination and unequal treatment disputes in 2017.⁹³ Two direct discrimination cases based on sex, and one related to the performance of family obligations were found. In 2017, in one case only, the employer paid a higher salary to a male employee for the same work.⁹⁴ The petitioner worked as a full-time cook. The petitioner argued that her employer was discriminating against her on the ground of sex because she earned the lowest salary compared with the whole kitchen staff. The petitioner cancelled the employment contract and submitted the following claims: compensation of loss of earnings and paid leave, plus the severance indemnity (three months' wages). According to Article 91(2) of the Employment Contracts Act an employee may cancel an employment contract extraordinarily due to a fundamental breach of the employer's obligation, in particular if the employer has degraded the employee. The Labour Dispute Committee found that the employer had not complied with Article 4(2) of the Gender Equality Act on the burden of proof and therefore sex discrimination by the employer was found, the petitioner was paid less compared to other employees of the other sex doing the same work. The Labour Dispute Committee acknowledged sex discrimination, granted compensation of the loss of wages, and a severance compensation of two months' salary (EUR 1,295.18), which is less than the rate permitted by law. It seems that the Labour Dispute Committee failed to recognise the severity of sex discrimination. In this case, the employer did not take the burden of proof seriously. In the course of proceedings, the respondent should prove that there has been no violation of the principle of equal treatment. If the person refuses to provide proof, such refusal shall be deemed to be equal to acknowledgement of discrimination by the person. Article 100(4) of the Employment Contracts Act stipulates that if an employee cancels the employment contract extraordinarily on the ground that the employer is in fundamental breach of contract, the employer shall pay the employee compensation in the amount of three months' average wages of the employee. A court or a labour dispute committee may change the amount of the compensation, considering the circumstances of the cancellation of the employment contract and the interests of both parties.

A total of 26 claims have been reported, but only 16 disputes were heard because the remaining 10 were resolved by means of a compromise. In six cases the applicants were unable to provide statements and facts clarifying the basis on which unfair or discriminatory treatment took place. These cases illustrate the fact that employees, compared to employers, have less knowledge about what is legally required to establish a presumption of discrimination.

2.3 Shortcomings in the application of the equal pay principle

The national gender equality experts of the European network of legal experts in gender equality and non-discrimination have been asked to assess what in their view are the main shortcomings in the light of relevant national case law regarding the application of the principle of equal pay for equal work or work of equal value between male and female workers that have been described in Section 2.2 above. Various publications of the network have provided information on the relevant legislation, case law and difficulties

93 Töövaidluskomisjoni menetluses olnud ebavõrdse kohtlemisega seotud töövaidlusasjad 2017 (*Labour disputes based on unequal treatment in 2017*), http://www.ti.ee/fileadmin/user_upload/failid/dokumendid/Meedia_ja_statistika/Tooevaidlused/Ebavordse_kohtlemise_vaidlused_2017_1.pdf, accessed 9 October 2018.

94 Decision No. 4-1/733/17-6 of 4 May 2017 of the Labour Dispute Committee of the Labour Inspectorate. Summary available in Estonian at: https://intra.ti.ee/?page=pub_view_dynobj&pid=33466736&desktop=10005&u=20181010085751 No. 9, accessed 10 October 2018.

in the enforcement of the legal provisions on equal pay between women and men.⁹⁵ This section on shortcomings first provides a synthesis of the main issues that have been presented by national experts. This section is based on the most recent national case law and legal developments. Second, in order to highlight the context in which the application of equal pay legislation takes place and how different problems at national level are intertwined, the example of Greece is discussed more extensively by way of illustration.

2.3.1 Synthesis of findings

Lack of cases

First of all, it is striking that in a few countries there are no court cases at all to be reported (**Bulgaria, Czech Republic, Liechtenstein, Romania**). In some countries, court cases are either not published (**Slovakia**) or only some cases have been published (**Denmark**). In **Denmark**, judgments from the lower courts are not published, only some of the high court and supreme court cases are. Such systems of publication make it difficult to create an overview of the developments of equal pay case law. In **Slovakia**, there were no reported cases on equal pay either by the Slovak National Centre for Human Rights (the equality body) or by the Slovak National Labour Inspectorate. However, since 2002 annual reports on results in the area of pay equality are produced by the National Labour Inspectorate.⁹⁶

In some countries, no recent cases of national courts were published, but there were a few cases decided by equality bodies (**Bulgaria, Denmark, Iceland, Malta, the Netherlands**), or the Labour Dispute Committee of the Labour Inspectorate (**Estonia**), see Section 2.2. Even in countries in which national case law on equal pay exists, cases are scarce (e.g. **Belgium, Croatia, Denmark, Finland, Greece, Ireland, Latvia, Lithuania, the Netherlands, Slovenia, Spain, Sweden**). This does not mean that unequal pay between male and female workers is not a serious problem, as the **Dutch** expert emphasizes. Different reasons might explain the scarcity of national case law.

Possible reasons for scarcity of cases

First of all, the lack of pay transparency probably plays a role. The European Commission issued a Recommendation in 2014 on strengthening the principle of equal pay between men and women through transparency.⁹⁷ However, for example in **Greece**, neither the courts nor the administrative authorities seem aware of this Recommendation. For employees, obtaining information on the pay of a comparator often presents difficulties (e.g. **Finland, Malta**), as this information is often considered to be confidential (e.g. the **Netherlands**). In **Estonia**, legislation stipulates that the employer has no right to disclose information about wages calculated, paid, or payable to the employee without the employee's consent or without a legal basis.⁹⁸ A potential claimant therefore often depends on the goodwill of a colleague to provide the necessary information for an equal pay claim. Also in Estonia, for example, employers do not have the legal obligation to disclose gender-disaggregated information on pay at company level. In

95 See on enforcement issues in particular: European network of legal experts in gender equality and non-discrimination, Foubert, P. *The enforcement of the principle of equal pay for equal work or work of equal value. A legal analysis of the situation in the EU Member States, Iceland, Liechtenstein and Norway*, European Union 2017, available at: <https://www.equalitylaw.eu/downloads/4466-the-enforcement-of-the-principle-of-equal-pay-for-equal-work-or-work-of-equal-value>, accessed 24 October 2018. See also Annex III Selected bibliography.

96 These reports identified unequal pay cases, which usually concerned unequal pay of persons of the same sex, which the employer was unable to justify by objective factors: <http://www.nip.sk/?t=46&s=178&ins=nip>, accessed 24 October 2018.

97 2014/124/EU: Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency Text with EEA relevance, *OJ L* 69, 8.3.2014, pp. 112–116. See on measures taken at national level: European network of legal experts in gender equality and non-discrimination, A. Veldman, *Pay transparency in the EU. A legal analysis of the situation in the EU Member States, Iceland, Liechtenstein and Norway*, European Union 2017, available at: <https://www.equalitylaw.eu/downloads/4073-pay-transparency-in-the-eu>, accessed 24 October 2018.

98 Article 28(13) Employment Contracts Act (ECA).

France, information on pay is more often available in large firms, but lacking in particular in SME's. In **Greece**, the lack of transparency is not addressed in case law.

Second, closely related to the lack of pay transparency, difficulties related to the burden of proof of unequal pay are explicitly mentioned by several national experts (e.g. **France, Poland**). These difficulties might be enhanced when different courts do not apply the relevant provisions consistently (e.g. **Finland, Poland**). Proving unequal pay might be even more difficult when pay scales are set by collective agreements. In **Belgium**, this seems to be the main cause for the scarcity of case law. Challenging collective agreements with job classification schemes that might be indirectly discriminatory is sometimes rendered difficult in legislation (e.g. **Germany, Spain**). The German expert mentions difficulties in combatting discriminatory structures in collective bargaining and job classification systems, as employers bound by collective agreements are privileged in recently adopted legislation. When a collective agreement applies, the employer is not obliged to explain the criteria and procedures of their wage-setting, but can simply refer to the agreement for an explanation and justification despite the fact that most complex job classifications established by collective agreements often continue to be gender-discriminatory, and so are one of the obstacles to equal pay.

In **Croatia**, the formalistic approach of courts to the rigid system of job classification in public services renders any unequal pay claim almost impossible. Cases involving claims of public servants that they should be paid more because they actually perform the tasks of higher skilled workers or work classified in another job category, show that any formal difference in professional classifications will overturn comparability. The same is true when the public servant performs tasks of a higher-paid job category without any formal decision of the public body, even where his/her superiors have given informal orders to perform those tasks.⁹⁹

The lack of cases in **Denmark** is probably due to the Danish labour market largely being regulated by agreements between the labour market organisations. Consequently, the vast majority of equal pay cases are settled in private dispute resolution systems.

Third, the outcome of earlier cases might discourage potential claimants who would consider starting proceedings on equal pay. In **Belgium**, some courts showed levity in their analyses of 'one-on-one' cases, which is hardly encouraging for would-be claimants. For example, in a case relating to a married couple employed as concierges in an enterprise, but performing extra work, the husband as a handyman and the wife as a charlady, the Labour Court of *Liège* on 9 February 2011, accepted the difference in pay.¹⁰⁰ Another court judged that a difference in education was a justification for unequal pay, without checking whether such a criterion was relevant to the job in question.¹⁰¹

The lack of consistency in case law between different courts might also deter claimants from starting proceedings, as shown by some case law from **Finland**. The Finnish case law on pay discrimination derives from the Supreme Court (individual cases of discrimination) and from the Labour Court (cases of discrimination related to collective agreements). These courts have not been very consistent in their assessment of discrimination cases. For example, the Labour Court¹⁰² upheld an interpretation regarding the choice of a comparator stating that it is for the complainant to point out the comparator (see Section 2.1.6), whereas the Supreme Court argued differently in the 'judge cases'. The 'judge cases' were problematic because both male and female judges in district courts complained of pay discrimination at the introduction of a new pay system which divided the judges into several pay categories. The choice of comparator caused difficulties as de facto the gender impact of the new pay system could not be assessed through individual cases. Even the set of cases that involve collective agreements on maternity leave pay have been presented both to the Labour Court and for the Supreme Court. The Supreme Court

99 See, for example, Supreme Court of the Republic of Croatia, Revr-1952/09; Revr-196/10; Revr-201/11.

100 Judgment of 9 February 2011, *Chroniques de droit social/Sociaalrechtelijke Kronieken*, 2011, p. 380 with C. Lardin's case note.

101 Judgment of 4 January 2005, *Chroniques de droit social/Sociaalrechtelijke Kronieken*, 2005, p. 451 with J. Jacqmain's case note.

102 See Labour Court case TT:2002:7-9, in which the court held the pay system to be discriminatory.

has been involved in 'pure' individual pay discrimination claims,¹⁰³ whereas the Labour Court has decided cases where the collective agreement in question was discriminatory. The two courts therefore emphasize somewhat different dimensions of discrimination.

The **Polish** expert refers to substantial inconsistencies in the interpretation of what is required to establish a prima facie case of discrimination between courts.¹⁰⁴

Some experts highlight difficulties in legislation. For example in **Estonian** legislation, no clear legal definition of pay is provided in the Employment Contracts Act (ECA) and the concept of pay has to be derived from several articles. A definition of work of equal value is lacking in the Gender Equality Act (GEA) and there is no relevant national case law either.¹⁰⁵ Similarly in **Cyprus**, for example, the legislation does not provide specific criteria for the application of the principle of equal pay for equal work or work of equal value.

The lack of knowledge of more sophisticated and hidden forms of discrimination reflects a general incapacity of institutions and victims to fight discriminatory practices, even if the implementation of the EU gender equality directives is considered to be satisfactory, according to the **Lithuanian** expert.

The concept of equal value presents difficulties. In **Greece**, for example, the criteria and parameters to assess whether work is of equal value lack in legislation and the notion of equal value is hardly used in cases. Assessment of the equal or unequal value of two jobs is particularly difficult in cases where the tasks fulfilled by the claimant do not or no longer correspond to the job description (e.g. the **Netherlands**).

The national expert of **Ireland** considers the fact that the claimant must have a comparator of the opposite sex as a shortcoming, as there is no provision for a hypothetical comparator. There must be a female claimant and a male comparator or vice versa. Essentially as the legislation is drafted, logically the gender pay gap cannot be narrowed where there is segregated employment. This binary principle was applied in *Health Service Executive v 248 Named Complainants*¹⁰⁶ where the complainant group of female nurses could not compare themselves with their comparator group as there were more men in that group but not to a sufficient degree, which as a result rendered that comparator group gender-neutral. This problem occurs in sectors where workers of one sex are overrepresented, for example female nurses or primary school teachers.

Finally, the costs of litigation might deter potential claimants from starting proceedings. In the **Netherlands**, for example, the court fees are considerable and, especially on appeal, may amount to EUR 3 000 or EUR 4 000 if proceedings are lost. In addition, attorney's fees are rather high. Conducting a court case on equal pay is only worthwhile when proceedings are paid by a trade union or an insurance company. Similarly in the **United Kingdom**, tribunal fees (introduced in 2014 and quashed, following a Supreme Court ruling, in 2017) will also have discouraged would-be claimants from bringing legal action.

103 See Supreme Court case KKO:2009:78, in which the Court decided that there was no discrimination in the manner in which judges had been distributed among different pay categories.

104 See Supreme Court 17 April 2018, case No. PK A 37/17. A similar ruling on the verdict of the court of first instance in this case was issued by the lower courts, referred to by the Supreme Court's ruling on 29 August 2017 in Case II PK 269/16, and on 10 July 2014 in Case II PK 256/13. In the latter case, the Regional Court, although the claimant did not indicate the presumed ground of discrimination, decided that sex discrimination of the employee with respect to wages had taken place (because the defendant failed to prove that the difference in wages resulted from objective reasons) and awarded the claimant damages based on Article 18^{3d} LC, in an amount not only covering material loss, namely the difference in wages, but also including damages for moral loss.

105 The terms 'same work' and 'work of equal value' occur in Article 6(2)(3) of the GEA. Discrimination in professional life occurs if conditions for remuneration or conditions for the provision and receipt of benefits related to the employment relationship are less favourable regarding an employee or employees of one sex compared with an employee or employees of the other sex doing the same work or work of equal value.

106 EDA132, [2013] ELR 206.

Role of other actors

In some countries, the potential role of actors such as Labour Inspectorates, social partners, NGOs and/or equality bodies is rather limited. In **Germany**, there is no possibility of collective or class actions regarding equal pay. For example, in **Slovakia**, reports of the National Labour Inspectorate emphasise that the labour inspectorate has little competence in the area of inequality of remuneration. Some problems signalled are that if full-time employees refuse to provide information, the labour inspector has to conceal the identity of the complainant and that the reversed burden of proof for the employer does not apply to complaints handled by the inspectorates.¹⁰⁷

Such actors would play a limited role even if they had possibilities to take diverse actions. In **Spain**, for example, the Women's Institute for the equality of opportunities theoretically has the possibility to initiate proceedings against offenders in cases of discrimination, but it rarely does so. The same happens with the most representative trade unions. Second, the Labour Inspectorate theoretically has the possibility to investigate employers who discriminate against women and it can even bring cases against employers if they find evidence of gender pay discrimination. However, the Inspectorate's intervention depends on the instructions and priorities of the Labour Authorities, which do not always include gender pay discrimination. Third, the Labour Authority could theoretically check collective agreements for illegal provisions in relation to such discrimination, but it rarely does so. In **Lithuania**, social partners do not play any role in furthering equal pay between women and men according to the national expert. In **France**, the Labour Inspectorates and social partners do not often provide elements of proof of unequal pay.

Some limits of a legal approach

The expert for the **United Kingdom** considers that it is likely that a major cause of the persistent equal pay gap continues to be indirect sex discrimination related to the fact that many more women than men sacrifice their careers or work part time in order to care for children (and, increasingly, elderly dependents) and so these individual actions will never really have great impact on the gender pay gap that exists. She considers that further government commitment is needed.

The **Finnish** expert reflects that altogether, neither court – even in the highest instance – has produced case law that would tackle the most significant issues concerning the gender pay gap. In a country whose deeply gender-segregated labour market is a big issue, one would expect there to have been cases on equal pay for work of equal value. The lack of such cases may be caused by a general understanding that there is no legal remedy against gender-segregated labour markets, and by difficulties in obtaining pay information that would transcend collective agreement lines and local workplaces. Extending the access to pay information through pay audits could be a way forward. So far, the social partners have stressed their own measures and agreements and the labour unions currently seem to favour legislation.

2.3.2 The example of Greece

The country report of the Greek expert offers a good example of how different issues considered separately in the above synthesis are intertwined in the national context, i.e. also confronted with a deep financial and economic crisis. The Greek contribution is also particularly interesting because it extensively addresses the legal limits and shortcomings in the field of equal pay between women and men and relies on expertise not only in theory, but also in practice.¹⁰⁸

A significant shortcoming is the non-application of the notion of 'equal value', in spite of it having been included in Article 22(1) of the Constitution since 1975 and in the legislation since 1984 (in the Act

¹⁰⁷ <http://www.nip.sk/?t=46&s=178&ins=nip>, accessed on 17 January 2019.

¹⁰⁸ This information was provided by Panagiota Petroglou.

transposing Directive 75/117).¹⁰⁹ The legislation does not provide either for value assessment criteria or for parameters for establishing the equal value of the work performed, such as the nature of the work or the training and working conditions. Consequently, this notion is unclear to litigants and judges, so that in most cases the comparison concerns the same work. Some judgments vaguely refer to the ‘same nature and value’ of the jobs without questioning the job classification. The typical main premise is as follows: the equal pay principle applies to ‘workers employed by the same employer, who belong to the same category, have the same formal qualifications and provide the same services aimed at serving the same category of needs, under the same conditions’. So, workers having different qualifications or performing different duties are not compared, even where they perform the same work, for the same employer, under the same conditions.¹¹⁰ Some judgments require that the content of the work be specified, but the criteria are unclear.¹¹¹

Another shortcoming concerns the notion of ‘comparator’. Neither Article 22(1)(b) of the Constitution nor the pertinent legislation explicitly require a comparator. However, Article 2(a) of Act 3896/2010 transposing Directive 2016/54,¹¹² which copies the definition of direct discrimination from the Directive, may be considered as implicitly requiring a comparator. Case law relying on the broader constitutional principle of equal pay requires such a comparator in the same undertaking or service or within the framework of the same wage-fixing instrument (e.g. a collective agreement (CA), or a statutory or administrative provision).¹¹³

The provisions copying the definition of direct discrimination from the directives allow a hypothetical comparator. This presents difficulties in practice, because, according to case law, the hypothetical comparator must perform or have performed the same work.¹¹⁴

Workers of an undertaking may be covered by several wage-fixing instruments, while workers of several undertakings may be covered by the same wage-fixing instrument. According to case law, the comparator may be a worker employed at the same time, in the same undertaking or service, or having previously been employed there. In the absence of such a worker, the comparator may be a worker covered by the same wage-fixing instrument, but employed or having been employed in another undertaking. When there is no such comparator, the claimant can allege that he/she fulfils the conditions for the higher pay provided by an instrument for workers performing the same work or work of the same value, and claim the pay difference, without even naming a comparator.

A hypothetical comparator is also taken into account in cases of de-facto employment relationships (when work is performed although the individual contract has ended or there is no valid individual contract). In such cases, pay is due according to the provisions on undue enrichment (Article 904 Civil Code), which is given a limited scope: the employer must pay the amount that he/she would have paid another worker, who has ‘the same qualifications and ability, and would have been employed under a valid contract, in the same circumstances, for the same work’.¹¹⁵

Moreover, national case law does not address the issue of transparency in pay. However, the Greek Authority for the Protection of Personal Data (APPD) imposed a EUR 70 000 fine on a private firm for refusing to provide data to an employee on the comparative evaluation of its employees. The employee had requested these data in order to be able to exercise his employment rights. The APPD relied on the

109 Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women *OJ L 45*, 19.2.1975, pp. 19-20.

110 SCPC (Civil Section) 505/2017, 688/2017, 375/2016, 483/2016 (these are not gender cases).

111 SCPC (Civil Section) 242, 454, 684/2007, 1483, 207/2006 (these are not gender cases).

112 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) *OJ L 204*, 26.7.2006, pp. 23-36.

113 See e.g. SCPC (Civil Section) 257-258/2014, 15/2013.

114 See e.g. SCPC (Civil Section) 31/2015.

115 See e.g. SCPC (Civil Section) 390/2011, 82/2013 (these are not gender cases).

principles of equal treatment and the prohibition of discrimination in employment as enshrined in Act 3304/2005 transposing Directives 2000/43¹¹⁶ and 2000/78.^{117,118} Although this case did not specifically concern equal pay, it is obvious that the employee's evaluation was also reflected in his pay.

It seems that neither the courts nor the administrative authorities are aware of the European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency.¹¹⁹

Neither the Constitution nor specific legislation allows any derogation from the equal pay principle; therefore, any justification is excluded. However, differences in the legal nature of the employment relationship (e.g. one worker is employed under a private-law contract, while another is a civil servant) or the wage-fixing instrument (e.g. one worker is covered by a collective agreement, another is not, or they are covered by different collective agreements) are often used as justifications, even within the same company or service where the workers are employed by the same employer and perform the same work.¹²⁰ This is incompatible with EU law, which requires equal pay for equal work or work of equal value carried out in the same establishment or service for the same employer.¹²¹ The absence of criteria for comparable work or these criteria being very narrow is also a justification. More generally, there is a tendency to justify pay differences on budgetary grounds and by mere generalisations, as was shown in *Nikoloudi*,¹²² which concerned, inter alia, indirect discrimination in pay.

There is very scarce case law on equal pay between men and women, although there is widespread direct and indirect discrimination against women in pay, which has increased along with the financial crisis. Moreover, there is still a general lack of awareness regarding the equal value concept, as well as regarding the concept of indirect discrimination in pay. Equal pay cases usually do not concern gender discrimination. However, in practice, discrimination against women is widespread and growing. In its 2016 Observations on the implementation of ILO Convention No. 100 (equal remuneration), the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) deplores the absence of any impact assessment of austerity measures on women's pay, while 'the rapid growth of flexible forms of employment has led to a widening of the gender pay gap and to obstacles in women's career development'. According to the Government, gender wage differentials may exist where wages exceed those stipulated in collective agreements, but private agreements are not monitored. As the Ombudsman found, cuts in pay and allowances during pregnancy, maternity leave and parental leave increase the gender pay gap, even in the public sector.¹²³

2.4 Achievements

Given the findings in the previous Section 2.3, it is not surprising that only few national experts have reported achievements.

116 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, *OJ L 180*, 19.07.2000, pp. 22-26.

117 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, *OJ L 303*, 2.12.2000, pp. 16-22.

118 Decision 1/2008, available at: <http://www.dpa.gr>, accessed 12 April 2018.

119 2014/124/EU: Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency Text with EEA relevance, *OJ L 69*, 8.3.2014, pp. 112-116.

120 SCPC (Civil Section) 3/1997 (Plen.), 288/2003, 453/2002 (these are not gender cases).

121 CJEU 8 April 1976, Case 43/75 (*Defrenne II*), ECLI:EU:C:1976:56, Paragraph 22; CJEU 17 September 2002, C-320/00 (*Lawrence*), ECLI:EU:C:2002:498, Paragraph 18.

122 CJEU 10 March 2005, C-196/02 (*Nikoloudi*), ECLI:EU:C:2005:141.

123 Observation (CEACR), 106th ILC session (2017), Greece, http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3297841:NO, accessed 8 October 2018.

2.4.1 Legislative initiatives and legislation

Spain (ES)

The main conclusion that can be drawn from the limited Spanish case law on equal remuneration is that Spanish legislation must be modified to make it easier to identify pay discrimination and also to establish sanctions and dissuasive compensations. According to this, the Congress of Deputies agreed to begin to process on 22 February 2018 the first bill on equal pay in the history of Spain. It is a quite ambitious bill that applies to private companies and public administrations. The most important feature of the bill is that it is to establish in favour of individual workers and workers representatives the right to be informed about average remuneration by category of employee or position, broken down by gender, including all kinds of payments (even complementary or variable components). In addition, the bill increases the functions of the Institute for women and for equal opportunities and it creates dedicated bodies specialized in gender discrimination at the Labour Inspectorate. The bill also includes new and more dissuasive sanctions.

Croatia (HR)

There is a relatively clear and descriptive regulatory framework for the enforcement of the principle of equal pay between men and women. Article 91(2) of the Labour Act¹²⁴ clarifies and describes what is understood by the concepts of equal work and work of equal value. It stipulates that two persons of a different gender perform equal work and work of equal value if (i) they perform the same work in the same or similar conditions or they could substitute one another at the workplace; (ii) the work which one of them performs is of a similar nature to that performed by another, and the differences between the work performed by them and the conditions under which it is performed have no significance in relation to the overall nature of the work or they appear so rarely that they have no significance in relation to the overall nature of the work; (iii) the work which one of them performs is of equal value as that performed by another, if one takes into account the criteria such as qualifications, skills, responsibilities, the conditions under which the work is performed and whether the work is of a manual nature or not. There is no available case law which the courts would address and use to interpret some of these elements. The majority of analysed cases rely on differences concerning formal professional qualifications and prescribed job categories, as well as tasks described in a written employment contract.

Ireland (IE)

The definition of 'indirect discrimination' was amended by the Equality (Miscellaneous Provisions) Act 2015 so that the wording would be compliant with Article 2(1)(b) of Directive 2006/54.¹²⁵

The Government on 26 June 2018 approved the General Scheme of the Gender Pay Gap Information Bill.¹²⁶ The proposed legislation will be cited as the Gender Pay Gap Information Act 2018. The Employment Equality Act 1998 will be amended by the insertion of a number of sections to include 'Gender Pay Gap Information'. The Minister will introduce regulations requiring employers to publish information related to the pay of their employees for the purpose of showing whether there are differences in the pay of male and female employees and if so, the scale of such difference. The Minister will also have regard to the cost of complying with such regulations. These regulations will not apply to employers having fewer than 50 employees. It is proposed that for the first two years of the legislation that it shall apply to employment having over 250 employees and then within three years that upper limit shall become 150 employees. The regulations may prescribe classes of employer to which the regulations shall relate including by reference to the number of employees the employer has; classes of employee; how to calculate the

¹²⁴ Official Gazette Nos. 93/14 and 127/17.

¹²⁵ Sections 8 and 9 of the Equality (Miscellaneous Provisions) Act 2015, which entered into effect on 1 January 2016.

¹²⁶ <http://www.justice.ie/en/JELR/Pages/PR18000210>, accessed 9 October 2018. The Labour Party (in opposition) have introduced a Private Member's Bill (as opposed to a Bill introduced by Government) entitled the Irish Human Rights and Equality Commission (Gender Pay Gap Information) Bill 2017. The draft legislation includes no mention of Commission Recommendation 2014/124/EU. The Minister of State at the Department of Justice and Equality acknowledged the good intentions of the Bill and stated that the Government supported the general thrust of the draft legislation and the need to address the gender pay gap.

number of employees; how to calculate the pay of employees; and the form and manner in which and the frequency with which information is to be published under the proposed regulations. The proportions of male and female employees who are paid a bonus and benefits in kind. There is to be a provision for the publication of the hourly rate of pay for men and women in respect of each category of employee; and also whether the employees are permanent, on fixed-term contracts or are part-time employees. The mean and median rate(s) of pay shall be published for each group of employees. It is proposed that such information shall be published each year. The Irish Human Rights and Equality Commission (IHREC) may submit an application to court if there is an alleged breach of the proposed legislation. There will also be additional enforcement powers and access to the Workplace Relations Commission if an employee considers that there has been a violation of legislation. In addition, regulations may require the employer to publish information in respect of each Department of State, each office within the meaning of the Public Service Management Act 1997 (various state bodies), *An Garda Síochána* (police), and the Defence Forces.

Public bodies are to ‘have regard’ to the need to eliminate discrimination, promote equality of opportunity and treatment and protect human rights.¹²⁷ Public bodies include a department of state (other than the Defence Forces), a local authority, the health service, a university or institute of technology, an education and training board and any other statutory body.

Lithuania (LT)

The new Labour Code of 2016 (in force since 1 July 2017) contains new explicit provisions on the implementation of the principle of equal treatment in the field of employment relationships (Article 26 of the Labour Code). In substance it provides no additional rules compared to already long-standing equal opportunities legislation but it opens the way to use the quick, free-of-charge and easily accessible system of labour litigation. In other words, the victims of the discrimination are encouraged to use the system of labour disputes rather than to initiate the action in the court or to fill the complaint before the Office of Ombudsperson of Equal Opportunities. However, the number of discrimination-related cases remains very low.¹²⁸

2.4.2 Developments in national case law

Latvia (LV)

Taking into account the fact that the Supreme Court in its decisions tends to provide an interpretation of the concept of pay in general under Latvian law on the basis of the case law of the CJEU in matters of equal pay between men and women, it may be concluded that the Latvian Supreme Court not only is aware of and applies the CJEU law on equal pay, but also extends its application to national law on general issues of pay and general principle of equal pay.

Netherlands (NL)

The case of the Appeal Court of ‘s Hertogenbosch¹²⁹ (see Section 2.1.9) is relevant, because it emphasized the importance of transparency. The Court ruled that the fact that the employer did not provide clarity about the cause of the difference in pay between a man and a woman who did work of equal value, meant that discrimination was at stake. Since a lack of transparency makes it difficult to realise equal pay, it is important that this is at the risk of the employer instead of the employee.

¹²⁷ Section 42 of the Human Rights and Equality Commission Act 2014.

¹²⁸ During the period of one year (1 July 2017–1 July 2018) only 9 of the initiated labour cases (out of more than 6 000) were related to discrimination.

¹²⁹ Court of Appeal of ‘s-Hertogenbosch, 13 November 2012, *JAR* 2013/13 and 5 March 2013, *JAR* 2013/106, ECLI:NL:GHSHE:2013:BZ3454.

United Kingdom (UK)

The Asda claims¹³⁰ (see Section 2.1.6) have paved the way for other private claims: the law firm Leigh Day has announced that legal proceedings have now begun in the first equal pay claims against Morrisons, Sainsbury's and Tesco, the last of which may potentially be the largest-ever equal pay challenge in UK history, which could cost the supermarket giant GBP 4 billion to compensate workers.

2.4.3 Role of equality body

Netherlands (NL)

Research into pay structures is complicated and expensive. What might help is to ask the NIHR for an opinion and to have research carried out by the NIHR's job evaluation expert. This expert can examine what kind of pay system an organisation employs, how jobs are evaluated and whether jobs are of equal value. In addition, an employer is obliged to provide the NIHR and the persons engaged by it with the documents and data that the NIHR and its experts require (Article 6 Act on the NIHR).

130 *Asda Stores Ltd v Brierley* [2018] ICR 384 (EAT).

3 Good practices on equal pay

3.1 Examples of good practices at national level

3.1.1 Austria (AT)

Equal Pay Day

Equal Pay Day has been marked twice a year, in April and October, since 2009. As an awareness-raising measure, the day is organised by Business and Professional Women (BPW) in cooperation with other NGOs (mainly *Österreichischer Frauenring* and Association of independent Women's Shelters). The Austrian Trade Union Federation (*Österreichischer Gewerkschaftsbund*) as well as sectoral trade unions annually launch regional Equal Pay Day actions in order to raise awareness of persisting wage inequalities.¹³¹

Specific obligations in legislation

The regulations concerning income reports in companies came into full effect in 2014. Private-sector companies and companies with public ownership (full or part public ownership) with more than 150 employees are requested to issue annual income reports according to the legal requirements laid out in Paragraph 11a Equal Treatment Act for the Private Sector. The reports have to detail the number of men and women for every category of the applicable collective agreement with impact on the determination of pay and also to provide average or median pay amounts for men and women in the relevant categories. Reports generally are confidential; claimants in court cases can require data to be made accessible for the purpose of evidence.¹³²

Employers and employment agencies have to state the legal minimum wage when advertising a job (entry into force: 1 March 2011); the job applicant or the Equal Treatment Ombudsman can report those who do not do so, and this can result in a penalty of up to EUR 360 (entry into force: 1 January 2012).

Collective agreements

Several trade unions have extended the relevant collective agreements (which detail legal minimum pay and working conditions for every employee in the relevant sector) to include periods of unpaid maternity, paternity and parental leave in the calculation periods for advancement in pay schemes (*Vorrückungen*), increases in holiday leave, and in some cases also for regular (usually bi-annual) pay increases.¹³³

3.1.2 Belgium (BE)

Equal Pay Day

Belgium was the first country in Europe in which an Equal Pay Day was organised in 2005. *Zij-kant*, a progressive women's movement, is the main organiser of the event, which takes place every March in collaboration with the socialist trade union FGVB. Each year, an innovative campaign featuring posters and a video clip is launched around the Day to draw attention to the issue of equal pay. The first Equal Pay Day campaign focused on the pay gap between women and men. The Christian and liberal trade unions also organise their own events devoted to equal pay.¹³⁴

131 See https://www.oegb.at/cms/S06/S06_30.a/1342552822331/home/equal-pay-day-aktionen-in-ganz-oesterreich for 2018, accessed 19 November 2018.

132 Paragraph 11a Equal Treatment Act Private Sector, <https://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40126105/NOR40126105.pdf>, accessed 19 November 2018.

133 E.g. Collective Agreement for the Social Sector: <http://www.kollektivvertrag.at/kv/sozialwirtschaft-oesterreich-sw-oe-bags-arb-ang/sozialwirtschaft-oesterreich-sw-oe-bags-rahmen/1980489>, accessed 19 November 2018.

134 See Demagos, A., *L'écart salarial entre hommes et femmes. Effectivité potentielle de la loi du 22 avril 2012*, Bruxelles, Larcier, 2015.

Specific obligations in legislation

The Act of 22 April 2012 (amended by the Act of 12 July 2013), 'aimed at fighting the pay gap between men and women' (the 'Gender Pay Gap Act'), amended various pieces of legislation in order to encourage the social partners (in the private sector) to make fresh efforts in favour of equal pay. The implementation of the Act of 22 April 2012 required a number of ancillary Royal Decrees, which were promulgated on 25 April 2014.¹³⁵ According to this Act, differences in pay and labour costs between men and women should be stated in companies' annual reports (*bilan social/sociale balans*).

The Act provides that every two years, companies with over 50 workers should carry out a comparative analysis of their wage structure, showing the rates for their female and male employees. If this shows that women earn less than men, the company will have to draw up an action plan. An employer may appoint a works mediator, following a proposal from the works council or the trade union delegation. If discrimination is suspected, women can turn to their firm's work mediator, who will investigate whether there is indeed a pay differential. If there is a differential, the works mediator will try to find a compromise with the employer.

The control of annual reports and comparative analysis is part of the tasks of company auditors within their role of annual accounts control. Despite instructions given by the Institute of company auditors (*Institut des réviseurs d'entreprises/ Instituut van de Bedrijfsrevisoren*),¹³⁶ currently this obligation is not really effective as auditors do not systematically check the accuracy of figures provided. Moreover, the report is only accessible internally to the works council, limiting its use for example for legal cases. The Labour Inspectors also have a role in controlling information provided by enterprises, but due to their limited human resources, this is not effective. Finally, all data mentioned in the reports are confidential.

The communication and control of revised job evaluation and classification systems by the federal service in charge of collective agreements is one positive outcome of the law (between 1 July 2013 and 30 November 2014, more than 150 collective agreement were analysed and a number of those were corrected or completely modified subsequently).¹³⁷

Finally, the fact that until now, no mediator has been appointed is a signal that while the law provides a number of mechanisms to ensure that equal pay in enterprise is real, it is not really effective.

Job classifications and evaluations

In 2010, the Institute for the Equality of Women and Men developed a checklist, also referred to in the Gender Pay Gap Act, regarding gender neutrality in job evaluation and job classification to be used by both private and public employers.¹³⁸ Previously, in 2006, the Institute had developed training programmes and published a guidebook on gender-neutral job classification for employers and trade unions to avoid and eliminate gender bias in pay systems (2006).

Collective agreements

In Belgium, a national collective labour agreement commits social partners to keeping up efforts to achieve equality between women and men. This includes reviewing job classifications so as to make them gender neutral. This Collective Labour Agreement No 25 on equal pay for male and female employees, obliges all sectors and single enterprises to assess and, if necessary, to correct their job evaluation and

135 Royal Decree of 25 April 2014 concerning the analytical report on the structure of the workforce's remunerations and Ministerial Decree of 25 April 2014 setting the format of the analytical report, both in *Moniteur belge/Belgisch Staatsblad*, 15 May 2014. Royal Decree of 25 April 2014 concerning the works mediator with regard to the fight against the pay gap between men and women, in *Moniteur belge/Belgisch Staatsblad*, 21 May 2014. All three texts available at <http://www.juridat.be>, accessed 30 November 2018.

136 *Institut des réviseurs d'entreprise*, Communication 2014/10, 29 October 2014.

137 Deloose Safeya, *La loi sur l'écart salarial, effectivité et conformité au droit européen*, final essay for the L.L.M. at the Université libre de Bruxelles, June 2018, p. 18.

138 See: https://igvm-iefh.belgium.be/nl/publicaties/checklist_sekseneutraliteit_bij_funcitiewaardering_en_-classificatie, accessed 21 February 2019.

classification systems to ensure gender neutrality as a condition of equal pay. This Collective Labour Agreement, modified on 9 July 2008,¹³⁹ provides that discrimination between men and women has to be excluded from all conditions of remuneration.

3.1.3 Bulgaria (BG)

Since 2013 no specific legislative or policy measures have been taken in the field of equal pay by the Government. Nevertheless, some initiatives mentioned below can be considered as advances in practice and opening the way to new laws and policies.

Findings published in official reports

Two reports of the Bulgarian Government on gender equality were adopted by the Council of Ministers in 2017 and 2018, presenting the achievements in the field. First, the Report from 2017 on the implementation of the Plan of Action on gender equality, based on the Recommendations of the CEDAW Committee/the Plan of Action, was adopted in July 2013.¹⁴⁰ Second, the Report from 2018 on the implementation of the Plan on Gender Equality for 2017 was adopted.¹⁴¹

The following data and initiatives on equal pay presented in these reports can be mentioned:

A priority issue for the Ministry of Education and Science in 2017 was the increase of remunerations of pedagogical experts in the pre-school and school sectors and attracting young specialists to the profession, as well as keeping them in this important sector, where possible. The sector being highly feminized, all improvements are pertinent to the problem of equal pay and the gender pay gap. As a matter of fact, since 1 September 2017 the remuneration of the pedagogical staff was increased by 15 % as part of the political commitment by the Government in place since May 2017 for doubling the remunerations in the sector by the end of its mandate. Other incentives and additional payments were provided for those working in small towns as transport costs, payments for clothing, etc.

Specific project

There is a special EU-funded project in which the NGO 'Gender project foundation/GPF' is a partner, and which deals with the gender pay gap. It is called 'zero GPG-Gender e-quality: Innovative tool and awareness raising on GPG'. The project is about creating an enabling environment for tackling the gender pay gap through working with Government, trade unions, employers' associations, academics, and NGOs. A manual for trainers on countering the gender pay gap was created and an innovative web-based instrument was created for calculating the gender pay gap.¹⁴²

3.1.4 Cyprus (CY)

Equal Pay Day

Cyprus's first Equal Pay Day was held in 2013 and coincided with International Women's Day. An event to raise public awareness took place on 9 March, co-organised by the Ministry of Labour and Social Insurance, the European Parliament Office in Cyprus, the European Commission Representation and the

139 Collective agreement n°25 *ter*. All texts available in Dutch and French at <http://www.cnt-nar.be>, accessed 30 November 2018.

140 The Report on the implementation of the national plan on gender equality for 2017, adopted by the Council of Ministers in July 2018: <http://www.gov.bg/bg/prestsentar/zasedaniya-na-ms/dneven-red-na-zasedanieto-na-ministerskiya-savet-na-18-07-2018-g>, accessed 8 November 2018. The Report on the implementation of the Recommendations of the CEDAW Committee: <https://www.mlsp.government.bg/ckfinder/userfiles/files/politiki/ravni%20vyzmojnosti/normativni%20aktove/bg%20zakonodatelstvo/Doklad%20CEDAW%202017.pdf>, accessed 8 November 2018.

141 https://www.mlsp.government.bg/ckfinder/userfiles/files/politiki/ravni%20vyzmojnosti/normativni%20aktove/bg%20zakonodatelstvo/REPORT_Equality_2017_FINAL.pdf, accessed 17 January 2019.

142 See for more information: <https://gender-bg.org/bg/proekti/archive-proekti/33-proekt-zero-gpg-gender-equality.html>, accessed 8 November 2018.

Press and Information Office, with the participation of Business and Professional Women Federation of Cyprus.

Specific projects

NGOs, employer organisations and trade unions organise seminars for their officers on job evaluation schemes and carry out surveys on equality between men and women.

The Department of Labour Relations of the Ministry of Labour and Social Insurance is implementing a project entitled 'Actions for reducing the gender pay gap', co-financed by the European Social Fund. The budget is approximately EUR 3 million. Implementation started in July 2010 and ended in 2015. The project consists of a broad mix of measures to combat the root causes that create and sustain the gender pay gap.

In February 2019, the Ombudsman and the Labour Department will make a presentation on three European law cases which can be used and applied in Cyprus.

Collective agreements

The social partners have abolished references to male and female posts in collective agreements, but in some agreements, there is still job segregation. Social partners have not yet widely used job evaluation, in order to match pay in jobs mainly carried out by women with pay in those mainly done by men. For example, a man working as a messenger receives a higher salary than a cleaning lady who is working the same amount of hours.

3.1.5 Czech Republic (CZ)

Equal Pay Day

Equal Pay Day was launched in 2010 and takes place annually in April. Recent activities have included mentoring sessions, and opportunities for women to ask successful female entrepreneurs and managers questions about work and career progression. The event is organised by BPW Czech Republic, the national antenna of the NGO International Federation of Business and Professional Women.

Specific project

In 2016, the Ministry of labour and social affairs promoted an important project, partially financed from the EU social fund, called '22% for equality'. The whole project was aimed at awareness raising regarding equal pay and the gender pay gap in the Czech Republic, which indeed represents 22 %. As part of the project, a study was carried out,¹⁴³ the equal pay calculator was launched and several actions regarding this topic were promoted.¹⁴⁴

3.1.6 Germany (DE)

Equal Pay Day

Germany first held an Equal Pay Day in 2008. Initiated by BPW Germany (Business and Professional Women's Foundation), the event takes place annually in March. Every year, a key aspect of the gender pay gap is highlighted for discussion. Separate events take place in the fourth quarter of the year to inform stakeholders about the key topic and to prepare activities for Equal Pay Day.

143 Information available in Czech at https://www.mpsv.cz/files/clanky/25032/MPSV_rovna_odmena_studie_Aktualni_rozdily_v_odmenovani_zen_a_muzu_CELA.pdf, accessed 8 November 2018.

144 See: www.rovnaodmena.cz, accessed 8 November 2018.

Publication of statistics

The Earnings Statistics Act, implemented in 2007, provides a database for research on the development and causes of pay inequality, with possibilities for counter strategies to target the causes.¹⁴⁵

Specific tools

The Logib-D management tool helps employers identify if there is a pay gap between their male and female employees.¹⁴⁶ Through analysing payment structures, this online tool enables employers to explore whether there is a gender pay gap and the reasons for it. It also helps employers to develop solutions to ensure equal pay for all employees. This instrument was developed by the German Federal Government in cooperation with partners. There are indications that another tool (known as eg-check) is better suited to detect pay discrimination on the grounds of sex/gender and to design pay structures and evaluation systems free of sex/gender discrimination.

The federal Government has developed non-binding guidelines on the implementation of equal pay for work of equal value.¹⁴⁷

Specific obligations in legislation

Before the entry into force of the Pay Transparency Act in 2017 (see below), access to detailed information about the wages of a company's employees was only available to works councils under the Works Constitution Act.¹⁴⁸ Under the Act, the employer is obliged to report on the state of affairs within the company, and this includes the topic of gender equality. If the employer is found to have committed grave violations of the prohibition of discrimination, works councils and trade unions can seek a court order obliging them to stop. However, these statutory regulations have not yet been put into practice.

On 6 July 2017, the Pay Transparency Act entered into force.¹⁴⁹ Former drafts had been discussed and amended on many occasions to water down the means for the effective enforcement of equal pay. Nevertheless, the act contains an explicit prohibition of direct and indirect pay discrimination on the grounds of sex/gender (including pregnancy and motherhood). It tries to provide a definition of the 'same work' and 'work of equal value', covering the kind of work, training requirements, working conditions and the key requirements of the actual work in question. The prohibition of pay discrimination is repeated under the heading 'pay equality' (although there is still no obligation to pay the same remuneration for the same work under German law, but rather the prohibition of pay discrimination on the ground of sex, which is different). Agreements violating the prohibition of pay discrimination on the grounds of sex/gender are invalid. The act explicitly prohibits victimisation connected to the exercising of rights under this law.

Under Section 5(1) of the Pay Transparency Act, 'pay' covers all basic or minimum wages or salaries and all other remuneration in cash or in kind, directly or indirectly granted on the basis of an employment relationship. People in employment relationships include employees, civil servants, judges, the military, trainees and employees working at home.

145 Via the Quarterly Earnings Survey required by the Act, available under <https://www.destatis.de/DE/ZahlenFakten/Gesamt-wirtschaft/Umwelt/VerdiensteArbeitskosten/VerdiensteVerdienstunterschiede/Methoden/Vierteljaehrliche-Verdiensterhebung.html>, accessed 17 January 2019.

146 See: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/equal-pay/tools-and-actions-more-gender-equality_en, accessed on 21 February 2019.

147 See, for example: <https://www.bmfsfj.de/bmfsfj/bundesfrauenministerin-manuela-schwesig-eroeffnet-forum-equal-pay-day-in-berlin/80396?view=DEFAULT>, accessed on 22 February 2019.

148 See Betriebsverfassungsgesetz (Works Constitution Act), 15 January 1972, available at http://www.gesetze-im-internet.de/englisch_betrvg/, accessed on 22 February 2019.

149 Gesetz zur Förderung der Entgelttransparenz zwischen Frauen und Männern – Entgelttransparenzgesetz (Statute on the Promotion of Transparency of the Remuneration between Women and Men – Pay Transparency Act) of 30 June 2017, Official Law Journal 2017, p. 2152.

The act contains an explicit prohibition of direct and indirect pay discrimination on the grounds of sex/gender (including pregnancy and motherhood). Employers are obliged to develop a non-discriminatory payment system. Agreements violating the prohibition of pay discrimination on the grounds of sex/gender are invalid. However, when a collective agreement applies, the employer can simply refer to the agreement for an explanation and justification despite the fact that most complex job classifications established by collective agreements continue to be gender-discriminatory and thus are one of the obstacles to equal pay.

Under Section 4(2) of the Pay Transparency Act, female and male employees are performing work of equal value when, on the basis of a set of factors, they can be considered to be in a comparable situation. These factors include, among others, the nature of work, the training requirements and the working conditions. Only the actual requirements that are essential to the respective activity are to be taken into consideration, independent of the employees performing the activity and their performance. Different groups of employees covered by the law (employees, judges, the military, trainees etc.) are never in a comparable situation.

Under Section 3(2) of the Pay Transparency Act, direct pay discrimination on the ground of sex, including pregnancy and maternity, cannot be justified. Under Section 3(3) concerning indirect pay discrimination on the ground of sex, criteria relating to the labour market, performance and work results may justify different pay, provided that the principle of proportionality has been observed. This does not provide for a more in-depth understanding of the ECJ's rulings (especially case C-262/88 *Barber*) or the principle of equal pay. Criteria relating to the labour market may only justify pay discrimination under very special circumstances. In addition, differences in performance and work results either exclude the condition of work of equal value or cannot be taken into consideration because the calculation of basic pay depends upon the requirements that are essential to the respective activity and not upon the employee's individual performance. In conflict with the ECJ rulings (especially *Barber*), the statutory justifications do not differentiate between the different components of the remuneration.

Under Sections 10–16 of the Pay Transparency Act, employees (and civil servants, judges and the military) are entitled to obtain information on the gross remuneration of their fellow employees doing the same work or work of equal value and up to two remuneration components. The employee exercising this right has to identify the comparable same work or work of equal value and the comparison group of employees of the opposite sex has to contain at least six persons.

Under the Pay Transparency Act, employers are obliged to design their remuneration systems in such a way that excludes any pay discrimination on the ground of sex. However, at the same time, employers bound by collective agreements are privileged. The main problem with the act is that it does not cover any further consequences in case of a violation of the prohibition of pay discrimination on the grounds of sex/gender. The employee has to take individual legal action under the General Equal Treatment Act individually, irrespective of whether the pay discrimination is based upon an individual agreement or a discriminatory system, as there is no possibility of collective or class actions regarding equal pay, such as the right of associations to start legal proceedings.

3.1.7 Denmark (DK)

Publication of statistics

Since 2017, Statistics Denmark has specifically provided statistical data on gender equality. As part of the thematic statistical data on gender equality data are also provided on equal pay, both in general and deconstructed into specific sectors.¹⁵⁰

150 See <https://www.dst.dk/da/Statistik/emner/levevilkaar/ligestilling/ligestillingswebsite>, accessed 8 November 2018.

Specific obligations in legislation

According to the Act on Equal Pay Section 6a, the Minister of Employment together with the Minister of Equality conduct a report on the status on equal pay between women and men every three years.¹⁵¹

The report provides information on initiatives regarding equal pay from 2013-2016, including:

- An amendment to the Act on Equal Pay (Act No. 513/2014) imposing a requirement on enterprises with a minimum of 10 employees to provide gender-specific information on salaries.
- Updated information on the gendered labour market.
- A mapping of the gendered labour market and its consequences. The mapping was conducted by the Danish National Centre for Social Research and resulted in a report on the Gendered Labour Market: Developments, Consequences and explanations.¹⁵²

The implementation of requirements for gender-specific salary information provides a good and necessary basis for addressing equal pay issues. An amendment to the Equal Pay Act, however, modified the obligation to provide gender-specific information for smaller enterprises outlined above.¹⁵³ The amendment came into force on 15 February 2016. Following this amendment, Section 5 of the Equal Pay Act now stipulates that only companies with a minimum of 35 full-time workers are under the obligation to prepare yearly gender-segregated wage statistics (before the introduction of the amendment the obligation to prepare gender-segregated wage statistics applied to companies with a minimum of 10 full-time workers). Further, the duty to prepare gender-segregated wage statistics now only applies to companies that employ a minimum of 10 men and 10 women with comparable job functions. The amendment was justified by referring to the need to ease the administrative burden on smaller companies.

Survey

The mapping of the gendered labour market conducted by the Danish National Centre for Social Research in 2016 was a comprehensive study of the national labour market and its gendered nature.¹⁵⁴ The mapping also looked into the consequence for women of the gender segregation over a life course. The unresolved issue of unequal pay is mentioned as one of the consequences of the gender-segregated labour market. Further to this, the report looked into the connection between choice of education and the subsequent labour market placement. The report therefore connects gender segregation in education to the subsequent occupational gender segregation. Also, the report refers to the gendered economic effects of the gender-segregated labour markets.

Report

In 2017 the Ministry of Education launched a report on gender equality and educational choices.¹⁵⁵ According to the report gendered choices of education and thus the subsequent choice of occupation is to a large extent shaped in preschool, as well as in primary schooling systems. The report highlights the necessity to place explicit focus on gender equality to eliminate gender stereotypes and gendered educational choices leading to a gender-segregated labour market.

151 The latest report is dated April 2016 and is available at: <https://bm.dk/media/5141/ligeloesredegørelse-2016.pdf>, accessed 8 November 2018.

152 The report is available at: <https://www.sfi.dk/publikationer/et-koensopdelt-arbejdsmarked-11749/>, accessed on 8 November 2018.

153 Act No. 116, 2016.

154 See <https://en.sfi.dk/publications/a-gender-segregated-labour-market-11749/>, accessed 11 March 2019.

155 The report is available at: <https://uvm.dk/aktuelt/nyheder/uvm/2017/jun/170626-stoerre-viden-om-koen-og-ligestilling-giver-frie-og-kvalificerede-uddannelsesvalg-til-alle>, accessed 8 November 2018.

Specific project

The Ministry of Equality in 2018 launched the campaign 'The future is yours'.¹⁵⁶ The campaign focuses on educational choices to promote gender equality and awareness on gender stereotypes in education and occupation.

3.1.8 Estonia (EE)

Equal Pay Day

Equal Pay Day takes place annually in Estonia in spring and is organised by BPW Estonia. The date of Equal Pay Day varies and marks the point in the year where women in Estonia have to work to catch up with what men earned last year. Due to the large gender pay gap in Estonia, the day took place on 10 April in 2017 and on 2 April in 2018.¹⁵⁷ Equal Pay Day has drawn attention to gender inequalities and serves well as an awareness-raising measure. While some awareness-raising campaigns were organised in the past, the focus of action has now shifted towards the organisation of events aimed at educating the broader public.¹⁵⁸ Activists and MPs initiate public debates in parks and some seminars and workshops are held.

Specific obligations in legislation

In 2017-2018, with the aim of reducing the gender pay gap, the Ministry of Social Affairs drafted an amendment to the Gender Equality Act.¹⁵⁹ The draft of the Gender Equality Act and Other Acts Amendment Act to the Parliament was debated in the autumn of 2018.¹⁶⁰ Legal amendments are planned to enter into force on 1 July 2020. The main objective of the legal development is to help public-sector employers to more effectively analyse the fees paid to women and men. A competence centre for equal pay to the Labour Inspectorate will be established. The centre provides support and advice to employers. The Labour Inspectorate is also granted the right to carry out supervision to ensure that public-sector employers accept the principle of equal pay for equal work. If there is a suspicion that public-sector employers with ten or more employees do not pay equal pay for men and women for a work of equal value, the employers are given an injunction to conduct a wage audit. If objective reasons for the pay gap are found, a public-sector employer should make an action plan to reduce and eliminate the discrepancies discovered. The action plan for the implementation of the measures will start no later than one year after the onset of the lack of objective wage gap. An employer may extend the implementation of measures planned in the action plan by one year.

The draft Act is intended to tackle the gender pay gap, gives more responsibilities and rights to the Labour Inspectorate and directly targets public-sector employers with 10 and more employees. The private sector is not targeted, but wage audits from gender perspectives could lead to a change in attitude. The public sector would be an example to the private sector. There is planned additional funding to the Labour Inspectorate for the monitoring of the principle of equal pay. If legal amendments to the Gender Equality

¹⁵⁶ Information on the campaign is available at: <https://fremtidenerdin.dk/om-fremtiden-er-din>, accessed 8 November 2018.

¹⁵⁷ According to Eurostat the gender pay gap in Estonia in 2015 was 26.9 % and in 2016 it was 25.3 %.

¹⁵⁸ In the past, 'during the Day, cafes and restaurants serve salmon dishes (a play on words as 'lõhe' in Estonian, meaning both 'salmon' and 'gap') both with and without the herb dill. The dishes with dill are more expensive (by a percentage which corresponded to that year's gender pay gap in Estonia) than those without, so highlighting the country's gender pay gap. The gender pay gap is seen a complex issue, and measures to combat it have to be introduced simultaneously in all relevant fields.' See <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52013SC0512>.

¹⁵⁹ Legal developments to tackle the gender pay gap came to a halt and the target set in the national action plan for 2015-2019 (NAP) was not achieved. However, amendments were drafted by the Government in 2018, the first reading was passed in the Riigikogu on 10 September 2018, hopefully to be followed by a reading for the second and third time in December 2018. This said, the draft will meet serious opposition.

¹⁶⁰ *Soolise võrdõiguslikkuse seaduse ja teiste seaduste muutmise seadus (The Gender Equality Act and Other Acts Amendment Act)*. Legislative proceedings of the Parliament on draft law No. 283 SE is available in Estonian at: <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/920bb10b-1e71-48fa-896d-c8f2c473867a/Soolise%20võrdõiguslikkuse%20seaduse%20muutmise%20ja%20sellega%20seonduvalt%20teiste%20seaduste%20muutmise%20seadus>, accessed 9 October 2018.

Act and Other Acts are passed in Parliament in 2018, the competence centre for equal pay to the Labour Inspectorate will be established.

Survey

Research on the gender pay gap is important. The most recent survey was carried out in 2009-2010.¹⁶¹ In 2018-2019, a new survey was planned to take place in Estonia. This survey will be carried out with the support of the RITA Programme, supported by the European Regional Development Fund. The main aim is to explore the 'unadjusted' gender pay gap and to shed light on the parameters that would identify and explain some of the earnings difference. Researchers should provide digital solutions and develop prototypes for easy access to survey results. Disseminating the survey results among employers and employees increases their knowledge on pay differences. Recommendations for further measures to reduce the gender wage gap are expected. The research project is due to end on 31 December 2021.

Labour Inspectorate

The Labour Inspectorate has conducted awareness campaigns for people to understand the difference between employment contracts and authorisation agreements or service contracts. Only under employment contracts is it possible to agree on pay conditions. Statistical data for analysing the gender pay gap contain data about employees' wages, i.e. wages paid under an employment contract. However, it is not possible to complain about pay discrimination under contracts under the law of obligations, where the contractor takes responsibility for the working time and conditions, no holidays are prescribed and social security payments may be agreed between contractors. Fair pay could be applied if the employment contract is agreed and the Labour Inspectorate insists on agreeing on the employment contract rather than the contractual relationship offered.

Specific Project: Against Gender Gap!Plan

Social partners have worked with proposals to tackle the gender pay gap in Estonia in 2016-2018. A document entitled 'Against Gender Gap!Plan' (*Palgalõhe Vastu!Plaan*) was signed by the Human Rights Centre, Estonian Women's Studies and Resource Centre (ENUT), Estonian Association of Business and Professional Women, Estonian Trade Union Confederation (EAKL) and the Gender Equality and Equal Treatment Commissioner.¹⁶² The Estonian Employers' Confederation did not, however, sign the plan. The signatory parties encourage more effective cooperation between the state agencies, local government, employers and employees. The plan targets activities in six areas: amendments to the parental leave system, affordable and flexible childcare, gathering and publishing sex-segregated data on wages, supporting diversity and reconciliation of work and family life, in-house assessment of company culture and practices, and public discussion about wages (the campaign is called, 'Let's talk about wages' – '*Naised, räägime palgast!*').

3.1.9 Spain (ES)

Equal Pay Day

Equal Pay Day has been held on 22 February each year following a declaration by the Spanish Government in 2010. The Day is organised by the Spanish Ministry of Health, Social Services and Equality. Activities include the production of lottery tickets with a special design to raise awareness of the gender pay gap. Stakeholders such as women's groups and trade unions have also used the Day as an opportunity to address the gap by organising press conferences and publishing reports on the issue. The Ministry has created an institutional logo. Special postage stamps were issued to support Equal Pay Day nationally in 2013.

161 See: https://www.sm.ee/sites/default/files/content-editors/Ministeerium_kontaktid/Valjaanded/gender_pay_gap_estonia_analysis.pdf, accessed 9 October 2018.

162 More information available in Estonian at: <https://humanrights.ee/2017/04/allkirjastasime-palgalohe-vastuplaani/>; http://www.sm.ee/sites/default/files/contenteditors/sisekomm/palgalohe_vastuplaan_26.03.18.pdf, accessed 13 December 2018.

Tool to measure wages and gender pay gap

Two initiatives are worth mentioning. First, there is free software, available to companies through the website of the Ministry of the Presidency, and relations with the Parliament and Equality, to carry out a self-diagnosis of a possible wage gap in companies.¹⁶³ The tool is quite general but allows a first approximation as to the existence of pay discrimination in companies. Secondly, in the strategic plan of the Labour and Social Security Inspectorate 2018-2020, specific mechanisms have been established to improve the detection of compensation discriminations in companies by inspectors.¹⁶⁴ One of the objectives is to improve the training of labour inspectors in the fight against discrimination based on gender. The launching of special campaigns to detect compensation discrimination is also proposed.

3.1.10 Finland (FI)

Wage survey under Equality Act

The Gender Equality Act requires employers to draw up a gender equality plan, which must include proposals to reduce pay differences between women and men. The Equality Act requires the employer to actively promote gender equality, for example, in terms of employment and especially salary.

If an employer has 30 or more employees, they have to draw up an equality plan, which has to include a wage survey. The aim of the survey is to find out whether there are gender-based pay differences at the workplace and to evaluate the conclusions in the equality plan so as to remove unjustified differences. The wage survey should investigate whether the wage system is fair to women and men and whether work of the same level of difficulty is treated equally.

Tripartite Equal Pay Programme

The present Government's Equality Programme includes a tripartite Equal Pay Programme for the years 2016-2019. The programme aims at reducing the gender pay gap. The gender segregation of the labour market is to be reduced by stressing the need to do so in the labour force and enterprise development work, as well as in education of experts in labour and economic affairs administration. Further, the gender dimension is to be included in immigrant and refugee services.¹⁶⁵ The tripartite Equal Pay Programme for 2016-2019 includes actions by Social Partners to promote gender impact assessments of collective agreements, and to increase the use of pay systems based on demands of the work and assessment of personal input. Strong emphasis is placed on reducing gender segregation in the labour market by educational measures. The Programme also refers to measures aiming to an increase of fathers using family-related leaves. An evaluation of the Programme is underway. The evaluator of the Equality Programme, Leo Suomaa, has indicated that the results have been meagre. In an open evaluation hearing, union representatives hoped that a new tripartite programme would be started, but now at union level, as the central organisations no longer make general agreements. Union representatives also suggested that legislation might be a way forward if social partner cooperation proved inefficient.¹⁶⁶

Report and recommendations of the Equality Ombudsman

A report on extending access to pay information through pay audits was commissioned from the Equality Ombudsman by the Minister responsible for gender equality, and was delivered in October 2018. The Equality Ombudsman recommended that: the present provision on pay audits in the Act on Equality between Women and Men should be amended so as to require that pay audits always consider all employees across collective agreements, and even individual pay information should be considered when needed, under a secrecy rule if necessary; and that an obligation to publish the pay audit in the company

163 <http://www.igualdadenlaempresa.es/>, accessed 5 October 2018.

164 The strategic plan of the Labour and Social Security Inspectorate 2018-2020 was approved by the Council of Ministers on 6 April 2018. https://www.boe.es/diario_boe/txt.php?id=BOE-A-2018-5329, accessed 27 November 2018.

165 *Hallituksen tasa-arvo-ohjelma* (Government's Equality Programme) 2016-2019, pp. 9-10, available at: <http://julkaisut.valtioneuvosto.fi/handle/10024/75238>, <http://julkaisut.valtioneuvosto.fi/handle/10024/75238>, accessed 19 November 2018.

166 Anne Mironen, SAK (Central Union of Finnish Trade Unions), 4 October 2018.

internet site should be introduced for bigger employers. The report includes a legal analysis of the impact of data and privacy protection on pay audits. In January 2019, as a follow-up to the report, the Ministry of Social Affairs and Health nominated a tripartite working group to prepare proposals for legislative amendments concerning pay transparency.

So far, the social partners have stressed their own measures and agreements. At the moment, the labour unions seem to favour legislation. Political solutions are in all probability not to be expected before the general elections of 2019.

3.1.11 France (FR)

Equal Pay Day

Equal pay day has been organised annually in April by the French Federation of Business and Professional Women (BPW France) since 2009. Every year, its symbol, a red carrier bag, symbolizing the earnings women lose due to the gender pay gap, is given away at awareness-raising events in cities across the country.

Specific obligations in legislation

The 2006 Act on Equal Pay between Women and Men covers compulsory collective bargaining on gender equality and requires companies to report on salaries and produce a description of the measures they will take to close the gender pay gap.¹⁶⁷ Businesses employing 50 or more employees are obliged to produce an action plan on gender equality and they face sanctions if they fail to do so.

One of the most important measures obliging employers to address the issue of equal pay is the information they have to give to workers' representatives (works councils and trade union representatives) on equality. Businesses employing 50 or more people have to produce a written annual report for the works council comparing the situation of men and women in the company. This must comprise a comparative analysis in terms of recruitment, training, qualifications, pay, working conditions and balance between professional and private life, supported with relevant statistically-based indicators.

The employer has to describe measures taken in the company over the previous year to attain employment equality, and an outline of the objectives for the year ahead. Publication of relevant indicators at the workplace is mandatory according to the law, to enable the report to be analysed in detail. Employees have the right to consult the report directly.

Employers also have to provide information on equality in annual negotiations. They have to give month-by-month data on trends regarding the number of staff and their qualifications by sex, and have to state the number of employees on permanent contracts, the number of fixed-term contracts and the number of part-time employees.

In the first meeting complying with the annual obligation for unions and employers to negotiate at enterprise level, the employer has to provide trade union representatives with information that enables them to carry out a comparative analysis of the situation of men and women in jobs, qualifications, pay, hours worked and the organisation of working time. The accompanying information has to explain the situation captured by the statistics. Companies with fewer than 300 employees can conclude an agreement with the State to receive financial assistance to carry out a study of their employment equality situation and of the measures they would need to take to ensure equal opportunities between men and women.¹⁶⁸

¹⁶⁷ Act No. 2006-340 of 23 March 2006.

¹⁶⁸ Article R 1143-1 of the Labour Code.

In order to enhance the effectiveness in practice of these provisions in both the private and the public sector, the law has been modified several times.

Legislation aimed at the private sector

The law of 17 August 2015¹⁶⁹ on social dialogue and employment streamlined the bargaining obligations and information/consultation procedures of the works council in order to make it more effective. More specifically, company bargaining on professional equality is annual and takes place in the wider context of a negotiation on 'professional equality between women and men and the quality of life at work'.

As part of the consolidation of mandatory information and consultation with the works council:

- professional equality between women and men has been included in the scope of the annual consultation on the company's social policy, working conditions and employment, which is one of the three major annual consultations of the enterprise;
- the economic and social database (BDES) is the support of these consultations; it now contains a section dedicated to professional equality between women and men within the company;
- the works council can now be assisted by a technical expert to prepare the consultation.

The provisions setting out the new architecture of the information/consultation procedures of the works council described above entered into force on 1 January 2016.¹⁷⁰

The law of 8 August 2016¹⁷¹ on 'work, the modernisation of the social dialogue and the securing of career paths' provides details on the derogation from the principle of yearly business negotiation with regard to professional equality, applicable from 1 September 2019. A company agreement may change the timing of negotiations for all or part of the topics, up to a limit of 3 years for the 2 annual negotiations and to 5 years for the triennial negotiation, if the company is already covered by an agreement on professional equality or, failing that, an action plan.

If these conditions are not met, companies with more than 49 employees cannot access public procurement processes: their tenders for public procurement contracts cannot be examined and they cannot get any such contracts.

The architecture of these negotiations is detailed in a very precise document published on the website of the State Secretariat for Equality between Women and Men.¹⁷²

The law of 5 September 2018 provides that in companies with more than 50 employees, the employer each year publishes indicators relating to the pay gap between women and men and the actions implemented to eliminate them, according to a methodology defined by decree.¹⁷³ The methodology had to be discussed by social partners. On November 22, social partners and the Government came to an agreement approved by all social partners, about the structure of the index aimed to measure equal remuneration in companies with more than 50 employees. Five comparison criteria were retained: remuneration; return from maternity leave; salary increases; promotions; and the percentage of women in the group paid the highest wages.¹⁷⁴

169 Act No. 2015-994 of 17 August 2015.

170 However, for companies already covered by an agreement on professional equality on that date, new provisions will not enter into force until the expiry of this agreement and no later than 31 December 2018.

171 Act No. 2016-1088 of 8 August 2016.

172 <https://www.egalite-femmes-hommes.gouv.fr/dossiers/egalite-professionnelle/obligations-des-entreprises/egalite-professionnelle-dans-la-loi/>, accessed 8 November 2018.

173 Article L.1142-8 of the Labour Code.

174 See https://www.lemonde.fr/economie/article/2018/11/23/egalite-salariale-les-entreprises-seront-notees_5387402_3234.html and https://lentreprise.lexpress.fr/rh-management/remuneration-salaire/egalite-salariale-que-vaut-le-plan-du-gouvernement_2049852.html, accessed on 17 January 2019.

The law also provides that the indicators are defined by decree. The negotiation on professional equality should also cover the appropriate measures and correction and, where appropriate, an annual or multiannual programme of financial catch-up measures. In the absence of an agreement providing for such measures, they will be determined by decision of the employer, after consulting the Social and Economic Committee.¹⁷⁵ The agreement or the decision of the employer must be sent to the services of Labour Ministry (DIRECCTE) who can provide observations on them.

In this case, the company has a period of three years to comply. At the end of this period, if the results obtained are still below the level defined by decree, the administrative authority may impose on the employer a financial penalty of a maximum of 1 % of earnings and earnings paid to employees or similar workers in the calendar year preceding the expiry of the compliance period.

The professional branches must include in the activity report of the obligatory negotiations an assessment of the action of the branch in favour of professional equality between women and men.

These obligations will come into force no later than 1 January 2019 for branches and enterprises with more than 250 employees and no later than 1 January 2020 for companies with between 50 and 250 employees.

Agreements at company level

On the basis of these successive texts, several important agreements have been concluded in companies. These agreements are based on findings based on the indicators, and specify methods to progress in equality.

One example are the agreements cited by the State Secretariat on its website which gives access to the text of these agreements.¹⁷⁶ Of particular note are the Coca Cola Agreement and the BNP Paribas Agreement, which contain such provisions. An Air France agreement details indicators to measure inequalities and find ways to address them.¹⁷⁷

Agreements applicable to the public sector

An agreement was concluded on 8 March 2013 to assess pay gaps and look for ways to address them.¹⁷⁸ This agreement was circulated accompanied by a special note.¹⁷⁹ As part of the implementation of this agreement, a statistical study of pay gaps between women and men in the public service has been prepared.¹⁸⁰ Each year, an annual report is published by the Government.

The latest agreement was concluded on 24 October 2018, but must still be ratified by Trade Unions and signed by them. The Government and almost all trade unions have agreed on the text but Trade Unions want to consult their members before signing.

According to this agreement, in order to transform practices in a sustainable manner, the agreement is based on mandatory and binding mechanisms, which may give rise to financial sanctions in the event of non-compliance with the obligations set, as well as on proactive timetables. These sanctions, the details of which are yet to be specified, will fuel a fund for professional equality.

175 The new denomination and form of previous 'comité d'entreprise' (work council).

176 <https://www.egalite-femmes-hommes.gouv.fr/dossiers/egalite-professionnelle/obligations-des-entreprises/suivre-et-promouvoir-vos-actions/>, accessed 8 November 2018.

177 http://www.cfdtat.org/wp-content/uploads/2015/12/accord_egalite_professionnelle_2015_2017.pdf, accessed 8 November 2018.

178 https://www.fonction-publique.gouv.fr/files/files/publications/politiques_emploi_public/20130308-Protocole-d-accord-egalite-professionnelle.pdf, accessed 8 November 2018.

179 http://circulaire.legifrance.gouv.fr/pdf/2013/07/cir_37266.pdf, accessed 8 November 2018.

180 <https://www.fonction-publique.gouv.fr/files/files/statistiques/etudes/remunerations-femmes-hommes.pdf>, accessed 8 November 2018.

Measures applicable to the public sector

Administrations will have to draw up an action plan before 2020. The protocol provides for the extension and reinforcement of balanced appointments for senior management, as well as measures to close the pay gap. According to the Ministry, women's net wages on average were 13.1 % lower than men's in 2015.

Bonuses and allowances will be maintained during maternity, paternity and adoption leave. Civil servants on parental leave or family-related leave will retain all of their advancement rights.¹⁸¹

3.1.12 Croatia (HR)

Publication of statistics

The Croatian Bureau of Statistics publishes the annual publication 'Men and Women in Croatia' (since 2006), which contains a separate chapter with gender-segregated data on employment and earnings. This publication is easily accessible online, on the Bureau's website and is published in Croatian and English.¹⁸²

Reports

The annual reports of the Ombudsperson for Gender Equality contain a separate section on the gender pay gap. It mainly analyses available statistical data on the gender pay gap and recommends further action where needed. In the 2017 Annual Report, the Ombudsperson reports that she has suggested to the Ministry of labour and pension system establishing an Interdepartmental Working Group which would include members from various ministries and other competent bodies with the task of finding possible solutions for the gender pension gap, which is a consequence of the pay gap. Although the Ministry has acknowledged the need to address this issue, there is no further information whether a specific task group will be formed to deal with it.

Collective agreements

A practical handbook on collective bargaining (2015), issued by the Union of Autonomous Trade Unions of Croatia (*Savez samostalnih sindikata Hrvatske*), declares gender equality as one of the overarching aims of the collective bargaining process.¹⁸³ It emphasises the importance of practical implementation of the guarantee of equal pay between women and men in the Labour Act in collective agreements.

3.1.13 Hungary (HU)

Publication of statistics

The Office of the Hungarian Parliament, as part of its series of 'Info Notes' for MPs, published briefings on 'Equal Opportunities for Women'¹⁸⁴ and 'Women on the Labour Market';¹⁸⁵ both of these publications address the issue of the gender pay gap, including statistics and referring to the relevant UN principles and EU norms.

181 https://www.fonction-publique.gouv.fr/files/files/Espace_Presse/dusopt/20181024-point-etape-egalite-pro.pdf, accessed 8 January 2019.

182 www.dzs.hr, accessed 8 November 2018.

183 See <http://www.kolektivni-ugovori.info/wp-content/uploads/2015/03/Prakticni-prirucnik-o-kolektivnom-pregovaranju.pdf>, accessed on 17 January 2019.

184 See: http://www.parlament.hu/documents/10181/595001/Infojegyzet_2016_33_nok_eselyegyenlosege_2.pdf/5e1e626e-c1e8-49bb-865c-cd141c97333e?version=1.0&inheritRedirect=true, accessed 11 December 2018.

185 See: http://www.parlament.hu/documents/10181/1202209/Infojegyzet_2017_10_nok_a_munkaeropiacon.pdf/91c7128a-ad5e-45e4-b50a-59e7de659c3d?version=1.0&inheritRedirect=true, accessed 11 December 2018.

Specific project

The Women's Section of the Hungarian Trade Union Confederation (*Magyar Szakszervezeti Szövetség Női Tagozata*) keeps the issue of equal pay on its agenda; e.g. they initiated a roundtable discussion on the gender pay gap with representatives of political parties in 2016,¹⁸⁶ and, in 2017, organised a conference with the title, 'Pay gap – It's not just money'.¹⁸⁷

3.1.14 Ireland (IE)

Proposal on specific obligations in legislation

The Government on 26 June 2018 approved the General Scheme of the Gender Pay Gap Information Bill.¹⁸⁸ The proposed legislation will be cited as the Gender Pay Gap Information Act 2018.¹⁸⁹ The Employment Equality Act 1998 will be amended by the insertion of a number of sections to include 'Gender Pay Gap Information'. The Minister will produce regulations requiring employers to publish information related to the pay of their employees for the purpose of showing whether there are differences in the pay of male and female employees and if so, the scale of such difference. The Minister will also have regard to the cost of complying with such regulations. These regulations will not apply to employers having fewer than 50 employees. It is proposed that for the first two years of the legislation it shall apply to employers having over 250 employees and then within three years the upper limit shall become 150 employees. The regulations may prescribe classes of employer to which the regulations shall apply including by reference to the number of employees the employer has; classes of employee; how to calculate the number of employees; how to calculate the pay of employees; and the form and manner in which and the frequency with which information is to be published under the proposed regulations. The proportions of male and female employees who are paid a bonus and benefits in kind should also be published. There is to be provision for the publication of the hourly rate of pay for men and women in respect of each category of employee; and also whether the employees are permanent, on fixed-term contracts or part-time employees. The mean and median rate(s) of pay shall be published for each group of employees. It is proposed that such information shall be published each year. The Irish Human Rights and Equality Commission (IHREC) may submit an application to court if there is an alleged violation of the proposed legislation. There will also be additional enforcement powers and access to the Workplace Relations Commission if an employee considers that there has been a violation of the legislation. In addition, regulations may require the employer to publish information in respect of each Department of State, each office within the meaning of the Public Service Management Act 1997 (various state bodies), *An Garda Síochána* (police), and the Defence Forces.¹⁹⁰

Action Plan

The Minister of State at the Department of Justice and Equality when discussing the gender pay gap referred to the National Strategy for Women and Girls 2017 to 2020¹⁹¹ which refers to actions to deliver the Programme for Government to include Action 1.22 to initiate a dialogue between unions and employers aimed at addressing the gender pay gap. Practical tools will be developed to assist employers in calculating the gender pay gap within their organisations and to consider its aspects and causes, mindful of obligations regarding privacy and data protection. Action 1.23 pledges to 'promote wage transparency by requiring companies of 50 or more employees to complete a wage survey periodically

186 See: <https://www.szakszervezet.net/hu/noi-tagozat-hirei/1047-maszsz-no-tagozat-berkulonbseg-kampany>, accessed 11 December 2018.

187 See: <https://www.szakszervezet.net/hu/noi-tagozat-hirei/1215-a-berkulonbseg-nem-csak-penz-2017>, accessed 11 December 2018.

188 The Labour Party (in opposition) introduced a Private Member's Bill (as opposed to a Bill introduced by Government) titled the Irish Human Rights and Equality Commission (Gender Pay Gap Information) Bill 2017. The draft legislation includes no mention of Commission Recommendation 2014/124/EU. The Minister of State at the Department of Justice and Equality acknowledged the good intentions of the Bill and stated that the Government supported the general thrust of the draft legislation and the need to address the gender pay gap.

189 <http://www.justice.ie/en/JELR/Pages/PR18000210>, accessed 9 October 2018.

190 This is a general scheme only and there was no draft legislation by the cut-off date of this report.

191 <http://www.genderequality.ie/en/GE/Pages/Conferences>, accessed 9 October 2018.

and report the results'. It should be noted, however, that there are concerns in respect of confidentiality and data protection which are very important issues given the small population and the size of employment agreements.

Wage transparency

Certain wage transparency is part of the Programme for Partnership Government.¹⁹² Ireland has moved further in respect of resolving the gender pay gap. In 2017, there was considerable public consultation spearheaded by the Minister for Justice and Equality which has resulted in the General Scheme of the proposed Gender Pay Gap Information Act published in June 2018. The issues of data protection and privacy do not appear to have been addressed, however. The Scheme does not appear to have considered the matter of publication of the figures in respect of the various employments.

3.1.15 Iceland (IS)

Specific obligations in legislation

A bill of law (amendments to Article 19 of the Gender Equality Act No. 10/2008 on equal pay) was passed by the Icelandic Parliament (*Althingi*) with a vast majority on 1 June 2017 and came into force on 1 January 2018.¹⁹³ The new legislation makes Iceland the first country in the world to require companies and institutions with 25 or more employees on an annual basis, to obtain certification, on the basis of the requirements of a management standard, that they offer equal pay for work of equal value regardless of gender. The aim of the Icelandic authorities with this obligatory certification is to close the gender pay gap by 2022. The certification requires companies with more than 25 employees to not only offer equal pay across the same job level, but also equal pay for work of same value. The equal pay standard, on which the certification requirements are based, does this by assessing a company's pay policies, classification of jobs according to equal value and wage analysis on the basis of the classification, as well as formalising policies and processes related to pay decisions.

The Equal Pay Standard ÍST 85 (the equal pay standard) is the first to be deliberately developed according to international ISO standards, allowing it to be translated and adopted in other countries. The equal pay standard ensures professional working methods in order to prevent direct or indirect discrimination and can be purchased at Icelandic Standards.¹⁹⁴ In order to obtain qualification, companies and institutions need to implement an equal pay management system following guidelines in the equal pay standard. An accredited auditor will conduct an audit, and if the company or institution fulfils the requirements, it will receive a certification that must be renewed every three years. Equal pay certification under the standard is designed to confirm that decisions on pay are based only on relevant considerations. The equal pay standard does not entail a requirement that individuals receive exactly the same for the same work or comparable work, as employers have discretion to take into consideration individual factors applying to groups and particular personal skills when deciding wages. Nevertheless, it does make the inflexible demand that decisions on wages are based on relevant considerations, such as an individual's qualifications, experience, responsibilities or job performance, and that such things must not involve gender discrimination of any type, direct or indirect. The standard states that the normal procedure should be that information on employees' wages must be presented in the form of statistics, in such a way that they cannot be traced to the individuals involved. Social partner organisations are commissioned to monitor the compliance of workplaces in acquiring equal pay certification and ensuring that it is renewed every three years. Where a workplace either has not acquired equal pay certification or has failed to renew it by the deadline, the social partner organisations may report it to the Centre for Gender Equality.

192 http://www.taoiseach.gov.ie/DOT/eng/Work_of_The_Department/Programme_for_Government/Programme_for_Government.html (see Section 11), accessed 9 October 2018.

193 Iceland, Gender Equality Act No 10/2008, available at: <https://www.government.is/library/04-Legislation/Act%20on%20equal%20status%20and%20equal%20rights%20of%20women%20and%20men%20no%2010%202008%20as%20amended%200101%202018%20final.pdf>, accessed 8 November 2018.

194 <http://stadlarad.is>, accessed 8 November 2018.

The centre can impose on the workplace a formal demand to rectify the situation by a certain deadline. Rectification measures can involve, for example, the provision of information and release of materials or the drawing up of a scheduled plan of action on how the workplace intends to meet the requirements of the Equal Pay Standard. If the workplace fails to act on instructions of this type, the Centre for Gender Equality is authorised to impose *per diem* fines. Appeals can be referred to the Minister of Social Affairs and Equality against a decision to impose *per diem* fines.

The transparency of this equal pay certification has been questioned. The equal pay standard is owned by Icelandic Standards (Staðlaráð Íslands), an independent association that publishes Icelandic standards. There has been criticism due to the fact that the equal pay standard is copyrighted; hence it is not clear what rules companies have to follow. The company owning the equal pay standard charges ISK 10 000 (around EUR 70) to anyone who asks to look at the rules. It is not permissible to copy the document or post it. Hence the implementation of the equal pay certification procedure is in the hands of a private company. The authorities have been criticised for not making sure that the procedure was public before negotiating with Icelandic Standards.¹⁹⁵ Within the business sector there has been criticism that the standard imposes a burden on companies and that it should be kept voluntary.

3.1.16 Italy (IT)

Specific obligations in legislation

There are, as yet, no good practices specifically targeted at tackling the gender pay gap. However, addressing the gender pay gap may be one of the aspects of other good practices carried on in Italy in relation to equal pay, as illustrated by the following examples.

In the first place, Article 46 Decree No. 198/2006, which requires public or private companies of all sectors with more than 100 employees to draw up every two years reports on the workers' situation (male and female), as regards appointments, training, professional promotion, pay levels, mobility between categories and grades, other mobility aspects, redundancy fund, dismissals, early retirement and retirement, and remuneration actually paid. The Report is addressed to Regional Equality Advisers and trade unions; the Regional Equality Adviser shall then elaborate the data and send them to the National Equality Adviser, to the Ministry of Labour and to the Department for Equal Opportunities, under the Prime Minister. If the employer fails to present the report, the Regional Labour Direction, after the alert of Regional Equality Advisers or of the trade unions, allows another 60 days for the employer to fulfil this obligation; if the employer again fails to fulfil it, then an administrative pecuniary sanction is imposed. If the failure to fulfil the reporting obligation is particularly severe (e.g. reiterated), contribution benefits received by the employer can be suspended for a year.

The second example is represented by the role of positive action in this area; the list of the possible aims of positive actions includes the increase in value of professional skill of jobs where women's percentage in the sector is higher.¹⁹⁶ In respect of positive action, three-yearly positive action plans aim at achieving a better balance between the sexes in jobs and pay levels where women are under-represented, which must be drawn up by public employers.¹⁹⁷ Finally, positive action for the reconciliation of professional and family life partially addresses these issues, as they specifically refer to positive actions providing for innovative systems of job evaluation of those who are involved in family-care activities, in order to avoid their marginalisation.¹⁹⁸

Then, Article 37 of Decree No. 198/2006, which provides that National and Regional Equality Advisers can propose a conciliation agreement before going to court, requesting the person responsible for a collective

¹⁹⁵ <https://grapevine.is/news/2018/02/07/9981264/>, accessed 22 October 2018.

¹⁹⁶ Articles 42-49 of the Code for Equal Opportunities, Decree No. 198/2006.

¹⁹⁷ Article 48 of the Code for Equal Opportunities, Decree No. 198/2006.

¹⁹⁸ Article 9 Act No. 53/2000.

discrimination to devise a plan to remove it within 120 days; if the plan is considered to be suitable to remove the discrimination, on the Equality Adviser's demand, the parties sign an agreement which becomes a writ of execution through a court decree.

Also, what can be regarded as a good practice is the sanction of revocation from financial or credit inducements or from any public tender, or even the exclusion, for a certain period, from any further award of financial or credit inducements or from any public tender provided in the case of direct or indirect gender discrimination.¹⁹⁹

Agreement

Another example of good practice is the Agreement between the National Labour Inspectorate and the National Equality Adviser signed on 6 June 2018, which updated the agreement of 2007.²⁰⁰ Both parties committed themselves to increasing their cooperation in fighting gender discrimination through several actions, such as: the prompt examination of cases reported by Equality Advisers; the exchange of statistical data; the joint examination of the biannual report on the working conditions distinguished by gender in enterprises employing more than 100 workers provided by Article 46 of the Code for Equal Opportunities; the exchange of good practices and measures to fight discrimination and the monitoring of the results; the organisation of professional training on gender equality for both local equality advisers and labour inspectors; the promotion of meeting, at national or local level, to examine specific cases to remove discrimination or remarkable situations of inequality in the participation of workers, unions, employers' representatives, and the Minister of Labour. Both the National Labour Inspectorate and the National Equality Adviser were committed to disseminate the agreement and to invite local equality advisers and local labour inspectorates to contribute to the initiative by signing agreements which take the local situation into consideration.

3.1.17 Lithuania (LT)

Agreement

Collective bargaining agreements do not yet play any role in promoting equal pay in Lithuania. Back in 2005, an agreement was signed by national employer and trade union bodies on a 'Methodology for the Assessment of Jobs and Positions' in enterprises and organisations. This is based on the assessment of a job using eight factors: education, professional experience, levels of positions and management, scope of decision making and freedom of action, autonomy and creativity at work, responsibility, work complexity and conditions of work. The agreement was drawn up as a model that could be used in collective agreements at company level. However, the agreement is no longer in force and it did not have an impact on the bargaining practices. In principle, the methodological approach as to how the salaries should be structured is lacking and parties to the bargaining agreements do not take gender-specific approaches into consideration.

Specific obligations in legislation

One of the problems related to the lacking enforcement of the principle of equal pay is the widely recognised principle of confidentiality of remuneration. Currently there are no provisions that are aimed at making the pay schemes or the exact pay visible for other persons who are not party to the contract of employment. However, this issue is addressed in the new Labour Code 2016. Two special provisions were introduced to strengthen the transparency of the implementation of the principle of equal treatment:

- 1) The Labour Code now requires companies with more than 50 employees to adopt a specific internal document: a policy of equal opportunities (Section 26 (5) of the Labour Code). The Code is silent on the content and the status of this internal document but it is believed that the adoption of this

199 Article 41 Decree No. 198/2006.

200 Following the reform of the Labour Inspectorate by Decree NoN. 149/2015.

document (in information and consultation procedures) will not be formal, but will at least trigger discussions on what has to be done to promote equal opportunities at the workplace. A works council becomes obligatory in companies employing 20 or more employees and the dialogue between representatives of the workforce and the employer will have to cover these issues;

- 2) Section 23(2) of the Labour Code obliges companies with more than 20 employees to provide anonymised data on the average wages of employees according to gender and professional groups, except those in managerial positions, to works councils and trade unions. This information will indicate problematic differences in pay for men and women, and which may need to be dealt with by the social partners.

3.1.18 Luxembourg (LU)

Specific obligations in legislation

The government programme of 2013 involved ‘the elimination of pay inequality between men and women by the force of law’. The Law of 15 December 2016²⁰¹ transformed into the law the disposals of the Grand-Ducal Regulation of 10 July 1974, which stated that all employers had to guarantee equal pay between women and men for equal work or for work of equal value.

Since 1 January 2017, equal pay for women and men has been regulated by Articles L.225-1 to L.225-5 of the Labour Code. The Law defines the concept of ‘pay’ in Article L. 225-2: ‘the basic standard wage or a minimal wage and all other benefits, paid directly or indirectly, in cash or in kind, by the employer to the employee because of his or her job’. ‘Work of equal value’ is defined in Article L. 225-3: ‘work, which requires from the employees a comparable set of professional knowledge recognized by credentials, diploma or professional practice, capabilities stemming from experience, responsibilities and physical or nervous burden’. The Law also introduces a fine of EUR 251 to 25 000 as a financial sanction for employers who do not comply with the obligation of equal pay. This penalty can be doubled in case of recidivism (Article L. 225-5 of the Labour Code). The Labour Inspectorate has the power to control the application of the law.

The Minister for Labour and the Minister for Equal Treatment answered the following parliamentary question No. 3549 of 9 January 2018:²⁰² ‘Since the entry in force of the law, have there been any complaints, has legal action been taken and have sanctions been imposed?’ In their answer, they stated that only one complaint had been lodged and that it was still being processed.²⁰³

In March 2018, a counselling service on equal pay was opened by the Labour Inspectorate in the form of 4 regional desks and an Info line.

Collective agreements

Since the Law of 30 June 2004 on Collective Labour Relations,²⁰⁴ all collective agreements have to include commitments implementing the principle of equal pay for women and men (Article L. 162-2 (4) 4.). In particular, an action plan regarding equality in employment and wages has to be established.

National equality action plans

Three national action plans for equality between women and men were adopted: the first one in 2006, the second one in 2009 and the third one in 2015. Measures to overcome pay inequality include direct measures, such as:

201 Memorial A No. 264 of 21 December 2016: <http://data.legilux.public.lu/file/eli-etat-leg-memorial-2016-264-fr-pdf.pdf>, accessed 17 November 2018.

202 <https://www.chd.lu/>, accessed 21 November 2018.

203 <https://www.chd.lu/>, accessed 21 November 2018.

204 Memorial A No. 119 of 15 July 2004.

- The introduction of the ‘LOGIB-Lux’ tool.²⁰⁵ this online tool developed by the Ministry for Equal Opportunities in 2009, enables a company to analyse its salary structure and helps to identify the causes of wage inequality. After entering data, the company receives a report, which discusses the pay structure from the point of view of the gender of the employees, examines the causes of inequality and suggests ways of achieving equal pay. There are no statistics regarding the use of ‘LOGIB-Lux’, because it is an anonymous self-assessment instrument. But companies that want to participate in the ‘positive actions programme’ of the Ministry for Equal Opportunities, are obliged to use this tool. In this context, more than 70 companies have used it;
- The publication of a guide on gender-equal pay: in May 2017, the Ministry for Labour and the Ministry for Equal Opportunities published a booklet and a leaflet on ‘Equal pay: one of the priorities of the Government’;
- Conferences on gender-equal pay: the Ministry of Labour and the Ministry for Equal Opportunities participated in several conferences, such as the conference organised during the European sustainable development Week 2018 by the Chamber of Commerce entitled ‘To ensure equal pay between women and men’ (1 June 2018);
- Training for equality delegates: the Ministry of Equal Opportunities offers, in cooperation with the Labour College (*Ecole Supérieure du travail*), training on equality between women and men for Equality Delegates, who must be appointed in all companies employing more than 15 workers. Their mission is to defend equal treatment in particular regarding wages (Article L. 414-15 of the Labour Code).

In addition, the national action plans include indirect measures, such as the general initiative, Girls’ Day-Boys’ Day (‘GD-BD’), which has the aim of breaking down gender stereotypes.

3.1.19 Malta (MT)

Equality Mark

The National Commission for the Promotion of Equality (NCPE) awards the Equality Mark to companies that have good employment practices, including on equal pay. The NCPE certifies organisations that foster gender equality at the workplace according to set criteria, including equality in recruitment and working conditions such as equal pay for equal value. Over 21 650 employees now work under equality-certified conditions. The organisations that were certified operate in a variety of sectors including financial services, hospitality, and the public sector.²⁰⁶

Through a new project called Prepare the Ground for Economic Independence, a project co-funded by the European Union Rights, Equality and Citizenship Programme (2014-2020) between September 2018 and August 2020, the NCPE will be strengthening the measure of equal pay for women and men by developing a tool with which equal pay may be checked during Equality Mark audits. To this end, NCPE will seek to procure the services of a researcher to gather all the best practices which are already available.

The Equality Mark will be re-launched through a campaign which will focus on the measures of the new Equality Mark certification process as well as on the importance, the significance and the realities of equal pay for women and men.²⁰⁷

Campaign

The National Commission for the Promotion of Equality (NCPE) also launched the PayM€qually campaign which is a media campaign aimed to raise awareness on the gender pay gap at the national level.

²⁰⁵ <http://mega.public.lu/fr/travail/genre-ecart-salaire/mesures/logib/index.html>, accessed 21 November 2018.

²⁰⁶ <http://www.independent.com.mt/articles/2018-05-29/local-news/21-organisations-in-Malta-now-awarded-The-Equality-Mark-6736190673>, accessed 5 October 2018.

²⁰⁷ https://ncpe.gov.mt/en/Pages/Projects_and_Specific_Initiatives/Prepare-the-Ground-for-Economic-Independence%E2%80%8B.aspx, accessed 5 October 2018.

Through this campaign, NCPE is bringing its message across by participating in TV and radio programmes and publishing articles in order to increase awareness that a pay gap between women and men still exists and that there are ways in which this can be addressed.²⁰⁸

Pay transparency

The National Commission for the Promotion of Equality in its input for the Equality Bill proposed to strengthen the protection regarding pay referring to Provisions in the Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency.²⁰⁹

3.1.20 Netherlands (NL)

National action plan and checklist

In the Netherlands, through the consultative Labour Foundation, employers' organisations and trade unions have initiated a government plan for achieving equal pay, including a checklist for the social partners to use when negotiating pay. This plan has now become part of a broader plan that aims to reduce discrimination in the labour market.²¹⁰ Part of this plan is to update the checklist on equal pay for the social partners. The checklist was most recently revised in 2009. Other plans are still being considered, such as introducing an obligation for companies to give information about the pay of men and women in their company in their annual report and developing systems for creating more transparency about salaries.

Legislative proposals

Four political parties (opposition parties) submitted a bill to Parliament on equal pay for men and women on 6 March 2018.²¹¹ This bill proposes to impose a duty on companies with more than 50 employees to provide information about the employment conditions of their employees every three years. If men and women are paid unequally in the company, the employer is given the chance to improve the situation. If they fail to do so, they will be fined. In addition, companies will be obliged to publish information in their annual report on pay differences between men and women. If unequal pay exists, this must be reported in the annual report together with information on how these differences will be eliminated.

The bill on equal pay for men and women is not the first of its kind. In 2014 a bill was sent to Parliament that introduced partly the same obligations, but also included a right of consent of the Works Council with respect to equal payment. However, this bill was strongly criticized in Parliament in mid-2016 because it was considered to contain mainly 'symbolic measures', after which no more was heard about it. Maybe now, in 2018, the time is right for a new attempt to introduce such a law, now that other countries have done so or are considering it as well, such as Iceland, the United Kingdom and Germany.

Surveys on wage differences in different sectors

It is worth mentioning here that the NIHR (Netherlands Institute for Human Rights) published three reports on wage differences in general hospitals (2011), universities of applied sciences (2016) and insurance companies (2017).²¹² In all three sectors the NIHR found a considerable gender pay gap. The NIHR concluded that these gaps were due, at least partly, to the use of non-neutral criteria for determining the

208 <https://ncpe.gov.mt/en/Pages/Upcoming-events-and-Developments.aspx>, accessed 5 October 2018.

209 https://meae.gov.mt/en/Public_Consultations/MSDC/Documents/2015%20HREC%20Final/NCPE.pdf, accessed 5 October 2018.

210 *Kamerstukken* 29544, No. 834. Letter by the Secretary of State for Social Affairs and Employment to Parliament on 'Discrimination in the labour market', 19 June 2018. See especially the part on 'wage discrimination' in Section 3.

211 <https://www.internetconsultatie.nl/wetgelijkebeloning>, accessed 12 December 2018.

212 <https://www.mensenrechten.nl/nl/publicatie/9898> (hospitals), <https://www.mensenrechten.nl/nl/publicatie/36318> (universities of applied sciences) and <https://www.mensenrechten.nl/nl/publicatie/38165> (insurance companies), accessed 21 November 2018.

salary, such as attaching insufficient weight to previous work experience, determining the salary based on the last-earned salary elsewhere and determining the salary based on negotiations.

The NIHR regularly gives workshops and other forms of information about this topic to HR advisers and managers, in order to help them avoid unequal pay situations.

Tool enabling comparisons of wages

Another tool worth mentioning is the website www.gelijkloon.nl (part of www.wageindicator.org). The introduction of this website was subsidised by the Dutch Government. This website makes it possible to compare wages and also gives advice on how to obtain a good (equal) salary.

Equal Pay Day

Lastly, every now and then an 'Equal Pay Day' is organised in order to create attention for the pay gap between men and women. The last Equal Pay Day took place on 3 November 2017.

3.1.21 Norway (NO)

Equality Prize

The largest bank in Norway, DNB, was awarded the YS equality Prize in 2016 for its equal pay work.²¹³ The bank paid NOK 16 million (EUR 1 658 030) to rectify the gender pay gap after an equal pay evaluation on its employees. The evaluation was initiated by the employee representatives and resulted in a thorough self-analysis of each factor in the pay evaluation process. The bank stated: '[w]e can pay this amount once, but not every five years. We need to be in control of every element in our pay structure'. It was revealed that in many of the pay raise evaluations subconscious gender-stereotypical ideas were applied. This pay evaluation process strengthened the speed and pressure of the bank's general equality work. DNB has made the HR Director part of the top leadership on equal footing with the financial directors for instance. The CEO and HR Director have made on numerous media appearances, about their systematic work on equal pay and other equality issues. DNB has strong collaborative links with the organisation #Shegotthis.

#Shegotthis/Hun Spanderer, is an organisation that has been successful in awareness raising about subconscious discrimination, including equal pay. The founders, Marie Louise Sunde and Isabella Ringnes, have succeeded in creating visibility in social media; they co-operate with the largest employer organisations and organise workshops and conferences.²¹⁴

3.1.22 Poland (PL)

Tool to measure gender pay gap

In 2013 the Government promised to take radical steps in order to eliminate the gender pay gap. The Commissioner for Human Rights regularly asked the Ministry in charge of labour matters about progress in this regard.²¹⁵ Eventually, in May 2017, a free app to measure the pay gap (called Logib-PL) was made available on the website of the Ministry of Family, Labour and Social Policy (MRPiPS).²¹⁶ The Ministry

213 <https://www.dn.no/rune-bjerke/dnb-dnb/dnb-far-ys-likestillingspris-for-a-ga-nye-veier/1-1-5746911>, accessed 21 November 2018.

214 <https://www.linkedin.com/company/shesgotthis/>, accessed 21 November 2018.

215 For example: intervention made in 2014. (https://www.rpo.gov.pl/sites/default/files/Do_MPiPS_ws_niwelowania_roznic_w_wynagrodzeniach_kobiet_i_mezczyzn.pdf), action taken in 2016 (<https://www.rpo.gov.pl/pl/content/do-mrpips-ws-roznic-w-wynagrodzeniach-kobiet-i-mezczyzn>), both accessed 26 March 2018.

216 <https://www.mpiips.gov.pl/narzedzie-do-mierzenia-luki-placowej>, accessed 2 March 2018. See also: https://www.mpiips.gov.pl/gfx/mpips/userfiles/_public/1_NOWA%20STRONA/Aktualnosci/2017/NierownoscPlacowa_raport.pdf, <https://www.mpiips.gov.pl/aktualnosci-wszystkie/art,5543,9609,luka-placowa-w-polsce.html> and <https://www.gov.pl/web/rodzina/aplikacja-do-mierzenia-nierownosci-placowych>, each accessed 20 January 2018.

encourages employers to use this tool, explaining that providing equal pay for equal jobs or jobs of equal value is not only an obligation for employers, but also brings many advantages, such as: ‘a way of creating more attractive work places, which will appeal to the most talented persons and motivate current employees. This in turn translates into higher competitiveness of a particular employer, which is very important, given the current situation on the “employee market”.’ The MRPIPS also emphasizes that many companies monitor the average pay with respect to different groups of employees. The point of reference is usually the average pay for the whole entity or a particular section. Without negating such an approach, the MRPIPS proposes to estimate the so-called ‘corrected pay gap’, where employees’ wages are compared with consideration of features such as sex, age, education, occupied position, work time or length of service. Employees are also encouraged to ‘use the option of sending to the MRPIPS the corrected gender pay gap, together with information indicated by the user of the application, which will be used only for statistical purposes’. The Ministry guarantees full anonymity for users.

3.1.23 Portugal (PT)

Job evaluation method

The Portuguese Labour Code (LC), approved by Law No. 7/2009 of 12 February 2009, explicitly indicates in Article 31 No. 4, that job evaluation methods must be based on objective criteria, common to men and women, in a way that excludes all forms of discrimination on the ground of sex. In addition, Article 32 of the LC imposes a duty on the employer to keep records for five years of all the admissions and career progressions of the employees with the company, along with information on the criteria used to select and promote the workers. This provision is very important for the purpose of actually checking if and how these procedures have respected the non-discrimination principle. In practice, we can find some examples of how the principle of gender equality in relation to job evaluation is being developed.

A method for job evaluation free of gender bias has been produced in the hotel and restaurant sector in Portugal as part of the project ‘Revalue work to promote gender equality’. The methodology was created by employee and employer representatives, state public bodies and researchers and coordinated by the General Confederation of the Portuguese Workers (*Confederação Geral dos Trabalhadores Portugueses — Intersindical, CGTP-IN*). This allowed jobs that are male-dominated and jobs that are female-dominated to be evaluated and compared, to determine whether the gender pay gap is a result of the unfair valuing of women’s work and discrimination.

A guide co-financed by the European Commission, ‘The value of work and gender equality’,²¹⁷ developed a job evaluation method to assess the value of work free of gender bias. A training handbook²¹⁸ has also been developed.

Reporting obligations

With the exception of public authorities and entities and employers of domestic service workers, employers are obliged to collect information on their personnel records annually and to send this to the Ministry responsible for labour and employment. The information covers several aspects of working conditions, including pay.

The records are submitted to the labour inspection authorities (ACT); trade unions or workers committees (on request); and employer representatives on the Standing Committee for Social Dialogue (CPCS). Before this, the records have to be made available to the employees.

217 Commission for Equality in Labour and Employment, Portugal http://www.cite.gov.pt/asstscite/downloads/guia_revalorizar_en.pdf, accessed 21 November 2018.

218 http://www.cite.gov.pt/asstscite/downloads/referencial_revalorizar_en.pdf, accessed 21 November 2018.

The 4th Plan for Equality includes among its objectives the reduction of gender pay gaps and the introduction of equality plans in enterprises.

Specific obligations in legislation

The first and more traditional good practice is stipulated in Article 26 of the LC and regards the automatic replacement system of collective agreements or company regulation provisions, that restrict a certain type of remuneration or a certain professional category or activity only to men or to women, or that describe two professional categories in correspondence to different pay rates, one of the categories being mainly female and the other one mainly male, when in practice the workers of both categories perform the same work or work of equal value, by the more favourable provision that becomes applicable both to men and women or to the two professional categories of workers.

Survey of collective agreements

Another good practice is related to pay discrimination in collective agreements and the survey of such agreements by the CITE (the Gender Equality Agency in Employment). If the CITE spots a collective agreement with clauses causing pay discrimination, it notifies the parties of the collective agreement in order for them to change the discriminatory clause and if such request is not voluntarily met, the Agency can submit the case to the public attorney for the purpose of a judicial action intended to declare the clauses null and void. This line of action, that is allowed under Article 479 of the LC, has proven to be quite effective in practice, not so much at the level of the court, but because the situation is often solved at the earliest stage, e.g. directly between the employers and the trade unions that have subscribed to the collective agreement, with mediation of the CITE. The fact that CITE is a tripartite agency (with representatives from the Government, but also from the social partners) makes it easier to solve these disputes by way of a negotiation with the parties involved. This solution is also worth mentioning as a good practice because it goes beyond EU law.

Campaigns and Equal Pay Day

Finally, on a regular basis, the CITE as well as the Government launch campaigns in favour of equal pay, directed at employers, employers' associations and trade unions. On 6 March 2013, Portugal held its first National Equal Pay Day. This day marks the extra number of days that women would have had to work to earn as much as men did the previous year. To raise awareness about the persistence of the gender pay gap, the Commission for Equality in Labour and Employment (CITE) launched a campaign to be released on public transport, and posters were distributed across the cities of Lisbon, Almada and Oporto. In addition, on 6 March, CITE brought the Equal Pay Day event to the attention of CEOs of the largest Portuguese companies, as well as to employers' associations and social partners by giving them a symbolic gift aiming to raise awareness on the equal pay issue.

For some years now, the CITE has launched campaigns on the precise day of the year where, according to statistical data, women meet the pay rate of men (until now, this day has been set somewhere in November, thus indicating that the pay gap corresponds to more than a month's salary in favour of men), that are intended to raise awareness regarding the annual development of the pay gap. Other more substantive actions directed at the involved stakeholders also take place, as well as the publication of studies and other data in this area.

These campaigns often involve the media and the activity of the CITE in this area is regularly published on the CITE's website (www.cite.gov.pt).

New specific obligations in legislation

The major novelty in this field regards Law No. 60/2018, of 21 August 2018,²¹⁹ that is directly intended to promote equal pay of men and women for equal work of work of the same value. This piece of legislation will only enter into force six months after its publication as indicated in Article 19.

The main goal of this piece of legislation is to establish a set of measures directly intended to contribute to a better implementation of the principle of equal pay. These measures are the following:

- The Ministry of Employment and Social Affairs will publish every year detailed statistical data on the salary gap between men and women, at general and sectoral levels; and statistical data by company, profession and qualification level, based on the annual balance sheet provided by the companies (Article 3);
- The employers must implement a transparent wage policy in their companies (Article 4);
- Following the publication of the statistical data indicated above, if the Gender Equality Agency in Employment (CITE) detects wage inequalities at a company, it summons the employer to present an 'evaluation plan of the wage differences in the company' that is intended to justify those differences and to eliminate those with no objective justification, and that will be put in place for a period of 12 months (Article 5);
- The workers and union representatives also have the right to ask the CITE for advice on alleged gender pay discriminatory practices in the company; if the CITE concludes that a wage discrimination on the ground of sex exists, the employer is compelled to eradicate it and they may be subjected to a fine (Article 6);
- The dismissal or the application of disciplinary measures against the worker until 1 year after he/she has asked the CITE for the advice indicated above is presumed unlawful (Article 7).

The measures now approved are examples of possible good practices in this field, since they go far beyond the level of protection granted by EU law. However, in the author's opinion, some of these measures look rather complex and therefore may be difficult to implement in practice, mainly as regards the assessments tasks of the CITE. At another level, this Act repeats some of the definitions and some of the rules that are already inscribed in the Labour Code (LC), apparently with the aim to reinforce the protection already granted by the LC in this field. However, since the content of both definitions and rules is not always equivalent some technical problems may arise in the application of this legislation.

3.1.24 Sweden (SE)*Equal Pay Day*

In connection with International Women's Day, and also Equal Pay Day (held in Sweden since 2011), the Swedish Women's Lobby, trade unions, NGOs and other actors organise activities to highlight the gender pay. In 2012, the Swedish Women's Lobby initiated an extensive campaign to raise awareness on the gender pay gap. This involved a large number of trade unions, political parties and women's rights organisations. The message: 'After 15:51 women work for free every day. It is time for pay all day', was widely published on the Internet. The campaign is still alive, and since its start six years ago, the time has moved from 15:51 to 16:02.

Specific obligations in legislation

On 1 January 2017, the Discrimination Act was amended with regard to duties of the employer to prevent discrimination and promote equal rights (so-called active measures). In connection with this, the rules on pay surveys were also amended, to increase the frequency of such surveys. The Act now requires the employer to carry out pay surveys on a yearly basis instead of every three years, which was the case before 2017. The provision means that the employer is required to survey and analyse provisions and

219 Published in the Official Journal of 21 August 2018, www.dre.pt, accessed on 21 August 2018.

practices regarding pay and other terms of employment that are used at the employer's establishment, as well as pay differences between women and men, in order to discover, remedy and prevent unfair gender differences in pay and other terms of employment. All employers, regardless of size, shall carry out pay surveys. An employer with at least ten employees shall document the work in writing.²²⁰

Surveys

The website of the Equality Ombudsman provides guidelines on how to carry out a pay survey on gender. The website also provides a link to an external tool that can be used for pay surveys.²²¹ In 2015, the Equality Ombudsman published a report on how employers work to counteract wage differences between women and men. The report displays that a wide variety of strategies are used by employers, and that there is no unified way of addressing the issue of wage differences from the employers' side.²²²

Statistics and findings

Employers with 25 or more employees have to provide gender-specific pay statistics on request. Trade unions or employee representatives have the right to request such statistics. It is also the task of the Swedish Mediation Office (*Medlingsinstitutet*) to provide national pay statistics from a gender perspective on a yearly basis.²²³

In 2017, the Government instructed the Swedish Mediation Office to deliver a report on the relative wage changes for different professions in Sweden between 2014 and 2017, and to analyse the result from a gender equality perspective. The Swedish Mediation Office was also instructed to initiate a discussion (based on the outcome of the abovementioned analysis) on how to promote the work of the social partners to reduce the pay gap between women and men.²²⁴ The Swedish Mediation Office delivered its report in September 2018.²²⁵ The report finds that, between 2014 and 2017, there have been changes in the wages for a number of large occupational groups. Among the professions where the wage increase rate has been higher than average, there are both male-dominated and female-dominated professions. However, the female-dominated professions have been larger than the groups dominated by men. As a result, the total pay gap between women and men has decreased. Among the professions where wages that have raised more than average, a significant share requires higher education. Several of these professions are female-dominated and can be found in the healthcare and school sectors. In the academic community generally, the proportion of women has increased. These factors have also contributed to a reduction in the pay gap between the sexes. The Swedish Mediation Office concludes that their findings indicate that the prevailing wage formation model is consistent with the reduced pay gap between women and men.

Towards more effective sanctions

In August 2018, the Government appointed and convened a committee to analyse and review the need for more effective sanctions related to compliance with the provisions on active measures, including pay surveys. This committee is due to deliver its report in late September 2019.²²⁶

220 Government Bill, Prop. 2015/16:135.

221 See: <http://e-utbildning.do.se/lonkartlaggning> and <https://www.lonelotsarna.se/analyslonelots/>, accessed 20 November 2018.

222 See: Sakligt motiverad eller koppling till kön (in Swedish only) <https://www.do.se/globalassets/publikationer/rapport-sakligt-motiverad-eller-koppling-till-kon2.pdf>, <https://www.do.se/globalassets/publikationer/rapport-sakligt-motiverad-eller-koppling-till-kon2.pdf>, <https://www.do.se/globalassets/publikationer/rapport-sakligt-motiverad-eller-koppling-till-kon2.pdf>, accessed 20 November 2018.

223 <http://www.mi.se> accessed 20 November 2018.

224 Government Decision 2017-12-21 A2017/02478/ARM.

225 Medlingsinstitutet (Swedish Mediation Office) (2018), *Yrke lön och kön En kartläggning av löneläget för 383 yrken mellan 2014 och 2017 – ett jämställdhetsperspektiv*, (in Swedish only): http://www.mi.se/files/PDF-er/att_bestalla/ovrigt/Relativl%C3%B6ner_webbfilen.pdf, accessed on 16 January 2019.

226 Committee Directive 2018:99.

Job evaluation criteria

Job evaluation free from gender bias has often been included in collective agreements based on four criteria: knowledge and experience, degree of effort, responsibility and working conditions. Other factors can also be taken into account, such as physical and mental stress, competence and degree of independence, planning and decision making.

3.1.25 Slovenia (SI)*National programme*

In October 2015, the General Assembly adopted the Resolution on the National Programme for Equal Opportunities for Women and Men 2015–2020²²⁷ (hereafter ‘the new Resolution’). The new Resolution is a strategic document of the Government whose basic purpose is to define general priorities in order to improve the position of women and to ensure sustainable development of gender equality. In order to diminish discrimination based on sex in the labour market, some special objectives, measures and key policy makers in the area of gender equality in various fields of social life of women and men in the Republic of Slovenia for the period from 2015 to 2020 are defined. This is the second document of this kind in the Republic of Slovenia. The first Resolution on the National Programme for Equal Opportunities for Women and Men, adopted by the Government of the Republic of Slovenia in 2005, covered the 2005 to 2013 period and for the first time comprehensively defined an equal opportunities policy for the various fields of social life. The new Resolution builds on the experience under the previous document and upgrades it by the findings of the Evaluation of the Implementation of the Resolution on the National Programme for Equal Opportunities for Women and Men (2005–2013) on how the implementation of measures and activities contributed to achieving the objectives defined in the 2005–2013 National Programme and on the outcomes and effects of these processes.

The main objectives of the new Resolution are reducing differences in employment rates of women and men; reducing vertical and horizontal segregation; and combating gender discrimination at work.

3.1.26 Slovakia (SK)*Equal Pay Day*

Slovakia first held Equal Pay Day on 30 March 2012. It was organised in cooperation with the EU House in Slovakia.²²⁸

National action plan

The Government of the Slovak Republic adopted the National Strategy for Gender Equality for 2014–2019²²⁹ and the related Action Plan. The concrete commitments also included the reduction of the gender pay gap. The gender pay gap in hourly earnings between men and women has continued to decrease, from 21.5 % in 2012 to 19.6 % in 2017.²³⁰ An extensive awareness-raising campaign on gender pay gap, its pervasiveness, and its harmful effects, was launched in 2014 as part of the national project ‘Institute for gender equality’ (‘When I grow up’).²³¹ The campaign has been received well and followed by an intense public discussion on gender disparities and their impact on the future and ambitions of women and men in the labour market as well as in the private sphere.

227 Resolution on the National Programme for Equal Opportunities for Women and Men 2015–2020, Official Journal of the Republic of Slovenia No. 84/15.

228 <https://zenskaloby.wordpress.com/2012/03/30/30-marec-den-rovnosti-v-odmenovani/>, accessed 20 November 2018.

229 https://www.gender.gov.sk/en/files/2015/06/Strategy_EN.pdf, accessed 20 November 2018.

230 http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=52696#pay, accessed 20 November 2018.

231 <https://genderdatabaza.wordpress.com/2016/10/24/ked-vyrastiem/>, accessed 19 November 2018.

The Ministry of Labour regularly organises the competition Employers Friendly to Family, Gender Equality and Equal Opportunities. The basic objectives of this competition include motivating employers to create conditions that are responsive to employees' family duties and giving public recognition to employers who implement systems for reconciling work and family life and for creating equal opportunities for women and men. The competition questionnaire includes questions on the policy on equal pay and gender audit of monthly remuneration.

Publication of statistics

In Slovakia there are 2 institutions providing data about the gender pay gap: the Statistical Office of the Slovak Republic and Trexima Ltd. The Statistical Office annually issued the *Gender Equality report*,²³² which also contains statistical data on the gender pay gap. Regular monitoring of gender pay differences was processed on a quarterly basis by Trexima²³³ which provided statistical data for the Ministry of Labour, Social Affairs and Family of the Slovak Republic under the supervision of the national Statistics Office. The last data are available for the second quarter of 2015, when the project was finished.²³⁴

3.1.27 United Kingdom (UK)

Equal Pay Day

Equal Pay Day in the UK has been organised by the Fawcett Society since 2009. It is held in autumn. The date, which varies depending on the country's gender pay gap that year, marks the day from which women in full-time employment effectively work for nothing until the end of the year. Equal Pay Day is still popular and gains media attention.

Agreements

In the UK, an agreement between the social partners, Agenda for Change, has resulted in the introduction of a new pay system in the National Health Service. The system involved widespread job evaluations and pay reviews. These have placed pay, grading, access to career development and working hours on a more equitable basis for women and men.

Specific obligations in legislation

In 2014 the Equality Act 2010 (Equal Pay Audits) Regulations 2014 came into force. Triggered once an employer loses an equal pay claim, a tribunal can order the employer to perform an equal pay audit. Exceptions exist however, including where an employer has already conducted an audit in the previous three years, and when the tribunal considers that the equal pay breach is a one-off occurrence.

Issues have persisted in practice as public-sector employers often perform regular pay audits and private-sector claims are very rare so few employers are required to perform an audit as a result of this legislation.

The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 came into force in the UK on 6 April 2017. It applies to employers with 250 or more employees on the 'snapshot' date of 5 April. Affected employers must now annually publish certain information about the gender pay gap: (1) the difference in mean and median hourly rates of pay for male and female employees; (2) the difference between the mean and median bonuses paid to male and female employees over the 12-month period ending 5 April and the proportion of male and female employees receiving a bonus in that period; and (3) the proportions of male and female employees in each of four pay quartiles of the employer's overall pay distribution. Employers *may* (but are not obliged to) also publish a narrative explaining any pay gaps/disparities and any action/plans they have to address them. The legislation is supported by guidance from ACAS (the Advisory, Conciliation and Arbitration Service).

232 slovak.statistics.sk accessed 19 November 2018.

233 Trexima Ltd. is a specialized research-statistical and advisory-consulting private company in the field of sample survey on occupational positions, labour market, earnings and labour costs etc.

234 See: <http://www.zenymuzi.sk/dokumenty-na-stiahnutie.html>, accessed 19 November 2018.

Job evaluation method

Support for companies using Job Evaluation Schemes is available from ACAS, which has developed a guidebook describing considerations and risks,²³⁵ and the Equality and Human Rights Commission in the United Kingdom.²³⁶

3.2 Comparative analysis and assessments by the national experts

This section highlights some general features of the good practices described by the national gender experts of the European network of legal experts in gender equality and non-discrimination and their assessments of the measures intended to tackle the gender pay gap.

Experts of three countries had no good practices to report (**Liechtenstein, Latvia and Romania**). In **Greece**, there are no specific projects in gender equality policies on equal pay. This is worrying in the light of the European Commission's strategic engagement which aims in particular at reducing the gender pay gap.²³⁷

3.2.1 National Action Programmes

Many experts refer to the adoption of national equality plans or programmes, which include actions aimed at reducing the gender pay gap (e.g. **Cyprus, Estonia, Finland, France, Ireland, Luxembourg, the Netherlands, Portugal, Slovakia, Slovenia, the United Kingdom**). However, these plans have not always resulted in concrete actions. In **Ireland** for example, the Department of Business, Enterprise and Innovation²³⁸ published *Ireland's National Plan on Corporate Social Responsibility 2014-2016*,²³⁹ which, *inter alia*, provides for equal pay audits, but to date there have been no developments. In **Estonia**, the target set for a reduced gender pay gap was not achieved. The action plans in themselves can therefore not always be considered as good practices, in particular when they lack specific actions and tools in relation to equal pay.

3.2.2 Legislation and proposals going beyond EU law

In many countries, legislation has been adopted or proposals are pending (e.g. **Estonia, Ireland, the Netherlands**) which include specific obligations, in particular for employers, which go further than required under EU law. In various countries, specific reporting obligations on gender equality pay issues exist for employers (e.g. **Austria, Belgium, Denmark, France, Germany**,²⁴⁰ **Iceland, Italy, Lithuania, Portugal, Sweden, the United Kingdom**). In some countries, the Government has specific reporting obligations on equal pay issues (e.g. **Denmark**). In **Luxembourg**, legislation requires that all collective agreements contain commitments on the implementation of the principle of equal pay for women and men, including an action plan. Regulations often require employers to provide specific data. Pay transparency up to some level and so-called pay-audits are sometimes part of the reporting obligations for employers described above. This is for example the case in **Iceland**. In **Finland**, proposals on pay transparency and pay audit are currently (September 2018) being discussed.

235 See: <http://www.acas.org.uk/media/pdf/3/d/Job-evaluation-considerations-and-risks-advisory-booklet.pdf>, accessed 19 November 2018.

236 See <https://www.equalityhumanrights.com/en/advice-and-guidance/job-evaluation-schemes> accessed 7 December 2018.

237 One of the five priorities of the strategic engagement for gender equality is: 'reducing the gender pay, earnings and pension gaps and thus fighting poverty among women': https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy_en, accessed 21 November 2018.

238 Formerly the Department of Jobs, Enterprise and Innovation.

239 This document is available on <https://www.djei.ie/en/>, accessed 9 October 2018.

240 This is only for companies with more than 500 employees and there is no provision for sanctions if they do not respect their reporting obligations.

Long-standing and far-reaching obligations exist for example in **Iceland**. The national expert recalls that when the first act on equal wages for women and men was passed in 1961, it was believed that the major obstacle would be to change people's attitudes towards the positions of the sexes, while the easiest thing would be to abolish the gender pay gap, and that this would disappear within a few years. The national expert writes that now, nearly 60 years later, the gender pay gap still exists. In 2008 an updated (new) Gender Equality Act No. 10/2008 amended the equal pay provision in Article 19 by adding a paragraph *permitting* workers, by choice, to disclose their wage terms. According to the national expert, this was a superficial attempt to counter on-going pay discrimination in an environment where there was no transparency and where pay secrecy had been the prevailing principle. Adding this clause to the law did not enhance pay transparency. The clause permits individuals to disclose their terms but does not oblige them to do so upon request and hence it seems obvious that those receiving better pay and terms will not voluntarily disclose such information in case it is found to be discriminatory.²⁴¹ Since 1 January 2018, companies and institutions with more than 25 employees are required each year to apply an equal pay standard in order to receive a certification. An independent audit forms part of this procedure. Failing to meet the standard and thus receiving no certification is sanctioned by a fine. This equal pay certification allows much more transparency. However, although equal pay certification may correct the pay inequality in certain sectors, the situation remains that sectors in which women constitute a majority (nurses, teachers, cleaners) are 'undervalued' in comparison with sectors where men are far more numerous.

In **Germany**, the Pay Transparency Act adopted in 2017 entitles employees to obtain some information on the gross remuneration of their fellow employees who perform the same work or work of equal value. However, the national expert also highlights some limits and deficiencies of the new act. Pay audits and reporting duties on equal pay are restricted to businesses with more than 500 employees and there are no effective sanctions in the case of non-compliance. Pay audits are not mandatory and the right to information is restricted to businesses with more than 200 employees, although the majority of women work in smaller enterprises. The Pay Transparency Act mainly provides for a prohibition of pay discrimination. The subsequent barriers for access to justice remain, such as the stated need for comparable employees in relation to equivalent work or the problems concerning the burden of proof. The privilege for remuneration systems under collective agreements is an obstacle to the analysis and removal of structural pay discrimination. Moreover, transparency is a condition and is no substitute for anti-discrimination law enforcement: without collective or class actions, more rights for works councils and binding obligations, the principle of equal pay will not be strengthened by insulated transparency measures.

In **France**, employers with 50 or more employees have to provide specific information on equality issues on a regular basis to works councils and union representatives, according to detailed procedures. Failure to meet these requirements can result in sanctions.²⁴² According to the national expert, these legal requirements are now better known. The legislation has been amended several times in order to avoid a formal application of the law without complementing effective measures. Reporting obligations (although clearly restricted) to the works council on the state of gender equality in businesses exist, for example, in **Germany**.

Similarly, in **Italy**, detailed reporting obligations and specific procedures apply to public and private companies employing more than one hundred workers. Fines can be applied if the obligations are not met.²⁴³ Sanctions can also be related to access to public procurement in cases of direct or indirect gender discrimination.

Reporting obligations also exist in **Portugal**. In addition, collective agreements or company regulations that are contrary to specific equal pay requirements are automatically replaced, for example, if a collective

241 Link to GEA: <https://www.government.is/publications/legislation/lex/2009/02/10/Act-on-Equal-Status-and-Equal-Rights-of-Women-and-Men-No.-10-2008/>, accessed 22 November 2018.

242 See the part on France, above, in "3.1 Examples of good practices at national level".

243 The detailed obligations are described in the part on Italy, above, in "3.1 Examples of good practices at national level".

agreement restricts a certain type of remuneration or a certain professional category or activity only to men or to women. New specific measures adopted in 2018 aim to ensure better enforcement of the equal pay principle.²⁴⁴

In the **United Kingdom**, since 2017 detailed obligations to report annually on gender pay gaps apply to companies with 250 or more employees. Assessing this legislation, the national expert considers that having announced in 2015 an intention to ‘end the gender pay gap in a generation’ the 2017 pay gap reporting legislation is a key part of the Government’s strategy to achieve this. Following failed attempts to encourage voluntary gender pay reporting, this legislation helps improve transparency and demonstrates commitment to tackling the gender pay gap in the UK: an area where progress has been far too slow. However, whilst it may help provide a ‘snapshot’ of inequality in relation to pay, the Government’s policy lacks ‘bite’. Some feel that employers ought to have been required to break down the gender pay gap by grade or job type – a measure the Government decided not to take forward in the Regulations. It also seems clear that this legislation fails to tackle the broader underlying causes of pay inequalities between men and women: such concerns were raised and discussed in a parliamentary cross-party *Women and Equalities Select Committee Inquiry* in 2016.²⁴⁵ Recommendations from that inquiry included addressing the part-time pay penalty and flexible working; supporting parents to share childcare equally; supporting women re-entering the workforce after time out of the labour market and addressing low pay in highly feminised sectors such as catering, cleaning and caring. The national expert considers that ‘unfortunately, the Government rejected most of the Committee’s seventeen evidence-based recommendations for addressing these issues and until the Government changes its perspective in relation to the gender pay gap, rapid improvements are unlikely. Whilst a step in the right direction the gender pay gap reporting legislation in the UK fails to tackle some of the key broader issues that would reduce the gender pay gap and it lacks civil enforcement mechanisms so that the risk of non-compliance is largely reputational. The Equality and Human Rights Commission (EHRC) is however consulting on a draft enforcement strategy for pursuing employers that fail to comply.²⁴⁶ In the absence of such enforcement, individual action remains the main method of awareness raising and forcing compliance with the law and this remains problematic for most. There has however been public outrage at the revelations regarding the gender pay gap experienced amongst top journalists and other celebrities, which has raised public awareness but more still needs to be done’.²⁴⁷

Reporting obligations would apply to companies with 50 employees or more if a pending proposal is adopted in the **Netherlands**. In **Ireland**, a proposal on reporting obligations is also pending. If adopted, enforcement competences of the Irish Human Rights and Equality Commission (IHREC) as well as the Workplace Relations Commission would be broadened. The pending proposal in **Estonia** would apply to the public sector and enhance the competences of the Labour Inspectorate in relation to equal pay between men and women. A centre for equal pay under the Labour Inspectorate will be established in order to provide support and advice to employers. The Labour Inspectorate will also be granted the right to carry out supervision to ensure that public sector employers apply the principle of equal pay for equal work.

3.2.3 Statistics

The importance of available statistics and surveys on the gender pay gap is stressed by some national experts (e.g. **Bulgaria, Croatia, Denmark, Slovakia, Sweden**). Obligations for employers to provide specific statistics are mostly part of the legislative reporting obligations described above. The national

244 Published in the Official Journal of 21 August 2018, www.dre.pt, accessed on 21 August 2018.

245 See <https://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/inquiries/parliament-2015/gender-pay-gap-15-16/>, accessed 22 November 2018.

246 See <https://www.equalityhumanrights.com/sites/default/files/gender-pay-gap-enforcing-the-regulations-march-2018.pdf>, accessed 22 November 2018.

247 For a useful comment see <https://www.theguardian.com/commentisfree/2018/jul/11/bbc-not-close-gender-pay-gap-men>, accessed 22 November 2018.

expert for **Croatia** notes that *Women and Men in Croatia* is a helpful, reliable and informative publication. 'However, the published data concerning pay and earnings does not offer a complete picture concerning the gender pay gap, because it includes only earnings of persons employed in legal entities. Only employers who are legal entities are required to report the average remuneration by category of employee or position, broken down by gender annually to the Croatian Bureau of Statistics'. This might be the case in more countries.

3.2.4 Specific tools to measure unequal pay

In various countries, tools are available for workers and/or employers which allow the measuring of wage differences, taking into account some of the factors that influence pay.²⁴⁸ In **Bulgaria**, a tool was developed which allows the measuring of the gender pay gap. In **Ireland**, **Spain** and **Sweden** for example, such tools are specifically designed for employers. The Logib tool is used for example in **Germany**, **Luxembourg** and **Poland**. As regards the app available in **Poland**, the national expert notes that 'the fact that the Ministry of Family, Labour and Social Policy prepared a free app to measure the pay gap, should be assessed positively. It seems however that a mere encouragement to use this tool, included in the introductory letter to employers, may not be enough to efficiently combat the gender pay gap phenomenon, given the legal (constitutional and statutory) obligation to guarantee equal pay for women and men. The MPRIPS should be more categorical in its approach and demand the use of this tool from employers, especially since the statement issued by the Ministry that 'many companies monitor the average pay with respect to different groups of employees' does not have any confirmation in statistical data. In addition, mere monitoring activities are not enough to successfully combat discrimination. This is the reason why the gender pay-gap monitoring tool should be generally applied by all companies (with the exception of companies which would be able to show that they use different yet similarly detailed monitoring tools). In addition, the periodic uploading of the results of such monitoring should be mandatory rather than only 'possible' and information about the existence of such tool should be spread as widely as possible²⁴⁹ and should be broadly promoted in mass media and professional publications addressed to employers and employees.²⁵⁰

In the **Netherlands**, a tool available online allows comparisons of wages by individuals and advice on how to obtain equal pay is provided as well.

3.2.5 Developing gender-neutral job evaluation schemes

In addition to the tools available for individuals, employers and others to allow the measurement of wage differences, steps have been taken in order to develop gender-neutral job evaluation schemes in different countries. Job evaluation schemes are often included in collective agreements and in **Sweden**, for example, criteria free of gender bias have been developed. Similarly, in **Lithuania**, criteria for job evaluations were developed so that they could be used at company level. However, the national expert notes that, there is little information on the impact in practice of the social partners' agreement 'Methodology for the Assessment of Jobs and Positions' and it has not been used for a long time. In **Belgium**, collective agreements and job evaluation schemes are controlled by a federal service and a checklist on gender-neutral job evaluation schemes was developed by the Institute for the Equality of Women and Men. Such methods were also developed in **Portugal**, one specifically for the hotel and restaurant sector. In **Germany**, the federal government developed non-binding guidelines on the implementation of equal pay for work of equal value. In the **United Kingdom**, some agreements between social partners have led to reviews of job evaluation schemes and pay systems and the re-valuing of jobs.

248 See references above, in section 3.1.

249 This was also indicated by the Commissionaire for Human Rights: <http://www.rp.pl/Place/308039935-RPO-aplikacja-do-szacowania-wynagrodzen-kobiet-i-mezczyzn-nie-wystarczy-w-walce-z-luka-placowa.html>, accessed 29 January 2018.

250 Such information can be found in the news section, dated 9 January 2018, <https://www.mpips.gov.pl/aktualnosci-wszystkie/art,5543,9609,luka-placowa-w-polsce.html>. <https://infostrow.pl/biznes/kobiety-w-polsce-zarabiaja-sporo-mniej-niz-mezczyzni/cid,80064,a>, accessed 4 October 2018.

3.2.6 Collective agreements

Some experts mention additional specific actions taken by social partners in relation to equal pay in collective agreements. In **Austria** for example, some collective agreements take periods of unpaid maternity, paternity and parental leave into account for regular pay increases. Some unions emphasize the importance of gender equality in **Croatia**. However, according to the national expert, collective agreements merit a detailed and comprehensive analysis, as many collective agreements seem to lack any clauses concerning gender equality guarantees. In **Finland**, social partners agreed on gender impact assessments of collective agreements in relation to pay. The Equality Ombudsman has suggested to carry out pay audits, not separately covering collective agreements, but across different collective agreements in order to address issues of work of equal value in a highly segregated labour market.

3.2.7 Role of equality bodies, Labour Inspectorates and tripartite bodies

Various national experts have highlighted specific good practices of specific bodies and/or Labour Inspectorates. In **Malta**, for example, the National Commission for the Promotion of Equality (NCPE) awards the Equality Mark. The national expert considers that this good practice offers an opportunity to know more about working conditions offered by employers. The NCPE provides guidance as well as training. The expert notes: 'It is positive that such a practice has lasted eight years already since it means that employers still value it and are willing to work for it. Since equal pay is one important factor of this certification, it also ensures there is transparency in the wages offered at these workplaces. One positive aspect for these employers is that through the certification they can attract qualified workers who would be attracted to the fact that said employer is an equal opportunities employer. Being an employer of choice is one of the selling factors of the Equality Mark certification'.

In the example of **Portugal**, the role of CITE – a tripartite body – merits attention, as various campaigns have been launched and CITE in the near future will have specific competences and measures to tackle the gender pay gap. In **Italy**, the Labour Inspectorate and the National Equality Adviser have agreed to take various measures to coordinate their activities in the field of anti-discrimination. In **Luxembourg**, specific counselling and information services on equal pay are provided by the Labour Inspectorate. The **Spanish** Labour and Social Security Inspectorate also aims at more actions in this field. The Spanish expert considers that 'new instruments against the wage gap (a self-diagnostic tool and greater commitment of the Labour and Social Security Inspectorate) are of greater interest than the old ones but, (...) they are still insufficient by themselves. A specific law on the wage gap would be necessary to guarantee wage transparency and establish more effective mechanisms. For example, greater involvement of the Institute for Women and for Equal Opportunities to denounce situations of discrimination would be necessary. But above all, a comprehensive law for the equal pay between women and men that would introduce reforms of all kinds, for example in procedural matters and labour law, would be necessary. A more dissuasive sanctioning framework should also be established.' In **Cyprus**, the Ministry has a role in resolving disputes in the private sector with regards to collective agreements.

3.2.8 Equal Pay Day

In most countries a so-called Equal Pay Day is organised (e.g. **Austria, Belgium, Cyprus, Czech Republic, Estonia, France, Germany, the Netherlands, Portugal, Slovakia, Spain, Sweden, the United Kingdom**). On Equal Pay Day specific awareness raising activities take place in most countries. Equal Pay Day takes place twice a year in **Austria** and in **Cyprus**. In **Sweden** for example, it is related to the International Women's Day. In various countries different methods show the negative effect of the gender pay gap for women's earnings. Equal Pay Day for instance falls on the day on which women have to catch up with what men earned the year before (in April in **Estonia**); or the day of the year on which women meet the pay rate of men and thus work for free until the rest of the year (**Portugal**; in November in the **United Kingdom**); or on the hour of the day where women start working for free every day (after

16:02 each day in **Sweden**). Activities also involve for example regional Equal Pay Actions launched annually by sectoral trade unions in **Austria**, posters and videoclips (**Belgium, Portugal**), public debates, seminars and/or press conferences (**Estonia, Spain, Portugal, Sweden**). In **Germany**, a different key aspect of the gender pay gap is highlighted each year for discussion. In a few countries, specific objects draw public attention to the gender pay gap on Equal Pay Day, for example postal stamps in **Spain** and a red carrier bag in **France**.

In some countries, this awareness-raising measure receives quite a lot of media attention, for example in the **Sweden** and **United Kingdom**. In Portugal, diverse campaigns relate to the Equal Pay Day. The **Spanish** expert considers that this day in Spain is not sufficiently effective to combat the gender pay gap.

3.2.9 The wider context

A few national experts explicitly mention some contextual aspects of the gender pay gap between men and women. In **Denmark** for example, a survey addressed the consequences of gender segregation during the life course in a highly gender-segregated labour market. Women for example are overrepresented in the public labour market whereas men dominate in the private labour market. Also, women are highly overrepresented in part-time jobs. Recent political initiatives focus on the gender-segregated labour market as part of the unresolved problem of unequal pay. According to the national expert, this includes the **gendered** education system as being a part of a complex problem of gender discrimination in occupation in general, and the unresolved issue of unequal pay specifically. The **Finnish** expert refers to difficulties in defining work of equal value in a highly gender-segregated labour market and the same is true in **Cyprus**, for example. In **Germany**, given that there is no scope for collective or class action, the use of individual claims to tackle structural problems (such as discriminatory classifications and pay structures, gender-segregated labour markets, mostly female part-time work or gender stereotypes in the evaluation of 'female' work) and sex discrimination is problematic. The national expert recalls that this restriction has been identified, time and again, as one of the main obstacles to achieving gender equality.

In some countries, reconciliation issues are explicitly addressed in relation to equal pay (e.g. **Finland, France, Italy**). The **Portuguese** expert considers that 'the Portuguese experience shows that the granting of rights related to equal pay by the law is not enough to eliminate the gender pay gap. This is so because the source of the problem is also linked to the traditional stigma attached to the social roles of men and women in public and private life and to the unbalanced share of the family and care responsibilities between workers of the two sexes – inequality in the reconciliation of professional and family life leads to shorter working time, undervalued work, shorter careers, increased difficulties in promotion and less training for women, and all these factors involve or lead to less pay... This is the reason why pay gap issues must be tackled both at the legal level and at the practical level, and good practices can make a difference here'.

4 Some conclusions

The reports of the gender experts of the European network of legal experts in gender equality and non-discrimination on recent national case law and good practices on equal pay provide rich insight into the developments, but also into the shortcomings of the enforcement of the equal pay principle in practice. First of all – and most strikingly – there is the lack of cases. In some countries, there seems to be no equal pay cases at all. In other countries, only few cases have been published. The fact that not all the cases are published can play a role; in some countries the databases of the courts only provide information on selected cases. This lack of public availability of national case law on the equal pay principle between women and men hinders awareness of the problems at stake and the potential legal means to combat unequal pay practices at national level. Landmark cases are even fewer. The lack of cases reflects the limits and shortcomings of a strategy based on individual enforcement of claims by legal procedures, which are often complicated, lengthy and costly. The lack of pay transparency might also play a role in the limited number of legal proceedings on equal pay matters.

The reported cases show that the concept of pay in most countries does not seem to present specific difficulties. However, the concept of positive action does not always seem to be well understood. Direct sex discrimination in pay is not often at stake in the cases reported by the gender experts, but many cases concern various forms of indirect sex discrimination in relation to pay. The issue of finding the right comparator is also often at stake, in particular in **Ireland** and the **United Kingdom**. Case law in which equal work or the equal value of work had to be assessed illustrates which criteria the courts use in the various countries in order to decide whether the work is equal or of equal value. In a recent case of the **Latvian** Supreme Court for example, the criteria to be applied and the procedure to be followed in such cases have been clarified. Fewer cases are reported on discriminatory criteria (directly or indirectly) in job classification schemes and/or collective agreements.

The cases show that burden of proof issues are most relevant. Sometimes, a court will apply a lenient burden of proof, for example if an employer refuses to provide information, as was at stake in an **Irish** case, as well as in a **Dutch** case. Contradictory outcomes of similar cases in relation to levelling up have also been described, for example in relation to two **Greek** cases, decided by the same court.

In many countries, equality bodies play an active role in the enforcement of equal pay at national level, for example by deciding cases or by commissioning surveys.

Many cases show that pay transparency is a very relevant issue. In different countries, specific legal reporting obligations – which go much further than what is required by EU law – apply to employers, which can be considered as good practices. **Iceland** seems well ahead in this respect. Some other countries also have – sometimes far-reaching – reporting obligations in place, often with specific procedures, and involving the unions and/or work councils, such as in **France** for example. The reported examples on good practices show how diverse the initiatives at national level are, while illustrating at the same time a trend towards more obligatory measures aimed at employers in particular. Addressing issues of unequal pay taking into account the wider context of gender-segregated labour markets and linking them to the unequal division of work and care responsibilities between women and men is one of the most important challenges for the years to come.

Annex I: Directives

- Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women *OJ L 45, 19.2.1975*, pp. 19-20 (repealed).
- Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions *OJ L 39, 14.2.1976*, pp. 40-42 (repealed).
- Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security *OJ L 6, 10.1.1979*, pp. 24-25.
- Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes, *OJ L 225, 12.8.1986*, pp. 40-42 (repealed).
- Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood *OJ L 359, 19.12.1986*, pp. 56-58 (repealed).
- Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) *OJ L 348, 28.11.1992*, pp. 1-8.
- Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC *OJ L 145, 19.6.1996*, pp. 4-9 (repealed).
- Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes *OJ L 46, 17.2.1997*, pp. 20-24 (repealed).
- Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex *OJ L 14, 20.1.1998*, pp. 6-8 (repealed).
- Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, *OJ L 14, 20.1.1998*, pp. 9-14.
- Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions *OJ L 269, 5.10.2002*, pp. 15-20 (repealed).
- Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services *OJ L 373, 21.12.2004*, pp. 37-43.
- 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) *OJ L 204, 26.7.2006*, pp. 23-36.

- Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC *OJ L 68, 18.3.2010*, pp. 13-20.
- Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC *OJ L 180, 15.7.2010*, pp. 1-6.

Annex II: CJEU cases on equal pay issues

- CJEU 25 May 1971, C-80/70, (*Defrenne I*), ECLI:EU:C:1971:55.
- CJEU 8 April 1976, C-43/75, (*Defrenne II*), ECLI:EU:C:1976:56.
- CJEU 27 March 1980, C-129/79, (*Macarthy*), ECLI:EU:C:1980:103.
- CJEU 11 March 1981, C-69/80, (*Worringham*), ECLI:EU:C:1981:63.
- CJEU 31 March 1981, C-96/80, (*Jenkins*), ECLI:EU:C:1981:80.
- CJEU 9 February 1982, C-12/81, (*Garland*), ECLI:EU:C:1982:44.
- CJEU 9 June 1982, C-58/81, (*Commission v Luxembourg*), ECLI:EU:C:1982:215.
- CJEU 6 July 1982, C-61/81, (*Commission v UK*), ECLI:EU:C:1982:258.
- CJEU 18 September 1984, C-23/83, (*Liefting*), ECLI:EU:C:1984:282.
- CJEU 13 May 1986, C-170/84, (*Bilka*), ECLI:EU:C:1986:204.
- CJEU 1 July 1986, C-237/85, (*Rummeler*), ECLI:EU:C:1986:277.
- CJEU 3 December 1987, C-192/85, (*Newstead*), ECLI:EU:C:1987:522.
- CJEU 4 February 1988, C-157/86, (*Murphy*), ECLI:EU:C:1988:62.
- CJEU 13 July 1989, C-171/88, (*Rinner*), ECLI:EU:C:1989:328.
- CJEU 17 October 1989, C-109/88, (*Danfoss*), ECLI:EU:C:1989:383.
- CJEU 17 May 1990, C-262/88, (*Barber*), ECLI:EU:C:1990:209.
- CJEU 27 June 1990, C-33/89, (*Kowalska*), ECLI:EU:C:1990:265.
- CJEU 7 February 1991, C-184/89, (*Nimz*), ECLI:EU:C:1991:50.
- CJEU 4 June 1992, C-360/90, (*Bötel*), ECLI:EU:C:1990:246.
- CJEU 17 February 1993, C-173/91, (*Belgium*), ECLI:EU:C:1993:64.
- CJEU 6 October 1993, C-109/91, (*Ten Oever*), ECLI:EU:C:1993:833.
- CJEU 27 October 1993, C-127/92, (*Enderby*), ECLI:EU:C:1993:859.
- CJEU 9 November 1993, C-132/92, (*Birds Eye Walls*), ECLI:EU:C:1993:868.
- CJEU 14 December 1993, C-110/91, (*Moroni*), ECLI:EU:C:1993:926.
- CJEU 22 December 1993, C-152/91, (*Neath*), ECLI:EU:C:1993:949.
- CJEU 28 September 1994, C-7/93, (*Beune*), ECLI:EU:C:1994:350.
- CJEU 28 September 1994, C-57/93, (*Vroege*), ECLI:EU:C:1994:352.
- CJEU 28 September 1994, C-200/91, (*Coloroll*), ECLI:EU:C:1994:348.
- CJEU 31 May 1995, C-400/93, (*Royal Copenhagen*), ECLI:EU:C:1995:155.
- CJEU 6 February 1996, C-457/93, (*Lewark*), ECLI:EU:C:1996:33.
- CJEU 13 February 1996, C-342/93, (*Gillespie*), ECLI:EU:C:1996:46.
- CJEU 7 March 1996, C-278/93, (*Freers*), ECLI:EU:C:1996:83.
- CJEU 17 April 1997, C-147/95, (*Evrenopoulos*), ECLI:EU:C:1997:201.
- CJEU 17 February 1998, C-249/96, (*Grant*), ECLI:EU:C:1998:63.
- CJEU 9 February 1999, C-167/97, (*Seymour*), ECLI:EU:C:1999:60.
- CJEU 9 September 1999, C-281/97, (*Krüger*), ECLI:EU:C:1999:396.
- CJEU 16 May 2000, C-78/98, (*Preston*), ECLI:EU:C:2000:247.
- CJEU 16 September 1999, C-218/98, (*Abdoulaye*), ECLI:EU:C:1999:424.
- CJEU 21 October 1999, C-333/97, (*Lewen*), ECLI:EU:C:1999:512.
- CJEU 28 October 1999, C-187/98, (*Commission v. Greece*), ECLI:EU:C:1999:535.
- CJEU 30 March 2000, C-236/98, (*JämO*), ECLI:EU:C:2000:173.
- CJEU 13 July 2000, C-166/99, (*Defreyne*), ECLI:EU:C:2000:411.
- CJEU 26 June 2001, C-381/99, (*Brunnhöfer*), ECLI:EU:C:2001:358.
- CJEU 9 October 2001, C-379/99, (*Menauer*), ECLI:EU:C:2001:527.
- CJEU 29 November 2001, C-366/99, (*Griesmar*), ECLI:EU:C:2001:648.
- CJEU 17 September 2002, C-320/00, (*Lawrence*), ECLI:EU:C:2002:498.
- CJEU 23 October 2003, joined cases C-4/02 (*Schönheit*) and C-5/02 (*Becker*), ECLI:EU:C:2003:583.
- CJEU 13 January 2004, C-256/01, (*Allonby*), ECLI:EU:C:2004:18.
- CJEU 27 May 2004, C-285/02, (*Elsner-Lakeberg*), ECLI:EU:C:2004:320.
- CJEU 8 June 2004, C-220/02, (*Österreichischer Gewerkschaftsbund*), ECLI:EU:C:2004:334.

- CJEU 9 December 2004, C-19/02, (*Hlozek*), ECLI:EU:C:2004:779.
- CJEU 10 March 2005, C-196/02, (*Nikoloudi*), ECLI:EU:C:2005:141.
- CJEU 3 October 2006, C-17/05, (*Cadman*), ECLI:EU:C:2006:663.
- CJEU, 6 December 2007, C-300/06, (*Voß*), ECLI:EU:C:2007:757.
- CJEU 22 November 2012, C-385/11, (*Moreno*), ECLI:EU:C:2012:746.
- CJEU 28 February 2013, C-427/11, (*Kenny*), ECLI:EU:C:2013:122.
- CJEU 13 February 2014, Joined cases C-512/11 and C-513/11, (*TSN*), ECLI:EU:C:2014:73.
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