



Pay Transparency: a first step towards closing the Gender Pay Gap

EWL response to the Proposal for a DIRECTIVE to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms

1. Introduction

The European Women's Lobby (EWL) welcomes the [proposal for a Directive on pay transparency](#) and believes the proposed Directive is an important step towards reducing the gender pay gap. Ensuring equal pay between women and men was one of the first EU legislative proposals back in 1975¹. Despite this the gender pay gap continues to persist in all Member States and has remained worryingly stable at an average around 14-16% at EU level for a number of years. For marginalised women, the gender pay gap may be even wider.²

The current legislative proposal comes at crucial time, as societies are gradually emerging from the COVID-19 pandemic, which not only brought the world temporarily to a halt, but also highlighted more so than ever, women's contribution to keeping society functioning. Their invaluable paid and unpaid care work is essential to the wellbeing and functioning of our societies and planet. The pandemic also revealed the systematic under valuing of women's work, highlighted the persistent gender segregated labour-market and the differences in pay between those sectors where the majority of women work compared to those where the majority of men work. In this context, equal pay for work of *equal value* is a central component to closing the gender pay gap not only within but also across industrial sectors of the economy. While the proposed legislative framework attempts to address equal value, more robust measures will be necessary in the future to address this structural issue. This moment should be used as a huge opportunity to take equality between women and men and equal pay and equal value into the new 'norm' in the aftermath of the COVID-19 public health crisis.

In Europe, wages remain a subject of taboo and non-transparent, which has undoubtedly also contributed to the long-standing gender pay gap in the EU and corresponding gender life-long earnings and pension gaps. Gender gaps in pay have lifelong consequences, as the male breadwinner model continues to define the 'standard' worker, shapes workers' rights, taxation regimes and social protection systems.

The current legislative proposal on pay transparency has the merit of smashing this cultural taboo and eliminating the lack of transparency as well as some informalities in pay deals. By lifting secrecy with regards to pay, it has the potential to empower women. It gives them the right to seek more clarity

¹ Directive 75/117/EEC ; article 1 : "for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration." See also Recast Directive: [Directive 2006/54/EC](#)

² For example, according to the 2020 Gender Equality Index of the European Institute on Gender Equality, the [EU average mean monthly earnings](#) of women with disabilities (1,734 €) was lower than the one of other women (1,899 €), of men with disabilities (2,368 €), and men without disabilities (2,620 €).



EUROPEAN WOMEN'S
LOBBY
EUROPEEN DES FEMMES

on pay composition, to receive more information on salary scales of equivalent workers, and to subsequently negotiate pay and seek redress when they are discriminated.

This is also very important for example for women returning from maternity leave to ensure that they too benefit from pay policies which have occurred whilst they were on leave and enable them to challenge any form of discrimination stemming from maternity leave/childbirth.

2. EWL welcomes the following proposals

2.1) Article 3: Definitions

Gender based discrimination: the intersection of different axes of discrimination, i.e. intersectionality.

The EWL welcome references to **intersectionality (article 3)**, as we know that many factors such as migration status, ethnic origin, lower socio-economic status, disability, age, etc. have a direct impact on pay and play a significant role in women's access to quality work, which includes pay.

For example, data from the European Gender Equality Institute (EIGE) show that the difference in the EU annual average income in 2019 between women with disabilities and women without disabilities was as high as 3000 EUR a year.

We also welcome the **definition of pay (article 3)** which builds on the 2006 Recast Directive and covers an extensive list of direct pay (salary) and indirect additional benefits. Many of these 'hidden', variable benefits are often associated with sectors in which many men work (finance, IT, etc.). It is crucial that the proposed directive reiterates that pay is composed of a number of factors, a combination of fixed (basic salary), complementary and variable elements and that all of these are part of pay composition.

2.2) Article 4: hypothetical comparator

We welcome reference to a '**hypothetical comparator**' (under **article 4** - on work of equal value) and see this as a real attempt to move beyond a real-life/physical comparator which is very difficult to apply in some sectors particularly as the labour market is still very much segregated by sex.

2.3) Article 5: obligations of employers

We welcome the obligation of employers to provide **information on initial pay levels** or the range (**Article 5**) **prior to employment** by providing this information in job vacancy notices or prior to job interviews. This also prohibits employers to seek information on previous pay history, which is a welcoming step forward towards the prevention of pay discrimination.





3. EWL key concerns

While the EWL welcomes the legislative proposal, it also wishes to highlight some concerns that could be counterproductive in the long term and jeopardise the spirit of the Directive itself. These concerns relate to:

3.1) **The absence of structural responses and of reference to collective bargaining through Trade Unions.**

The gender pay gap is a structural issue that requires structural responses. It is not the result of a personal failing. The way in which the proposal is now written, women are left to themselves to figure out the best way forward to seek information, determine whether they are discriminated against and to seek redress in various ways. This is not good enough, women in Europe want more.

To address structural inequalities, we need collective actions. Therefore, we must protect and promote social dialogue and strengthen collective bargaining, in particular sectoral and cross-sectoral collective bargaining, to guarantee equal pay for work of equal value. Reference throughout the legislative proposal refers to *'workers representatives'* and in so doing, fails to recognise the role of collective trade unions.

We regret that no provisions are included on **social dialogue** that would guarantee trade unions to collectively bargain, at the appropriate level, on measures to address pay discrimination and the undervaluation of work predominantly carried out by women.

We question whether equality bodies should be put on equal footing with social partners (cf. 4(1), 4(2)), in light of limited resources of equality bodies, including an organisational structure that is rarely tripartite.

Furthermore, the text of the proposed Directive encourages employers to establish *'workers representative'* in situations where these does not exist. This has the potential of creating a situation of a conflict of interest, in which employers themselves decide who should represent their interests through a human resource structure for *'workers representatives'* (**article 9**: joint pay assessments: *"If formal workers' representatives are absent in the organisation, the employer should designate one or more workers for this purpose."* Page 13, relating to *'joint pay assessments – linked to Article 9'*)

The right to be part of a **Trade Union** is a fundamental human right and must be complied with. We see a serious risk if this remains missing from the proposal and should be corrected without delay. We propose to specify the term *'workers representatives'*, as the workers themselves should have access to collective bargaining through trade union representation. We propose that the definition of *'workers representatives'* is based on the ILO Convention³, which stipulates

'workers representatives' mean (a) trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or (b) elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions

³ C135 - Workers' Representatives Convention, 1971 (No. 135), article 3, [Convention C135 - Workers' Representatives Convention, 1971 \(No. 135\) \(ilo.org\)](https://www.ilo.org/dyn/normlex/ui/show?p=normlex_fundamental+conventions&docId=C135)



EUROPEAN WOMEN'S
LOBBY
EUROPEEN DES FEMMES

of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned.

Women workers have the right to seek and bargain for pay equality through collective mechanisms and this proposed directive should reiterate this right. Collective bargaining has and continues to have a positive outcome in pay and working conditions and this is crucial given that the sectors where women work are undervalued and underpaid, as the COVID-19 pandemic highlighted.

3.2) The size of the workforce for mandatory reporting (250 employees)

Achieving equal pay should not be associated with the size of companies; the right to equal pay is a fundamental right. Therefore, equal pay obligations should apply to all companies regardless of the size. The threshold for mandatory reporting of companies with 250 employees (article 8) should be removed as this will exclude a huge part of the workforce and particularly sectors where women work.

The majority of women work in smaller entities and in small and medium sized enterprises (SMEs). If the mandatory reporting remains at 250 employees, the purpose of the proposed directive itself will be undermined. Whilst recognising that SMEs may be confronted with additional administrative costs, these are not excessive as the Commission's impact assessment shows (page 56), estimating costs between an average of 315€ and 500€ per employer.

Therefore, all companies, regardless of the size should carry out mandatory reporting, and in the case of SMEs the reporting period could be carried out every three years instead of the proposed two years in the legislative proposal.

3.3) The lack of definition of "Work of equal value"

'Value' is both an intrinsic translation of what is important in society, and how this is rewarded through pay. The forthcoming pay transparency legislation should enable a cross industry sector assessment of the value of work and subsequent 'equal pay for work of equal value'. In addition to assessment in some countries⁴ on the interpretation of equal value, it is crucial that a European wide study and peer review is carried out on 'equal value'.

Notwithstanding the case law of the Court of Justice and definitions in some countries, several Member States have not made any attempt to define "**work of equal value**" when transposing the Recast Directive into their national laws. Future amendments of the Recast Directive or any new Directives on equal pay should contain an explicit and binding definition of "work of equal value". The wording of such a definition should be based on the case law of the Court of Justice, but with some improvements with regards to:

- 1) the treatment of **part-time work**,
- 2) the over-emphasis on **formal professional qualifications** as opposed to an emphasis on the work actually performed, and

⁴ See Belgium, <https://igvm-iefh.belgium.be/sites/default/files/downloads/classification%20de%20fontions%20analytique.pdf>





EUROPEAN WOMEN'S
LOBBY
EUROPEEN DES FEMMES

3) the over-emphasis on **professional experience**.

On the basis of previous case law⁵ and taking into consideration the above mentioned elements, we propose the following definition on '**work of equal value**'

'Work shall be deemed of equal value if, based on a comparison of two groups of workers which have not been formed in an arbitrary manner, the work performed is comparable, based on an overall assessment of the requirements and nature of the work, and criteria such as knowledge and skills, responsibility and effort. In assessing the nature of the work, particular account is to be taken of working conditions. For the avoidance of doubt, the working hours shall not be a relevant factor. If professional experience is to be taken into account as one factor to determine if work is of equal value, the party claiming that such factor must be regarded shall bear the burden of proof to show that increased professional experience generally – and not only in specific cases – leads to added value for the work actually performed by the workers.'

The issue of equal pay for '**work of equal value**' **across different occupational sectors** still needs to be addressed, so that a **broader interpretation** can be applied to cover differences in pay for work which may not appear comparable from the outset and is performed in sectors that are highly gendered in practice, which often results in lower wages being attributed in sectors where women are highly concentrated. For example, the nursing or child care sector, compared to, e.g., the manufacturing sector or technical professions in which men are highly concentrated. From a cross occupational sector perspective, the principle of **equal pay for work of equal value** between women and men, could be defined as follows:

'Work shall be deemed of equal value if, based on a comparison of two groups of workers which have not been formed in an arbitrary manner, the work performed is comparable, taking into account factors such as the working conditions, the responsibility conferred on the workers and the physical or mental requirements of the work.'

The '**hypothetical comparator**' referred to in Article 4 of the proposed Directive, could provide the first step in the implementation of such a definition on '**work of equal value**'.

Article 8: The gender pay gap between men and women doing the same work and work of equal value should also be published. The argument that working categories cannot be compared between employers does not hinder that the employer publishes information about the average gender pay gap for women and men doing the same work or work of equal value. This is more relevant than the overall average pay gap between men and women.

Moreover, analysis of pay differences can be done in multiple ways and therefore give different results. It should be made clear that if the workers' representatives have a different opinion, for example, by finding that differences cannot be justified on the basis of objective and gender-neutral factors, the employer should also be obliged to make the joint assessment.

⁵ See (1981) : [EUR-Lex - 61980CJ0096 - EN - EUR-Lex \(europa.eu\)](#) and (2001) : [EUR-Lex - 61999CJ0381 - EN - EUR-Lex \(europa.eu\)](#)



Article 9 the requirement that a difference of average pay between female and male workers in the organisation must be at **least 5 percent** for the employer concerned to be obliged to carry out a pay assessment⁶ should be changed. No levels of discrimination should be accepted. A few percent is still a lot of money in most cases.

3.4) Data collection

Several provisions/recital of the directive concerns **data collection**. For women with disabilities it is essential that the statistics are also broken down by disability (**arts. 26, 28; recital 49**). The publication of the data in an accessible manner for persons with disabilities should be done in accordance with EU harmonised accessibility legislation (**under art. 26**).

4. Conclusion

While the EWL welcomes the proposed legislative proposal on pay transparency, which is a first step in the right direction, we expect further binding measures to close the gender pay gap in the EU. Such measures include: mandatory pay audits regardless of the size of the workforce, gender equality action plans and a holistic approach to addressing the gender pay gap of which pay transparency should be one but certainly not the last step. The gender pay gap has life-long consequences as mirrored in the gender pension gap that is double that of the gender pay gap.⁷

While the aim of this specific directive has a limited scope, the broader context of inequalities between women and men cannot be ignored as they impact on pay, this includes eliminating entrenched gender stereotypes.

Equal pay, is not an individual deficiency but a structural problem and must be addressed as a structural issue. It is urgent that the issue of equal pay, including pay transparency, firmly remains on the political agenda. In these times of the COVID pandemic, this legislative proposal should be used as a huge opportunity to take equality between women and men and equal pay into the new 'norm' in the aftermath of the COVID public health crisis as a necessary step towards closing the gender pay gap.

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0093&from=EN> Detailed explanation of the specific provisions of the proposal: Article 9, page 13

⁷ See : [130530_pensions_en.pdf \(europa.eu\)](#)



5. EWL key recommendations/amendments based on the European Commission's proposal⁸

Whereas:	Add: Reference to CEDAW - Convention on the Elimination of all forms of Discrimination Against Women Reference to ILO – International Labour Organisation Reference to UNCRPD – United Nations Convention on the Rights of Persons with Disabilities
Justification: CEDAW: All EU Member States have ratified or acceded to the CEDAW Convention, in which the right to equal pay and equal pensions are embodied in article 11 (d) and (e). Furthermore, CEDAW General recommendation No. 13 (1989) elaborates on equal remuneration for work of equal value; General recommendation No. 18 (1991) on Disabled Women claims for equal access of disabled women to employment; and General recommendation No. 28 (2010) - The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women outlines especially that the state party is obliged to hold the private sector accountable on the legal claims to equal pay of women and men and women's protection from any violation of their human rights and discrimination also in all extraterritorial enterprises. ILO Convention No. 111 in a broader scope aims to eliminate all discrimination in respect of employment and occupation, whether based on sex, race, colour, religion, political opinion, national extraction or social origin, or any other criterion determined by States parties to the Convention. The Equal Remuneration Convention, 1951 (No. 100) states the principle of equal remuneration for men and women workers for work of equal value. Paragraph 2(a) of the Equal Remuneration Recommendation, 1951 (No. 90) , calls for the application, as rapidly as practicable, of this principle in establishing minimum or other wage rates in industries and services where such rates are determined under public authority. UN CRPD , which the EU has ratified; article 6 refers to women and girls with disabilities.	

⁸ [EUR-Lex - 52021PC0093 - EN - EUR-Lex \(europa.eu\)](#)



<p style="text-align: center;"><i>Article 2</i> Scope</p>	<p style="text-align: center;"><i>Article 2</i> Scope Proposed amendment</p>
<p>This Directive applies to employers in the public and private sectors.</p>	<p>This Directive applies to employers in the public and private sectors, <i>including non-standard sectors, such as platform employers, sheltered workshops, and any other form of contractual work.</i></p>
<p>Justification: The scope should also apply to outsourcing companies by the public and private sectors that engage the cleaning sector, platform workers, zero-hour contracts and similar, and for the public sector, in public procurement. Factors in addition to gender, such as disability, cannot justify a difference in salary for similar work, in accordance with the 2000 EU Employment Equal Treatment Directive.</p>	
<p>2. This Directive applies to all workers who have an employment contract or employment relationship as defined by law, collective agreements and/or practice in force in each Member State with consideration to the case-law of the Court of Justice.</p>	<p style="text-align: center;">Proposed amendment:</p> <p>2. This Directive applies to all workers who have an employment contract, <i>including part-time work, temporary agency work, zero-hour contracts, sheltered/accompanied work contracts,</i> or employment relationship as defined by law, collective agreements and/or practice in force in each Member State with consideration to the case-law of the Court of Justice.</p>
<p>Justification: In the current context of the changing nature of work, in which outsourcing, platform work and other non-standard forms of work is increasing, particularly in sectors where women work, it is essential that the measures of this legislative proposal equally apply to these workers. For example, many women with disabilities work in sheltered workshops. It is crucial that the measures of this legislative proposal are applied to this form of work in conformity to the UN Convention on the Rights of Persons with Disabilities (UNCPRD)⁹. On average, only 48.3% of women with disabilities are in employment in the EU, compared with 53.3% of men with disabilities (EU-SILC 2017).</p>	

⁹ [Convention on the Rights of Persons with Disabilities – Articles | United Nations Enable](#)



<p style="text-align: center;"><i>Article 3</i></p> <p style="text-align: center;">Definitions</p>	<p style="text-align: center;"><i>Article 3</i></p> <p style="text-align: center;">Definitions</p> <p style="text-align: center;">Proposed Ammendmend(s)</p>
<p>1. For the purposes of this Directive, the following definitions apply:</p> <p>(a) ‘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 (‘complementary or variable components’), in respect of his/her employment from his/her employer;</p> <p>(b) ‘pay level’ means gross annual pay and the corresponding gross hourly pay;</p> <p>(c) ‘pay gap’ means the difference of average pay levels between female and male workers of the employer, expressed as percentage of the average pay level of male workers;</p> <p>(d) ‘median pay level’ means the pay of the worker that would have half of the workers earn more and half less than they do;</p> <p>(e) ‘median pay gap’ means the difference between the median pay level of female and median pay level of male workers expressed as percentage of the median pay level of male workers;</p> <p>(f) ‘quartile pay band’ means each of four equal groups of workers into which they are divided according to their pay levels – from the lowest to the highest;</p> <p>(g) ‘category of workers’ means workers performing the same work or work of equal value grouped by the workers’ employer based on criteria as laid down in Article 4 of this Directive and specified by the employer concerned;</p>	<p>1. For the purposes of this Directive, the following definitions apply:</p> <p>(a) ‘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 (‘complementary or variable components’), in respect of his/her employment from his/her employer;</p> <p>(b) ‘pay level’ means gross annual pay and the corresponding gross hourly pay;</p> <p>(c) ‘pay gap’ means the difference of average pay levels between female and male workers of the employer, expressed as percentage of the average pay level of male workers;</p> <p>(d) ‘median pay level’ means the pay of the worker that would have half of the workers earn more and half less than they do;</p> <p>(e) ‘median pay gap’ means the difference between the median pay level of female and median pay level of male workers expressed as percentage of the median pay level of male workers;</p> <p>(f) ‘quartile pay band’ means each of four equal groups of workers into which they are divided according to their pay levels – from the lowest to the highest;</p> <p>(g) ‘category of workers’ means workers performing the same work or work of equal value grouped by the workers’ employer based on criteria as laid down in Article 4 of this Directive and specified by the employer concerned following the definition that “Work</p>



<p>(h) 'direct discrimination' means the situation where one person is treated less favourably on grounds of sex than another person is, has been or would be treated in a comparable situation;</p> <p>(i) 'indirect discrimination' means the situation where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;</p> <p>(j) 'equality body' means the body or bodies designated pursuant to Article 20 of Directive 2006/54/EC, for the promotion, analysis, monitoring and support of equal treatment of all</p>	<p><i>shall be deemed of <u>equal value</u> if, based on a comparison of two groups of workers which have <u>not been formed in an arbitrary manner</u>, the work performed is comparable, based on an overall assessment of the requirements and nature of the work, and criteria such as knowledge and skills, responsibility and effort. In assessing the nature of the work, particular account is to be taken of working conditions. For the avoidance of doubt, the working hours shall not be a relevant factor. If professional experience is to be taken into account as one factor to determine if work is of equal value, the party claiming that such factor must be regarded shall bear the burden of proof to show that increased professional experience generally – and not only in specific cases – leads to added value for the work actually performed by the workers.”</i></p> <p>(h) 'direct discrimination' means the situation where one person is treated less favourably on grounds of sex than another person is, has been or would be treated in a comparable situation;</p> <p>(i) 'indirect discrimination' means the situation where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;</p> <p>(j) 'equality body' means the body or bodies designated pursuant to Article 20 of Directive 2006/54/EC, for the promotion, analysis, monitoring and support of equal treatment of all</p>
---	--



<p>persons without discrimination on grounds of sex;</p> <p>(k) 'labour inspectorate' means the national body or bodies that have an inspection function on the labour market in a Member State.</p>	<p>persons without discrimination on grounds of sex;</p> <p>(k) <i>'Gender' shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men;</i>¹⁰</p> <p>(l) <i>Intersectional discrimination recognises that individuals do not experience discrimination as members of a homogenous group but rather, as individuals with multidimensional layers of identities, statuses and life circumstances. It means acknowledging the lived realities and experiences of heightened disadvantage of individuals caused by multiple and intersecting forms of discrimination, which requires targeted measures with respect to disaggregated data collection, consultation, policymaking, enforceability of non-discrimination and provision of effective remedies.</i>¹¹</p> <p>(m) <i>'workers representatives'</i>¹² <i>mean (a) trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or (b) elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned.</i></p>
--	---

¹⁰ Council of Europe Convention on preventing and combating violence against women and domestic violence Istanbul, 11.V.2011, article 3, c. (definitions) : [CETS 210 - Council of Europe Convention on preventing and combating violence against women and domestic violence \(coe.int\)](#)

¹¹ UN CRPD, General Comment No. 3 on women and girls with disabilities (2016), [Treaty bodies Download \(ohchr.org\)](#)

¹² C135 - Workers' Representatives Convention, 1971 (No. 135), article 3, [Convention C135 - Workers' Representatives Convention, 1971 \(No. 135\) \(ilo.org\)](#)



	<p>(k) <i>(n)</i> 'labour inspectorate' means the national body or bodies that have an inspection function on the labour market in a Member State.</p>
<p>Justification The definition of "workers' representative" in Article 3 (1)(k) based on the ILO definition is a first meaningful step in clarifying the term in the context of the proposed directive, which recognises trade unions in requesting information on behalf of workers (7(4))</p>	

<p style="text-align: center;"><i>Article 3</i> Paragraph 2</p> <p>2. For the purposes of this Directive, discrimination includes:</p> <p>(a) harassment and sexual harassment, within the meaning of Article 2(2) of Directive 2006/54/EC, as well as any less favourable treatment based on a person's rejection of or submission to such conduct, when such harassment or treatment relates to or results from the exercise of the rights provided for in this Directive;</p> <p>(b) instruction to discriminate against persons on grounds of sex;</p> <p>(c) any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Council Directive 92/85/EEC61.</p>	<p style="text-align: center;"><i>Article 3</i> Paragraph 2 Proposed amendment</p> <p>2. For the purposes of this Directive, discrimination includes:</p> <p>(a) harassment and sexual harassment, within the meaning of Article 2(2) of Directive 2006/54/EC, as well as any less favourable treatment based on a person's rejection of or submission to such conduct, when such harassment or treatment relates to or results from the exercise of the rights provided for in this Directive;</p> <p>(b) instruction to discriminate against persons on grounds of sex;</p> <p>(c) any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Council Directive 92/85/EEC61;</p> <p><i>(d) failure by the employer to provide reasonable accommodation to workers with disabilities within the meaning of Article 5 of Directive 2000/78/EC.</i></p>
<p>Justification:</p> <p>The EU and all its Member States have ratified the UN Convention on the Rights of Persons with Disabilities (CRPD). Article 2 of the CRPD recognises denial of reasonable accommodation is a form of discrimination on the basis of disability. In relation to employment, States Parties must "ensure that reasonable accommodation is provided to persons with disabilities in the workplace" (article 27(1)(i)). Although Article 5 of Directive 2000/78/EC includes an obligation for employers to provide reasonable accommodation, this obligation is not implemented in compliance with the CRPD. A Report on Equality and Non-Discrimination published by the European Disability Forum in</p>	



2019 found that only in five EU Member States, legal provisions on reasonable accommodation would qualify as complying with the CRPD. We recommend that the Directive on Pay Transparency specifically mentions the denial of reasonable accommodation as a form of discrimination, which may also affect women with disabilities.

<i>Article 4</i> Equal work and work of equal value	<i>Article 4</i> Equal work and work of equal value Proposed amendment(s)
<p>1. Member States shall take the necessary measures to ensure that employers have pay structures in place ensuring that women and men are paid equally for the same work or work of equal value.</p>	<p>1. Member States shall take the necessary measures <i>after consulting the social partners and the equality bodies</i> to ensure that employers have pay structures in place ensuring that women and men are paid equally for the same work or work of equal value.</p>
<p>2. Member States shall take the necessary measures ensuring that tools or methodologies are established to assess and compare the value of work in line with the criteria set out in this Article. These tools or methodologies may include gender-neutral job evaluation and classification systems.</p>	<p>2. Member States shall take the necessary measures, <i>after consulting the social partners and the equality bodies,</i> ensuring that tools or methodologies are established <i>and are easily accessible to workers and employers</i> to assess and compare the value of work in line with the criteria set out in this Article <i>and to encourage the use of such tools or methodologies to determine pay levels.</i> These tools or methodologies <i>should be established with the involvement of social partners at company or sectoral level and shall</i> include gender-neutral job evaluation and classification systems.</p>
<p>3. The tools or methodologies shall allow assessing, in regard to the value of work, whether workers are in a comparable situation, on the basis of objective criteria which shall include educational, professional and training requirements,</p>	<p>3. The tools or methodologies <i>referred to in paragraph 2</i> shall allow assessing, in regard to the value of work, whether workers are in a comparable situation, on the basis of objective criteria <i>agreed</i></p>



<p>skills, effort and responsibility, work undertaken and the nature of the tasks involved. They shall not contain or be based on criteria which are based, whether directly or indirectly, on workers' sex.</p>	<p><i>upon with social partners which shall include but are not limited to:</i></p> <ul style="list-style-type: none"> a) educational, including formal and non formal educational, professional and training requirements, b) skills, including those necessary to meet the requirements of a job, people centred and interpersonal skills and problem solving; c) effort including mental and psycho-social effort and physical effort; d) responsibility, including for people, goods and equipment, information and financial resources; e) Working conditions, including those relating to the working environment (physical, psychological or emotional) and the organisational environment. <p>work undertaken and the nature of the tasks involved.</p> <p>The tools or methodologies shall not contain or be based on criteria which are based, whether directly or indirectly, on workers' sex. Member States shall provide support to employers and the social partners, including training and detailed guidance on establishing the objective, gender-neutral criteria referred to in paragraph 1 and the tools and methodologies referred to in paragraph 3.</p>
<p>Justification: We propose to extend the list of criteria for tools and methodologies to assess and compare the value of work, specifically gender-neutral job evaluation and classification systems.</p>	
<p>4. Whenever differences in pay can be attributed to a single source establishing the pay conditions, the assessment whether workers are carrying out the same work or work of equal value shall not be limited to situations in which female and male workers work for the same employer but may be extended to that single source. The assessment shall also not be limited to workers employed at the</p>	<p>4. Whenever differences in pay can be attributed to a single source establishing the pay conditions, the assessment whether workers are carrying out the same work or work of equal value shall not be limited to situations in which female and male workers work for the same employer but may be extended to that single source and cross-sector comparisons. The assessment shall also not be limited</p>



<p>same time as the worker concerned. Where no real comparator can be established, a comparison with a hypothetical comparator or the use of other evidence allowing to presume alleged discrimination shall be permitted.</p>	<p>to workers employed at the same time as the worker concerned or to the same sector nor to workers performing in the same establishment. Where no real comparator can be established, a comparison with a hypothetical comparator based on the objective and gender-neutral criteria as per article 4 paragraph 3 and agreed in coordination with social partners or the use of other evidence allowing to presume alleged discrimination shall be permitted. The comparator shall facilitate cross-sectoral comparisons.</p>
<p>Justification: Shifting perspective from formal qualifications to the recognition of the level of knowledge required for the job, regardless of how it was acquired, has been one way to ensure that value is given to acquired knowledge/skills of carers and the better valuing of care work. This is essential for work of 'equal value'.</p> <p>Sub-factors under skills, effort, responsibility and working conditions should include acquired learning, emotional/empathy skills, working with people with complex problems, dealing with difficult customers, emotional demands, communication skills, multitasking, lifting or moving people who are frail, restrictive light repetitive movements, exposure to chemicals and corrosive cleaning products etc., which are often overlooked in traditional job evaluation.</p>	
<p>5. Where a job evaluation and classification system is used for determining pay, it shall be based on the same criteria for both men and women and drawn up so as to exclude any discrimination on grounds of sex.</p>	<p>5. Member States shall ensure employers and social partners are provided with the necessary tools and guidance to introduce gender-neutral job evaluation and classification systems for determining pay. Where a job evaluation and classification system is used for determining pay, it shall be based on the same criteria for both men and women and drawn up so as to exclude any discrimination on grounds of sex, and ensure that skills associated with female dominated jobs are valued.</p>
<p>Justification It is crucial that all actors have access to these tools and therefore it should be envisaged that funding is made available through the EU budget (MFF programmes) to ensure that there is a level playing field. This could furthermore be facilitated by a gender budgeting approach.</p>	
<p>CHAPTER II</p>	<p>CHAPTER II</p> <p>Pay transparency 7. Right to information</p>



<p>Pay transparency 7. Right to information</p>	<p>Proposed amendments</p>
<ol style="list-style-type: none">1. Workers shall have the right to receive information on their individual pay level and the average pay levels, broken down by sex, for categories of workers doing the same work as them or work of equal value to theirs, in accordance with paragraphs 3 and 4.2. Employers shall inform all workers, on an annual basis, of their right to receive the information referred to in paragraph 1.3. Employers shall provide the information referred to in paragraph 1 within a reasonable period of time upon a worker's request. The information shall be provided in accessible formats for workers with disabilities upon their request.4. Workers shall have the possibility to request the information referred to in paragraph 1 through their representatives or an equality body.	<ol style="list-style-type: none">1. Workers shall have the right to receive clear and complete information on the mean and median gender pay gap between all workers in the company as well as the right to receive their individual pay level and the average pay levels, broken down by sex, for categories of workers doing the same work as them or work of equal value to theirs, in accordance with paragraphs 3 and 4. When requested by the worker, this shall also include information on how pay levels are determined, including through an existing job evaluation or job classification scheme as well as the gender pay gap of the employer as a whole.2. Employers shall inform all workers, on an annual basis, of their right to receive the information referred to in paragraph 1, and on the steps the worker should undertake to make use of their right.3. Employers shall provide the information referred to in paragraph 1 within one month of a reasonable period of time upon a worker's request. The information shall be provided in writing and the employer shall retain proof of transmission or receipt, in electronic form. The information shall be provided in accessible formats for workers with disabilities upon their request.4. Workers shall have the right possibility to request the information referred to in paragraph 1 through their representatives or an



<p>5. Workers shall not be prevented from disclosing their pay for the purpose of enforcing the principle of equal pay between men and women for equal work or work of equal value.</p> <p>6. Employers may require that any worker having obtained information pursuant to this Article shall not use that information for any other purpose than to defend their right to equal pay for the same work or work of equal value and not disseminate the information otherwise.</p>	<p>equality body, <i>in order to guarantee confidentiality and anonymity. Workers shall, personally or through their workers' representatives, have the right to request additional clarifications and details regarding any of the data provided, and receive a substantiated reply. Workers' representatives, including trade unions, shall have the possibility to request information on pay level on behalf of a worker, broken down by sex and categories of workers.</i></p> <p>5. Workers shall not be prevented from disclosing their pay for <i>any the purpose of enforcing the principle of equal pay between men and women for equal work or work of equal value.</i></p> <p>6. Employers may require that any worker having obtained information pursuant to this Article shall not use that information for any other purpose than to defend their right to equal pay for the same work or work of equal value and not disseminate the information otherwise.</p>
<p>Justification The purpose of this legislative proposal is transparency and access to information, which should become a right for all workers and their representatives.</p>	



<p style="text-align: center;"><i>Article 8</i></p> <p style="text-align: center;">Reporting on pay gap between female and male workers</p>	<p style="text-align: center;"><i>Article 8</i></p> <p style="text-align: center;">Reporting on pay gap between female and male workers</p> <p style="text-align: center;">Proposed amendment(s)</p>
<p>1. Employers with at least 250 workers shall provide the following information concerning their organisation, in accordance with paragraphs 2, 3, and 5:</p> <ul style="list-style-type: none">(a) the pay gap between all female and male workers;(b) the pay gap between all female and male workers in complementary or variable components;(c) the median pay gap between all female and male workers;(d) the median pay gap between all female and male workers in complementary or variable components;(e) the proportion of female and male workers receiving complementary or variable components;(f) the proportion of female and male workers in each quartile pay band;(g) the pay gap between female and male workers by categories of workers broken down by ordinary basic salary and	<p>1. Employers with at least 250 workers shall provide the following information concerning their organisation, in accordance with paragraphs 2, 3, and 5:</p> <ul style="list-style-type: none">(a) the pay gap between all female and male workers;(b) the pay gap between all female and male workers in complementary or variable components; <p><i>(b.a new) the pay gap between female and male workers without disabilities and female and male workers with disabilities when they have communicated their disability to the employers;</i></p> <ul style="list-style-type: none">(c) the median pay gap between all female and male workers;(d) the median pay gap between all female and male workers in complementary or variable components;(e) the proportion of female and male workers receiving complementary or variable components;(f) the proportion of female and male workers in each quartile pay band;(g) the pay gap between female and male workers by categories of workers broken down by ordinary basic salary and



complementary or variable components.	complementary or variable components.
<p>Justification</p> <p>Equal pay should not depend on the size of the work force nor the sector and should be an obligation for all employers. While we recognise that lengthener reporting periods could be established for SMEs, they should not be exempt from reporting. Furthermore, the EC Recommendation 2014¹³ refers to a threshold of 50 workers</p> <p>Analysis of pay differences can be done in multiple ways and therefore give different results. It should be made clear that if the workers representatives have a different opinion for example finding that differences cannot be justified by objective and gender-neutral factors, the employer should also be obliged to make the joint assessment. An assessment of the organisations' pay practices would be important too.</p> <p>Justification (article b.a new): Women with disabilities are affected by both the gender and disability pay gap. Under the Article 27(1)(b) of the CRPD, the EU and its member states have an obligation to protect the rights of persons “on an equal basis with others, to just and favorable conditions of work, including equal opportunities and equal remuneration for work of equal value.”</p>	
<p style="text-align: center;"><i>Article 8</i></p> <p>3. The employer shall publish the information referred to in paragraph 1, points (a) to (f) on an annual basis in a user-friendly way on its website or shall otherwise make it publicly available. The information from the previous four years, if available, shall also be accessible upon request. In addition, the employer shall share this information with the monitoring body referred to in paragraph 6</p>	<p style="text-align: center;"><i>Article 8</i> Proposed amendment(s)</p> <p>3. The employer shall publish the information referred to in paragraph 1, points (a) to (f) on an annual basis in a user-friendly way on its website or shall otherwise make it publicly available. <i>The information shall be published in accessible formats for persons with disabilities in line with EU harmonised accessibility legislation.</i> The information from the previous four years, if available, shall also be accessible upon request. In addition, the employer shall share this information with the monitoring body referred to in paragraph 6</p>
<p>Justification:</p> <p>The European Union has adopted in recent years a set of accessibility legislation for both the public and the private sectors, namely the Web Accessibility Directive and the European Accessibility Act. These Directives are underpinned by harmonised European Standards, such as the EN 301 549 on accessibility requirements for ICT products and services. Website owners must comply with the state of the art accessibility requirements in order to publish digital information in an accessible manner for persons with disabilities.</p>	

¹³ [EUR-Lex - 32014H0124 - EN - EUR-Lex \(europa.eu\)](#)



	<p style="text-align: center;">NEW article 22a Intersectionality</p> <p>1. Member States shall take the necessary measures to ensure that in legal proceedings aimed at enforcing the rights and obligations relating to equal pay for the same work or work of equal value, the court, equality body or other competent authority duly assesses the existence of discrimination based on a combination of gender and another ground of discrimination protected under Directive 2000/43/EC or Directive 2000/78/EC and takes due account of such circumstances for substantive and procedural purposes.</p> <p>2. Member States, employers, workers representatives, the equality body and the monitoring bodies designated pursuant to Article 26 are encouraged to take into account the existence of intersectional forms of discrimination when implementing and reporting on pay transparency measures and to develop and implement specific actions to identify and accordingly address when gender-based pay discrimination intersects with other grounds of discrimination. They may also analyse and revise any practice or criteria that could be discriminatory and to actively address the concerns of women facing intersecting forms of discrimination within a workplace or sector.</p>
--	---



	<p>3. <i>When collecting data received from employers, the equality bodies shall, where possible, analyse that data in a way that takes account of multiple and intersectional forms of discrimination.</i></p>
--	--

Justification:

NB: Regarding the introduction of Article 22(a) on intersectionality, it is of utmost importance to underline that any reference to intersectionality must not result in abandoning the male comparator or lead to its replacement (e.g. an equal pay claim between a woman with disabilities and a woman without disabilities). It is highly counterproductive to a Directive on equal pay to allow an employer to choose any other comparator than the male comparator. In addition, the practical applicability of references to intersectionality is unclear and risks to weaken the enforcement of the provisions without actually achieving meaningful improvements for women that face intersectional forms of discrimination.

<i>Article 26</i> Monitoring and awareness-raising	<i>Article 26</i> Monitoring and awareness-raising Proposed amendment(s)
<p>3. Member States shall ensure that the tasks of the monitoring body include the following:</p> <p>(a) to raise awareness among public and private undertakings and organisations, social partners and the general public to promote the principle of equal pay and the right to pay transparency;</p> <p>(b) to tackle the causes of the gender pay gap and devise tools to help analyse and assess pay inequalities;</p> <p>(c) to aggregate data received from employers pursuant to Article 8(6), and publish this data in a user-friendly manner;</p> <p>(d) to collect the joint pay assessment reports pursuant to Article 9(3); (e) to aggregate data on the number and types of pay discrimination claims brought before the courts and</p>	<p>3. Member States shall ensure that the tasks of the monitoring body include the following:</p> <p>(a) to raise awareness among public and private undertakings and organisations, social partners and the general public to promote the principle of equal pay and the right to pay transparency;</p> <p>(b) to tackle the causes of the gender pay gap and devise tools to help analyse and assess pay inequalities;</p> <p>(c) to aggregate data received from employers pursuant to Article 8(6), and publish this data in a user-friendly manner <i>and in an accessible manner for persons with disabilities in accordance with EU harmonised accessibility legislation;</i></p> <p>(d) to collect the joint pay assessment reports pursuant to Article 9(3);</p>



<p>complaints brought before the competent public authorities, including equality bodies.</p>	<p>(e) to aggregate data on the number and types of pay discrimination claims brought before the courts and complaints brought before the competent public authorities, including equality bodies.</p>
<p>Justification: The European Union has adopted in recent years a set of accessibility legislation for both the public and the private sectors, namely the Web Accessibility Directive and the European Accessibility Act. These Directives are underpinned by harmonised European Standards, such as the EN 301 549 on accessibility requirements for ICT products and services. Website owners must comply with the state of the art accessibility requirements in order to publish digital information in an accessible manner for persons with disabilities.</p>	
<p style="text-align: center;"><i>Article 28</i> Statistics</p> <p>Member States shall provide the Commission (Eurostat) with up-to-date gender pay gap data annually and in a timely manner. These statistics shall be broken down by gender, economic sector, working time (full-time/part-time), economic control (public/private ownership) and age and be calculated on an annual basis.</p>	<p style="text-align: center;"><i>Article 28</i> Statistics Proposed amendment(s)</p> <p>Member States shall provide the Commission (Eurostat) with up-to-date gender pay gap data annually and in a timely manner. These statistics shall be broken down by gender, economic sector, working time (full-time/part-time), economic control (public/private ownership), disability and age and be calculated on an annual basis.</p>
<p>Justification: According to Article 31 of the CRPD, the EU and its Member States have an obligation to “collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the CRPD”. The information collected must be “disaggregated, as appropriate, and used to help assess the implementation of States Parties’ obligations under CRPD and to identify and address the barriers faced by persons with disabilities in exercising their rights.” As women with disabilities face both a gender and disability pay gap, we recommend that the Directive requests that the data collected by disaggregated by disability.</p>	