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COMMISSION STAFF WORKING DOCUMENT

**IMPACT ASSESSMENT ON COSTS AND BENEFITS OF MEASURES TO
ENHANCE THE TRANSPARENCY OF PAY**

Accompanying the document

Commission Recommendation

**on strengthening the principle of equal pay between men and women through
transparency**

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Executive Summary Sheet

Impact assessment on the costs and benefits of measures to enhance the transparency of pay

A. Need for action

Why? What is the problem being addressed?

A substantial divide between pay levels of women and men still persists throughout the EU: the average gender pay gap ("GPG") in the EU Member States ("MSs") currently stands at 16.2% although the principle of equal pay between men and women has been enshrined in the Treaties since 1957. The GPG ranges from 2.3% to 27.3% across the MSs and is generally considerably larger in the private than in the public sector. A considerable proportion of the GPG can only be explained by discriminatory practices. Continued non-compliance with the principle of equal pay for equal work and work of equal value acts as a disincentive for women to enter the job market and has detrimental effects on the EU's employment and growth rates and the achievement of Europe 2020 objectives.

Lack of awareness of the problem and non-transparency of pay as well as lack of incentives to assess and improve fairness of the pay systems are key contributing factors to the persistent pay discrimination and tackling this problem would help to better implement the principle of equal pay and reduce the GPG.

What is this initiative expected to achieve?

The initiative will enhance the transparency of pay in order to enable employers, social partners and individual employees to assess whether and to what extent the principle of equal pay appears to be respected and whether remedial action or collective bargaining is warranted.

It will raise awareness of social partners and individual employers of the pay structures in companies or industries and the potential non-compliance with the principle of equal pay inherent in these structures and to incentivise them to remedy this situation where necessary.

The initiative will reduce those elements of the GPG that are explained by discriminatory practices and thus bring about a decrease in the GPG.

What is the value added of action at the EU level?

A considerable change in the GPG regarding pay discrimination will only occur if the issue is dealt with at EU level, as measures introduced by some MSs on pay transparency vary broadly in effectiveness, and a number of MSs have not taken any action in this area. Reducing the GPG would encourage more women to enter the labour market and to achieve the target of the Europe 2020 Strategy of a 75% employment rate. An EU-level initiative would fully respect the principle of subsidiarity, as it would not aim to replace national measures but to ensure a comparable level of promotion of pay equality throughout the EU.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

The following options were considered:-

- Option 1: No further action at EU level (baseline scenario);
- Option 2: Entitlement for employees to obtain information on pay levels upon request;
- Option 3: Regular reporting of companies on pay levels;
- Option 4: Pay audits;
- Option 5: Consideration of equal pay as a separate issue by social partners in collective bargaining.

Options 2 – 5 are assessed both on the basis of their introduction by binding legislation (Directive) and on the basis of a non-binding initiative in the form of a Commission Recommendation as impacts will obviously have to be expected to differ between measures of a mandatory and voluntary nature. In addition, for a Recommendation as a more flexible soft-law instrument one could envisage encouraging Member States to take one or more of the measures listed in Options 2 - 5 depending on the specific national circumstances.

A non-binding initiative in the form of Commission Recommendation, including options 2-5, appears to represent the best method of combining the need for horizontal action with the flexibility that is necessary to do justice to the complexity of the issues and the divergence of circumstances in MSs.

Who supports which option?

The social partners were consulted. ETUC and EWL (European Women's Lobby) welcomed a possible EU level action to strengthen wage transparency, both binding and non-binding. The employers' representatives (BusinessEurope, CEEP and UEAPME) expressed their doubts as to the need for an EU level approach but the public sector employers were more favourably disposed.

The European Parliament has consistently called for legislative action including measures to increase wage transparency, such as regular pay audits, job classification systems and publication of their results.

C. Impacts of the preferred option

What are the benefits of the preferred options (if any, otherwise main ones)?

The benefits of the individual components of the preferred options (options 2-5 introduced by a non-binding initiative) are:-

- Entitlement for employees to obtain information on pay levels upon request: reduction of the GPG by 0.33 – 0.5%; overall net positive economic effects around €53 billion EU-wide or about €3 billion per year.
- Regular reporting of companies on pay levels: reduction of the GPG by 0.66 – 1.5%; overall net positive economic effects around €122 billion EU-wide, or about €6 billion per year.
- Pay audits: reduction of the GPG by 0.66 – 2%; overall net positive economic effects around €132 billion EU-wide or about €7 billion per year.
- Consideration of equal pay as a separate issue by social partners in collective bargaining would lead to a reduction of the GPG by 0 – 0.33%; overall net positive economic effects around €17 billion EU-wide, or about €1 billion per year.
- Additional economic and social benefits include better use of women's skills, recruitment of better employees, increasing motivation, productivity and improving the image of the company.

What are the costs of the preferred options (if any, otherwise main ones)?

The costs of the individual components of the preferred options (options 2-5 introduced on a non-binding basis) are:-

- Entitlement for employees to obtain information on pay levels upon request: administrative burden for large companies (1000+ employees) per year would be a maximum of €466 and a total cost across the EU of €9 million; monitoring costs for MSs - approximately €1,000 per MS.
- Regular reporting of companies on pay levels: administrative burden for large companies per year would be a maximum of €2,028 – total cost across the EU of €38 million; monitoring costs for MSs - approximately €4,000 per MS.
- Pay audits: administrative burden for large companies per year would be €10,000, leading to a total cost across the EU of €188 million; monitoring costs for MSs - a maximum of €4,000 per MS.
- Consideration of equal pay in collective bargaining: average annual administrative burden for companies per year could amount to a maximum total cost across the EU of €12 million; the monitoring costs for MSs - approximately €400 per MS.

How will businesses, SMEs and micro-enterprises be affected?

This will depend on the approach taken by individual MSs in implementing the Commission Recommendation (including options 2-5) to suit their particular domestic circumstances. On the individual components:-

- Entitlement for employees to obtain information on pay levels upon request: it is recommended that this would apply to all undertakings.
- Regular reporting of companies on pay levels: it is recommended to cover undertakings with more than 50 employees.
- Pay audits: it is recommended to cover undertakings with more than 250 employees.
- Consideration of equal pay as a separate issue by social partners in collective bargaining: this would apply to social partners only and not directly to businesses.

Will there be significant impacts on national budgets and administrations?

No. The preferred options are non-binding and allows for Member States to take their own tailor-made approach. The monitoring costs for all the individual policy tools assessed are very limited as set out above.

Will there be other significant impacts?

No.

D. Follow up

When will the policy be reviewed?

In the case of the preferred options (options 2-5 introduced in the form of the Commission Recommendation) MSs would be free to decide what type of action to take at national level. The Commission would monitor the situation to assess progress made and report to the EP and the Council.

1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

1.1. Policy background

Promoting equality between women and men is one of the EU's main objectives, as reflected in its Treaties (Article 3(3) TEU, Article 8 TFEU, Article 157 TFEU) as well as in the Charter of Fundamental Rights (Article 23).

The principle of equal pay for men and women has been a fundamental principle of law since the Treaty of Rome where it was laid down in Article 119 (now Article 157). It was further specified by secondary legislation as early as 1975 in Council Directive 75/117/EEC and is today a key element of Directive 2006/54/EC on the implementation of the principle of equal treatment of men and women in matters of employment and occupation.

Article 4 of the Directive establishes the principle of equal pay by providing that for the same work or for work of equal value direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be prohibited. Where job classification systems are used for determining pay, the Directive provides that they must be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on the grounds of sex.

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

In its Strategy for Equality between Women and Men (2010-2015) the Commission reiterated its strong commitment to promote equal pay between men and women for equal work or work of equal value. It announced that the Commission would explore together with the social partners possible ways to improve the transparency of pay. The Strategy builds on the priorities of the Women's Charter¹, signed by President Barroso in 2010, which reaffirms the Commission's commitment to equal pay for equal work or work of equal value and to a forceful mobilisation of all instruments, both legislative and non-legislative, to close the gender pay gap.

The European Parliament has consistently called for more action to enhance the application of the equal pay provisions at the European level. Its resolutions adopted in 2008 and 2012 call upon the Commission to come forward with a legislative proposal to amend the Directive. The 2012 resolution² explicitly asks for a report on the application of the Directive to launch a revision process, in particular in relation to its provisions on equal pay. The resolution recommends, among other things, the introduction of measures aiming to increase wage transparency, such as regular pay audits and publication of their results as well as disclosure of information on remuneration in addition to pay to employees, trade unions and relevant national authorities (labour inspectorates, equality bodies). It also suggests encouraging the social partners and Member States to undertake job evaluation schemes free from gender bias, to implement job classification systems, and to foster the concept of work based on equal pay as well as to ensure a better provision of the statistics on gender pay gap.

¹ COM(2010) 78 final.

² European Parliament resolution of 24 May 2012 with recommendations to the Commission on the application of the principle of equal pay for male and female workers for equal work or work of equal value, P7_TA-PROV(2012)0225.

Against this background, an analysis was carried out to identify and evaluate the policy options available to tackle the **discriminatory dimension** of the gender pay gap and assess the impacts of these policy options.

1.2. Procedural issues and consultation of interested parties

1.2.1. Identification, Organisation and timing

A wide range of internal and external studies were used to prepare this IA. In 2011, Matrix Insight Ltd was commissioned to carry out a study on possible EU measures to tackle the gender pay gap, which was finalised in April 2012 (hereinafter: Matrix study). The methodology used in this IA to calculate the impacts and all the quantified data are primarily based on this study.

The sources used also include: the Belgian Presidency report of December 2010 "The gender pay gap in the Member States of the European Union: quantitative and qualitative indicators", which provides detailed information on the gender pay gap in the different Member States and develops a set of indicators with regard to the pay gap; the EP European Added Value Assessment of the application of the principle of equal pay for men and women for equal work of equal value of June 2013, examining the impact of the recommendations provided in the EP resolution of 2012³; the UK Impact Assessment of legislative proposals to promote pay of April 2012, examining the economic impact of the legislative actions aiming to increase wage transparency; the European Evaluation Consortium's study evaluating the effectiveness of the current legal framework on equal pay for equal work or work of equal value in tackling the gender pay gap of 2009; and the opinion of the Advisory Committee on Equal Opportunities for Women and Men, composed by delegates from Member States and social partners, adopted in June 2009⁴.

This IA was submitted to the Impact Assessment Board (IAB) in December 2013, for which the IAB issued the first opinion on 19 December 2013⁵. After addressing the comments provided in the opinion, the IA was resubmitted to the IAB for further scrutiny in January 2014. A second opinion of the IAB was issued on 7 February 2014⁶.

The opinions included recommendations on strengthening the subsidiarity analysis as well as streamlining the presentation of the policy options assessed. It was recommended to better explain the gender pay gap problem and its causes as well as describe in greater detail the situation in Member States by explaining the reasons behind the very different performance at the national level shown by gender pay gap data. It was also suggested to provide more details regarding stakeholder's views and Member States' relevant experiences with similar measures as the ones analysed in the IA. It was further recommended to enhance the presentation of the distributional effects as well as the analysis of social impacts. The opinions also indicated that the effectiveness of the retained measures should be assessed more in-depth. Finally, it was recommended putting forward the set of indicators to monitor the success of those measures in reducing the gender pay gap.

³ Available at [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/504469/IPOL-JOIN_ET\(2013\)504469_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/504469/IPOL-JOIN_ET(2013)504469_EN.pdf)

⁴ Opinion on the effectiveness of the current legal framework on Equal pay for equal work or work of equal value in tackling the gender pay gap, available at <http://ec.europa.eu/social/BlobServlet?docId=3176&langId=en>.

⁵ Ares(2013)3773605.

⁶ Ares(2014)304237.

The above recommendations were addressed to the largest extent possible in this IA.

1.2.2. Consultations and expertise

The Commission services consulted Member States in July 2012 on the application of the equal pay provisions of Directive 2006/54/EC. In the consultation Member States were specifically asked what measures they had taken to ensure wage transparency, in particular (i) how their national laws enable victims of pay discrimination to obtain relevant information on comparable jobs and salaries as well as (ii) what measures were taken to encourage employers to promote equal pay and to make appropriate information available to the employees, such as an overview of the proportions of men and women at different levels of an organisation and their respective pay. The information received from Member States was taken into account when assessing the need for EU level measures on equal pay and when drafting the Report on the application of Directive 2006/54/EC⁷.

In June 2009 the Advisory Committee on Equal Opportunities for Women and Men, including delegates from Member States and social partners issued an opinion on the effectiveness of the current legal framework on equal pay for equal work or work of equal value in tackling the gender pay gap. Amongst the possible key both EU and national level measures on equal pay the Committee listed improvement of information and transparency regarding wages paid by employers. In its Opinion the Committee also stressed the importance of the role of social partners in ensuring effective application of the principle of equal pay, including by incorporating equal pay in collective bargaining.

In 2009 the national gender equality bodies were consulted, in the form of a written questionnaire, about their views on what could be done to improve national and EU legal framework on equal pay. Most of the national equality bodies identified some areas where EU intervention would be useful. They recommended, inter alia, the EU level promotion of publicity of information on pay and requirement for companies to draw up equality plans.

Taking into account the non-binding nature of the envisaged initiative⁸ (see below on the consultation concerning a draft Recommendation) and in line with the Strategy for equality between women and men 2010-2015, the Commission principles and guidelines on the collection and use of expertise⁹ as well as the 2012 Review of the Commission Consultation Policy¹⁰, the Commission services conducted an informal targeted consultation, which included the EU-level organisations representing the main relevant stakeholders in Member States that would be impacted by an EU initiative in the field of equal pay. The European umbrella organisations of national employers, employees and NGOs active in women's rights protection area were consulted number of times on the issues concerning effective implementation of the equal pay provisions at the national level. European social partners (ETUC, CEEP, BusinessEurope, EUROCADRES, UEAPME), which in turn sought feedback

⁷ Report from the Commission to the European Parliament and the Council on the application of 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, COM(2013) 861 final.

⁸ Neither Article 157 nor Article 292 TFEU as a legal basis impose an obligation for a formal consultation under Article 154 TFEU.

⁹ Communication from the Commission on the collection and use of expertise by the Commission: principles and guidelines "Improving the knowledge base for better politics", COM(2002)713 final.

¹⁰ Commission Staff Working Document "Review of the Commission Consultation Policy" SWD(2012)422 final accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "EU Regulatory Fitness".

from their national member associations, and the European Women's Lobby (EWL) were repeatedly consulted in the preparation of both the Report on the application of Directive 2006/54/EC including its sections and annexes dedicated to the principle of equal pay in general and specifically on the project of a Recommendation promoting equal pay through enhanced transparency.

The social partners and the EWL were consulted in preparing the Report on the application of Directive 2006/54/EC and its annexes. In July 2012 they were consulted regarding the transposition and application of Directive 2006/54/EC, including provisions on equal pay, and in January 2013 on an annex of the Report on gender neutral job evaluation and classification systems. A technical workshop concerning this annex took place on 27 February 2013.

The social partners and EWL were also separately and specifically consulted on a draft Recommendation. In May 2013 a discussion document was circulated highlighting the problem of the persisting gender pay gap phenomenon as well as the significance of pay transparency in that context and inviting the social partners and the EWL to provide their views on the possible EU level measures aiming to tackle the gender pay effectively. The discussion document also listed the key measures aiming to increase pay transparency, proposed in the draft Recommendation, followed by a workshop of 21 June 2013 to further discuss the issues raised in that document.

The European social partners and the EWL consulted their national member organisations thus ensuring a feedback reflecting the full spectrum of views of the interested circles, i.e. employers and trade unions responsible for the determination of wages and wage levels and the organisations promoting the principle of equal pay. They provided their views both in writing and during the discussion at the workshop. The EU-level organisations, most notably the European social partners which collected the input of their national member organisations that would be impacted by an EU initiative on equal pay, were consulted on the measures analysed in this IA.

Employees' representatives (ETUC) as well as the European Women's Lobby (EWL) expressed support regarding EU level action and **all the transparency measures** listed in the consultation document, especially stressing the potential effectiveness of **pay audits** and discussion of equal pay issues in **collective bargaining**. They considered regularly providing employees with **information on pay and wage composition** an essential tool to address gender pay inequalities. The main thrust of their contribution was a preference for binding rather than non-binding measures and not a clear choice of one policy option over the others.

Employers' organisations showed less support for EU-level measures on pay transparency, with the exception of European public employers (CEEP). European public employers indicated their support for a measure on pay audits as well as collective bargaining and disclosure of wages by professional categories, broken down by gender. The European SME association (UEAPME) noted that transparency should be linked to transparency of pay systems and not pay of individuals, therefore measures providing indication of pay at sectoral level could provide better knowledge of pay structures and help avoiding gender bias. Overall, most employers' organisations voiced their general scepticism towards EU-level measures rather than advocating one particular policy option. Their horizontal concerns as regards the lack of a "one-size-fits-all" solution and as regards data protection were carefully taken into consideration in the analysis and influenced the comparison of options and the expression of preference for a flexible non-binding instrument. The social partners also

stressed the key role that social partners play in reducing the pay gap, which should be clearly recognised in any EU initiative¹¹.

The draft impact assessment was also discussed at a specially-convened meeting of Commission services on 2 December 2013. SG, LS, DG ENTR, DG ECFIN, DG EMPL and DG MARKT were invited to attend this inter-service meeting. The minutes of the meeting are attached to this report.

2. PROBLEM DEFINITION

2.1. The size of the overall gender pay gap

The gender pay gap currently still stands at 16.2% on average for the EU Member States ranging from 2.3% to 27.3% in individual Member States¹². The gender pay gap is still persistent and present in all Member States. In fact, the average gender pay gap for the EU27 remains practically unchanged since 1995. Even if a slight reduction in this figure is noticed during the last years (from 17.7% in 2006, 17.3% in 2008, 17.2% in 2009 and 16.2% in 2010 and 2011), this reduction is only a return to a level already reached earlier and in addition these latest developments are attributed in the literature to some extent to the crisis and the worsening of labour conditions in typically male-dominated sectors (such as construction) and not to an improvement of the pay conditions of women.

Table 1. The gender pay gap in the European Union 1995-2005¹³

	EU 27	EU 25	EU 15
1995	17 %	17 %	17 %
1996	17 %	17 %	16 %
1997	16 %	16 %	16 %
1998	17 %	17 %	16 %
1999	16 %	16 %	15 %
2000	16 %	16 %	16 %
2001	16 %	16 %	16 %
2002	16 %	16 %	16 %
2003	15 %	15 %	16 %
2004	15 %	15 %	15 %
2005	15 %	15 %	15 %

Source: Eurostat

¹¹ The summary of the replies is provided in an Annex 1 to this impact assessment.

¹² Eurostat Online Database 2011, available at <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tsdsc340>.

¹³ Eurostat estimate, available at <http://appsso.eurostat.ec.europa.eu>.

In any event the above figures show that no considerable improvement can be recorded in the overall gender pay gap ever since the phenomenon has been consistently measured across Member States.

Table 2. The gender pay gap figures in Member States 2006-2011¹⁴

	2006	2007	2008	2009	2010	2011	Difference 2011- 2006
EU27	17.7	:	17.3	17.2(p)	16.2	16.2 (p)	1.5
BE	9.5	10.1	10.2	10.1	10.2	10.2	-0.7
BG	12.4	12.1	12.3	13.3	13.0	13.0	-0.6
CZ	23.4	23.6	26.2	25.9	21.6	21.0	2.4
DK	17.6	17.7	17.1	16.8	16.0	16.4	1.2
DE	22.7	22.8	22.8	22.6	22.3	22.2 (p)	0.5
EE	29.8	30.9	27.6	26.6	27.7	27.3	2.5
IE	17.2	17.3	12.6	12.6	13.9	:	:
EL	20.7	21.5	22.0	:	15.0	:	:
ES	17.9	18.1	16.1	16.7	16.2	16.2 (p)	1.7
FR	15.4	17.3	16.9	15.2	15.6	14.8 (p)	0.6
HR	:	:	:	:	15.5	17.6 (p)	:
IT	4.4	5.1	4.9	5.5	5.3	5.8	-1.4
CY	21.8	22.0	19.5	17.8	16.8	16.4 (p)	5.4
LV	15.1	13.6	11.8	13.1	15.5	13.6	1.5
LT	17.1	22.6	21.6	15.3	14.6	11.9	5.2
LU	10.7	10.2	9.7	9.2	8.7	8.7 (p)	2.0
HU	14.4	16.3	17.5	17.1	17.6	18.0	-3.6
MT	5.2	7.8	9.2	7.7	7.2	6.0	-0.8
NL	23.6	19.3	18.9	18.5	17.8	17.9	5.7
AT	25.5	25.5	25.1	24.3	24.0	23.7	1.8
PL	7.5	14.9	11.4	8.0	4.5	4.5	3.0
PT	8.4	8.5	9.2	10.0	12.8	12.5	-4.1
RO	7.8	12.5	8.5	7.4	8.8	12.1	-4.3
SI	8.0	5.0	4.1	-0.9	0.9	2.3	5.7
SK	25.8	23.6	20.9	21.9	19.6	20.5	5.4
FI	21.3	20.2	20.5	20.8	20.3	18.2 (p)	3.1
SE	16.5	17.8	16.9	15.7	15.4	15.8	0.7

¹⁴ From reference year 2006 onwards, the calculation of the gender pay gap in unadjusted form is based on the methodology of the Structure of Earnings Survey (SES).

UK	24.3	20.8	21.4	20.6	19.5	20.1	4.2
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Source: Eurostat, SES (p) provisional data, : data not available.

This figure, the so-called “unadjusted” gender pay gap, shows the overall difference between gross hourly earnings of male and female employees.

2.2. The nature of the overall “unadjusted” gender pay gap

The unadjusted gender pay gap is a raw figure referring to the difference in average wages (gross hourly earnings) between men and women across all sectors. It does not include any adjustments to account for specific characteristics, such as those **relating to individuals** (e.g. age, education, number of children, type of occupation) and those **relating to occupation** (e.g. economic sector, place of employment, existence of collective agreements).

The gender pay gap is a multifaceted phenomenon that is explained by multiple reasons. These reasons include pay discrimination, undervaluation of female work, horizontal and vertical labour market segregation, the lack of childcare facilities, fiscal disincentives for women to work, an unequal burden of family and domestic responsibilities and gender stereotypes at the workplace. The effect of the gender pay gap on lifetime earnings means that women will also have lower pensions and are at a higher risk of poverty than men (especially for single parent families).

This impact assessment specifically focuses on measures tackling the discrimination component of the gender pay gap. Therefore a crucial distinction needs to be made between those aspects of the overall gender pay gap that are caused by pay discrimination and other aspects that reflect societal challenges of various kinds but do not amount in and of themselves to (pay) discrimination prohibited by Article 157 TFEU and Directive 2006/54/EC.

2.3. Examples of root causes of the gender pay gap not directly linked to pay discrimination

In order to briefly illustrate those root causes of the gender pay gap unrelated to pay discrimination as prohibited in EU legislation¹⁵ the **segregation of the labour market** is a suitable example. Women are concentrated in a much smaller number of sectors and professions than men. However, these tend to be associated with lower pay levels than those in which men predominate. Nearly 50% of women work in few sectors related to health, education and public administration, whereas men have access to a greater variety of occupations. Moreover, women are often employed as administrative assistants, shop assistants or low-skilled or unskilled workers — these occupations account for almost half of the female workforce. Conversely, only a third of managers are women in companies within the EU.

This segregation is reinforced by traditions and stereotypes which influence, for example, the choice of education courses, the evaluation and classification of occupations and employment patterns, including the balance between work and private life. This affects career choice, and means that far more women than men work on a part-time basis and women take more frequent career breaks than men, which has a negative impact on their careers. Almost a third

¹⁵ Since these factors unrelated to discrimination are not the subject-matter of this Impact Assessment there is no need for an extensive detailed description here.

of women work part-time, compared to only 8% of men. Although part-time work may be a personal choice and encourages the involvement of women in the workplace, the gap between women and men highlights the fact that they do not use their time in the same way and that the task of looking after dependent family members is largely borne by women. The lack of accessible, affordable and good quality childcare reinforces this lack of balance. In the same way, far more women than men choose to take parental leave. Parenthood permanently reduces the employment rate of women but not that of men. As a result, for these reasons that are not necessarily linked to discrimination, women have careers which are more disjointed, slower and shorter and thus less financially rewarding.

2.4. The forms of pay discrimination

Article 157 and Article 4 of Directive 2006/54/EC lay down the principle of equal pay both for equal work and work of equal value.

Straightforward discrimination for equal work, i.e. in relation to the exact same job, is a phenomenon that is still of relevance¹⁶ but appears to have somewhat decreased in significance. More considerable problems appear to reside today in securing equal pay for work of equal value. These problems are related to the evaluation of different types of work done predominantly by women or men, with a particularly big impact where this evaluation is carried out in the context of pay systems of large companies or in collective agreements. It also needs to be taken into consideration that the gender pay gap as well as its discriminatory element tends to be considerably bigger in the private sector than in the public sector since in the latter employers have less discretion in fixing wages¹⁷.

The CJEU has held on several occasions that determining what work of equal value is involves comparing the work of a female employee and a male counterpart by reference to demands made on workers in carrying out given tasks. Skills, effort and responsibility, or the work undertaken and the nature of the tasks involved in the work to be performed¹⁸ must be taken into account. These universal factors still need to be adapted to the size and the structure of the concrete businesses in question. Each of the four factors can be broken down into sub-factors capturing the characteristics of different jobs in greater detail, making them appropriate to the sector concerned.

Where gender-neutral job evaluation and classification systems are used, they can support credible definitions of work of equal value and detect indirect pay discrimination on grounds of sex. However, developing and using such gender-neutral job evaluation and classification systems is not widespread at national level. Moreover, companies often do not take the initiative to analyse their pay structures in order to determine pay discrimination and gender-bias mainly for lack of a strong incentive to do so and often due to a lack of awareness of a potential problem.

¹⁶ Particularly where wages are not systematically determined by collective pay systems but predominantly negotiated individually.

¹⁷ Based on the Eurostat Structure of Earnings Survey 2010, the gender pay gap in the public sector stands at 13.8%, while in private sector it is 22.4%.

¹⁸ See Case C-400/93 *Specialarbejderforbundet i Danmark v Dansk Industri, formerly Industriens Arbejdsgivere*, acting for Royal Copenhagen A/S., ECR 1995 I p. 1275; Case C-237-85 *Rummler* [1986] ECR 2101; Case C-333/97 *Lewen* [1999] ECR I-7243; Case C-471/08 *Parviainen* [2010] ECR I-6533 and Case C-194/08 *Gassmayr* [2010] ECR I-6281.

2.5. The proportion of the gender pay gap caused by pay discrimination

In order to assess the dimension of the problem of persistent pay discrimination and the resulting need for action it is necessary to move from the raw figure of the overall “unadjusted” gender pay gap, which incorporates the discrimination component but also a number of other factors, to a reliable estimate of the proportion of this general gender pay gap that is caused by discrimination. In view of the absence of exact statistics on pay discrimination and of the multiplicity of other aspects contributing to the overall gender pay gap it is a challenging process to precisely calculate the share of pay discrimination.

However, extensive research has been carried out to break up the overall gender pay gap into its various component parts and in particular to distinguish explanations that imply pay discrimination as defined and prohibited by Article 157 TFEU and Article 4 of Directive 2006/54/EC from other factors such as the segregation of labour markets that do not constitute discrimination.

The widely accepted Oaxaca-Blinder method, which was included in a list of indicators approved by the Council in 2001 and therefore used by the Belgian Presidency in its detailed report on the gender pay gap in 2010¹⁹, consists of decomposing the overall figure into a broad range of various components that can explain pay differences without per se constituting discrimination, examining the influence of each factor on the pay gap and calculating its size on the basis of econometric techniques.

In the Belgian Presidency report, the relative contributions to the total gender pay gap were calculated for the following factors:

- Part-time working arrangements
- Level of education
- Age
- Length of service in an enterprise
- Sector of the economy
- Type of occupation
- Hierarchical position
- Size of the enterprise
- Type of contract
- Type of economic and financial control of the enterprise

Once all the contributions of the above factors to the gender pay gap have been set aside, the remaining factors constitute the unexplained element of the pay gap. Given the high level of sophistication that has been reached in the development of the model for filtering out explanations that do not amount to discrimination **it is justified to assume that the unexplained part is a reasonable estimate of the proportion of the gender pay gap that comprises discrimination and provides an indication as regards the dimension of the**

¹⁹ See Belgian Presidency report 2010 "The gender pay gap in the Member States of the European Union: quantitative and qualitative indicators", available at: <http://register.consilium.europa.eu/pdf/en/10/st16/st16516-ad02.en10.pdf>.

discrimination component²⁰. That is, when adjustment has been made for all the non-discriminatory factors explaining the gender pay gap, it is reasonable to regard the remaining difference as the result of discrimination.

On the basis of this methodology the Belgian Presidency report, approved by the Council in 2010, provides that the component of the gender pay gap explained by discrimination constitutes approximately **half of the overall gender pay gap**, (i.e. around 8 % EU-wide), with only very limited variations between the Member States in this relative distribution. In all Member States the total percentage of the overall gender pay gap that could be traced back to the non-discriminatory factors ranged between 45 and 50.5 %²¹. Although estimates may vary²², **it is consensual that a considerable part of the gender pay gap can be traced back to discriminatory practices²³ and there is no evidence available that would suggest otherwise.**

The existing evidence thus strongly indicates a sizeable problem concerning the correct implementation of Article 157 TFEU and the provisions of Directive 2006/54/EC on equal pay in practice.

2.6. Commission activities to tackle the overall gender pay gap

The Commission has long been aware of the problem and launched a considerable number of initiatives to raise awareness and to contribute to reducing the pay gap by tackling its different contributing factors²⁴. These activities included, amongst others, EU-wide information campaigns, exchange of good practices²⁵, funding for civil society projects and the introduction of an Equal Pay Day. Moreover, in 2012 and in 2013, in the framework of the "Equality Pays Off" project, the Commission provided training and tools for companies throughout 34 European countries to understand and detect pay inequalities²⁶.

²⁰ While one has to take into account the possibility that a - rather limited - number of factors that influence the pay gap without representing discrimination (the Belgian Presidency reports lists a marital status and family situation factor) it also needs to be underscored that some of the factors discounted as non-discriminatory in general terms may actually comprise discriminatory practices. E.g. lower levels of pay in certain sectors covered by the "sectoral" factor could be caused by an undervaluation of work that does constitute discrimination).

²¹ See in more detail the Belgian Presidency report (op. cit.), p. 88 – 95 with various graphs including on the relative importance of the various different factors in different Member States.

²² The Matrix study carried out in 2012 for the Commission calculated an "adjusted" gender pay gap for each Member State to exclude the influence of factors that explain differences in pay between women and men to obtain a measure of the extent to which they are paid differently for equal work or work of equal value. The adjusted gender pay gap corresponds with the part of the pay gap that cannot be explained, and that is caused by pay discrimination within the meaning of the Directive. This adjusted gender pay gap ranged from 4.1% to 28.1% in Member States thus on average by far exceeding the estimate in the Belgian Presidency Report.

²³ The UK 2012 Impact Assessment on a package of measures to promote equal pay also states that equal pay remains a key concern as despite a legal framework around "equal pay being in force since 1975 there is still a significant gender pay gap and continuing evidence of non-compliance with the law in the public and private sectors.

²⁴ The Commission's gender equality website provides examples of best practices at national level to tackle the gender pay gap (http://ec.europa.eu/justice/gender-equality/gender-pay-gap/index_en.htm).

²⁵ http://ec.europa.eu/justice/gender-equality/other-institutions/good-practices/review-seminars/seminars_2013/equal_pay_days_en.htm

²⁶ http://ec.europa.eu/justice/gender-equality/equality-pays-off/index_en.htm

During the European Semester 2013, the Commission proposed and the European Council adopted country specific recommendations²⁷ to 13 Member States on female employment, in particular to improve childcare availability/quality, to include full-day school places and elderly care services, to harmonise pensionable ages and rights, to tackle fiscal disincentives and to reduce the overall gender pay gap and gender pension gap. The Commission's proposals for recommendations are based on analyses of each country's situation, which are presented in the accompanying Commission Staff Working Papers. The recommendations acknowledge the importance of gender equality on the labour market for the EU economy: increasing the participation of women in the labour market is seen as one of the major sources of boosting employment rates to meet the Europe 2020 headline target for employment. Currently, the employment rate of women in the EU is 62% compared to 75% for men. While several of these recommendations can be considered a contribution to tackle some of those root causes of the gender pay gap that explain differences which do not amount to discrimination within the meaning of the Directive only one of them actually concerned the gender pay gap as such in rather general terms asking for a reduction of the overall figure. **None of these recommendations specifically addressed the discrimination-based element of the gender pay gap due to the lack of the implementation of the principle of equal pay as such.**

As far as the specific discrimination component of the gender pay gap is concerned, in line with the Strategy for equality between women and men 2010-2015, one of the Commission's priorities in the field of gender equality is to monitor the correct application and enforcement of the equal pay provisions of Directive 2006/54/EC and to support Member States and other stakeholders with the proper enforcement and application of the existing rules. The Commission's Report on the application of Directive 2006/54/EC, adopted in December 2013²⁸, assesses the implementation in practice of the equal pay provisions including an analysis of the factors that explain the persistence of pay discrimination and possible ways to address these different elements²⁹.

The Report found that effective implementation of the existing EU legal framework on equal pay at national level is hindered by the lack of transparency in pay systems, the lack of legal certainty on the concept of work of equal value in the absence of a definition or clear assessment criteria for the comparison of different jobs, by lack of awareness of the gender bias in pay structures and by procedural obstacles. Those obstacles include the lack of information about the pay levels for categories of employees who perform the same work or work of equal value making it difficult for individual victims of pay discrimination to compare themselves to workers of the other sex. This Impact Assessment builds further on the findings of the Report.

²⁷ <http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/>

²⁸ Report from the Commission to the European Parliament and the Council on the application of 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), COM(2013) 861 final.

²⁹ For example the Commission Staff Working Document SWD(2013) 512 final accompanying the Report on the application of Directive 2006/54/EC (COM(2013) 861final) provides guidance on gender-neutral job evaluation and classification systems.

2.7. The gender pay gap and particularly the discrimination component as a horizontal problem in all Member States

It is generally agreed that the gender pay gap is a multi-faceted problem which varies not only in size between Member States and between industries. The gender pay gap, including its discrimination elements, is also influenced by a number of contextual factors such as the existing regulatory environment and the economic context (workforce characteristics, level of integration of women in the labour market, labour market policies, significance of centralised wage bargaining by social partners) as well as the social and cultural context. In spite of these differences it can be observed on the basis of the existing statistics that the gender pay gap and also its elements relating to non-observance of the principle of equal pay is a serious problem across **all Member States**, particularly if one takes into account that the gender pay gap is **below 10% only in four Member States**, is of considerable size also in Member States with a high level of gender equality in general³⁰, and is generally considerably larger in the private sector than in the public sector.

The fact that some few individual Member States have a rather low nominal overall gender pay gap does not challenge the nature of the pay gap as a horizontal problem affecting all Member States. This becomes even clearer when analysing the differences between the gender pay gap sizes in Member States in conjunction with other indicators linked to the labour market and especially the employment structures and the rates of labour market integration of women.

In most of those countries where the overall gender pay gap is very low, particularly in Malta and Italy, this goes hand in hand with a very low employment rate for women and in particular with a very uneven distribution of the employment rates of men and women at different levels of qualification. The data gathered for the Belgian Presidency Report reveals that Italy and Malta stand out among Member States as regards the divergence between the employment rates of men and women with a low level of education of more than 30% or even roughly 40% respectively, far above the average in that respect, whereas for persons with a high level of education this difference amounts to only roughly 10% and stays relatively close to the EU average³¹. This means that, compared to men, a greater proportion of women work in highly-skill jobs than in low-skill jobs. This should be reflected in relatively higher average wages for women than for men. Other things being equal, one would therefore expect that the gender pay gap in these countries should be in favour of women rather than men. That this is not the case suggests that the problem is actually bigger than it would at first sight appear from the unadjusted gender pay gap. Indeed, the Matrix study identifies 6 out of the 9 Member States with the lowest overall gender pay gap as having an adjusted gender pay gap (i.e. the discrimination element) that is actually higher than the overall figure³².

Against this background, in spite of the existing differences between Member States it must be concluded that not only the gender pay gap in its entirety but specifically its discrimination component is a horizontal problem seriously affecting all Member States.

³⁰ For example Denmark, Sweden and Finland.

³¹ Belgian Presidency Report, p. 60 et seq. and in particular Figures 20 – 22.

³² See Figure 1 on p. 32.

2.8. The social and economic impact of the persistent gender pay gap and particularly its discrimination component

2.8.1. The social impact of consistent non-compliance with a fundamental right – equal pay as a social right

The principle of equal pay is the single most important social element of the Treaty and in fact the principle that enabled the CJEU to find at a very early stage that the EU is not only an economic union but at the same time intended to ensure social progress and seek the constant improvement of the living and working conditions of its citizens. In its landmark jurisprudence the CJEU characterised the principle of equal pay in view of its double social and economic aim as forming part of the foundations of the Union³³.

The persistent imbalance of wages between men and women including a substantial element of outright discrimination therefore hinders the achievement of a fundamental social and economic objective of the Union and limits a fully equal participation of women not only in the workplace but in society as a whole. It also undermines the belief in the effective guarantee of a ‘constitutional’ right and therefore implies the risk of discouraging women from seeking fully equal treatment at the workplace and at large.

2.8.2. The economic impact – equal pay as a rule protecting fair competition in the internal market

It is clear from the legislative history and has been explicitly acknowledged by the CJEU that the purpose of the principle of equal pay is not only to ensure social progress but also – and this appears to be the predominant reason for including it already in the Treaty of Rome – to eliminate competitive disadvantages between Member States. The aim of the provision is to avoid a situation in which undertakings established in Member States which have (better) implemented the principle of equal pay suffer a competitive disadvantage in the internal market as compared with undertakings established in Member States which have not yet eliminated or reduced pay discrimination to the same extent³⁴.

In spite of the long-term benefits of equal pay (set out below) systematically paying lower wages to women for equal work or work of equal value implies a short-term unfair competitive advantage which has implications not only for competition between companies within the same Member State but also in the internal market. In addition to its social dimension, the principle of equal pay needs to be understood as a rule safeguarding fair competition which is not materially different in that respect from the proper competition rules. Consequently, persistent non-compliance with this rule has detrimental effects on competition in the internal market similar to breaches of competition law itself.

2.8.3. The business impact – specific positive effects of a better implementation of the principle of equal pay

³³ *Defrenne, C – 43/75*, judgment of 8 April 1976, paras 10 - 12.

³⁴ *Defrenne, C – 43/75*, judgment of 8 April 1976, para. 9.

2.8.3.1. EU 2020 employment rate target

Effective application of the principle of equal pay for equal work and work of equal value is indispensable for achieving the EU Treaty goal of equality between women and men on the labour market. Continued non-compliance with this principle acts as a disincentive for women to enter the job market and has detrimental effects on the EU's employment and growth rates.

Offering better working conditions related to pay to all workers free from discrimination by reducing the gender pay gap and specifically its discrimination component would represent an incentive for women to enter the labour market in greater numbers moving from unpaid work at home to paid employment or to increase the number of hours worked³⁵. This is an indispensable prerequisite to reaching the Europe 2020 target of 75% employment rate in the EU since female employment rates currently still stand at only 62.3%³⁶. The need to strengthen the application of the equal pay principle in order to combat pay discrimination and to tackle the persisting gender pay gap would contribute to achieving the objectives enshrined in the Europe 2020 Strategy.

2.8.3.2. Increased productivity and competitiveness

There is a **strong economic and business case** for tackling the gender pay gap and specifically its discriminatory component.

Research and academic analysis have consistently proven that wage discrimination, which is unrelated to productivity differences caused by the heterogeneity of labour, reduces economic efficiency in the longer term because businesses that do not discriminate tend to achieve a higher marginal product of labour and are more productive³⁷. Long-term economic performance is better in economies that set up mechanisms to narrow the gender pay gap.

The reduction of the gender pay gap could have the following **positive impacts**³⁸:

³⁵ According to a Eurobarometer survey (2009), 44 % of Europeans think that raising the pay women receive, so that they earn the same as men for equal work or work of equal value, is the main lever for increasing the share of working women in Europe.

³⁶ Eurostat 2012, http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=0&language=en&pcode=t2020_10&tableSelection=1.

³⁷ In addition to the studies and reports frequently quoted in this document and particularly those in the following footnote see e.g. the extensive analysis of the relationship between gender equality including equal pay and productivity M. Smith and F. Bettio (2008), Analysis note: the Economic Case for Gender Equality, available at ec.europa.eu/social/BlobServlet?docId=3971&langId=en

³⁸ The EP European Added Value Assessment of the application of the principle of equal pay for men and women for equal work of equal value of June 2013, examining the impact of the recommendations provided in the EP resolution of 2012 p. 18-21, available at [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/504469/IPOL-JOIN_ET\(2013\)504469_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/504469/IPOL-JOIN_ET(2013)504469_EN.pdf) and [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/504469/IPOL-JOIN_ET\(2013\)504469\(ANN02\)_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/504469/IPOL-JOIN_ET(2013)504469(ANN02)_EN.pdf).

International Labour Office, *Promoting equality: Gender neutral job evaluation for equal pay: A step-by-step guide* (2008), International Labour Organisation, Geneva, available at http://www.ilo.org/declaration/info/publications/eliminationofdiscrimination/WCMS_122372/lang-en/index.htm.

Belgian Presidency's report (2010), The gender pay gap in the Member States of the European Union: quantitative and qualitative indicators, available at: <http://register.consilium.europa.eu/pdf/en/10/st16/st16516-ad02.en10.pdf>.

- Higher employees' **job satisfaction** and stronger commitment to the company resulting in **lower staff turnover** and associated loss of organisational competence (especially important concerning high skilled employees and high demand occupations) as well as reduced **absenteeism and related costs**³⁹;
- Reduced likelihood of **lengthy and costly litigation** incurred by employer, including legal representation costs and compensation to the discriminated employees;
- Improved and more appropriate **skill utilisation** which could help improving **productivity and quality of goods and services**. Better evaluation and use of women's skills would make the most effective use of the human capital available in the labour market;
- Improvements in the internal and external **image and attractiveness of businesses**, bringing advantages in the competition to recruit the most talented and skilled staff. This would result in **lower costs related to recruiting** qualified employees and less time devoted to search for qualified staff.

All the above effects would result in increase of the **competitiveness** of businesses and stimulate investment. The promotion of equality is not only an ethical matter but creates a competitive advantage for companies by allowing their staff to make full use of their productive potential.

Other positive effects include:

- Increase in female wages;
- Reduction in low income benefit payments;
- Increase in proportion of senior and manager positions held by women.

The economic modelling to illustrate the benefits used in this impact assessment takes into account these factors and quantifies the impact on these parameters⁴⁰.

2.8.3.3. The social dimension of the economic benefits

To a considerable extent the economic benefits described above are at the same time significant social improvements. A higher labour market participation of women is a macro-economic objective but at the same time an advancement concerning the independence of women including but not limited to financial independence. A number of the other factors referred to above, most notably the increase of the number of women in senior positions and job satisfaction, also have a clear social dimension. Since these elements are included in the economic analysis and in the calculation of the overall economic impact of different policy options this calculation is at the same time an indicator of the magnitude of the social benefits.

³⁹ According to a pan-European survey on how satisfied women are with their job (2009), 73 % of them said that equal pay for men and women is the most important factor in job satisfaction.

⁴⁰ For further details on the methodology see below point 5.1.

2.9. Problem drivers

2.9.1. Lack of awareness of the problem and non-transparency of pay

One lasting effect of the long-standing existence of the principle of equal pay is that generally speaking conspicuous direct discrimination in the form of paying a woman a lower salary than her male colleague for the exact same job appears to have become a problem of somewhat lesser relevance. The persistent problems with the full implementation of equal pay appear to mainly relate to equal pay for work of equal value and reside in the evaluation of work done predominantly by women or men, with a particularly big impact where this evaluation is carried out by employers determining the pay structures for large companies or in collective agreements.

The evaluation of work is a complex process where gender bias that amounts to discrimination is not always easy to detect unless a conscious effort is made to analyse the pay structure of a company or an industry. It is due to this specificity that **employers as well as social partners (including trade unions) are to a large extent not aware of the existence of potential sex discrimination issues in their wage systems**. The impact assessment recently carried out in relation to pay audits in the UK⁴¹ confirms, on the basis of a survey, that many organisations believe they have no pay inequality without having taken steps to actually check this. It also notes that employers who lose equal pay cases often appear to do so because they are amongst those that have never considered their pay structures which frequently conceal gender bias and discrimination. It is in the interests of employers to act responsibly in order to promote equality between women and men within their organisations. While it is primarily female workers who suffer the financial loss arising from unequal pay, companies also lose out by failing to reward adequately the skills and experience that women bring to the labour force. Businesses run a risk of suffering costs of pay litigation, including legal representation costs, compensation to the discriminate employees, and timely process. Prevention of pay discrimination thus would benefit both employees and employers.

It is for that reason that many of the non-legislative activities of the Commission have been geared towards raising awareness, for example through information campaigns, training for companies and the promotion of software that helps companies to take an analytical look at pay helping them to detect evaluation of work that may not be in compliance with the principle of equal pay.

The **lack of wage transparency** explains to a large extent the lack of awareness concerning gender bias and discrimination in pay structures of an undertaking or an industry and it also poses a significant difficulty for victims who want to claim equal pay.

The correct implementation and, where necessary, **enforcement of equal pay obligations is to a large extent in the hands of individuals, both employers defining their pay policies and employees claiming their right to equal pay** (and of social partners to the extent that wages are fixed by collective agreements). It depends on their awareness of any discrimination as well as on the willingness of employers and social partners to take remedial action and revise pay structures and the willingness of employees, where necessary, to take matters to court. In most Member States, national authorities and enforcement bodies cannot initiate legal action and, even where they can, it is virtually impossible for such authorities to monitor pay arrangements across a Member State's economy. It is therefore usually the individual worker or someone on his/her behalf (e.g. trade unions) that can take the matter of

⁴¹ Page 10 of the Impact Assessment.

unequal pay to court and thus initiate legal action where discrimination is not proactively addressed by the employer or by social partners.

Even where the general obstacles deterring from court action, such as the cost of proceedings, can be overcome (for example through the assistance of equality bodies or trade unions) the principal difficulty in litigation consists in the necessity to identify a comparator or a group of comparators of the opposite sex who perform equal work or work of equal value but receive higher pay. The main problem in that respect is not to find the comparators but to obtain information on their pay. Since information on pay is generally not transparent or even a matter of confidentiality, victims will not be able to use comparison of wages in order to support their claims and discrimination is very hard to establish. According to the current EU acquis, the burden of proof shifts to the other side once an alleged victim can establish facts from which it may be presumed that there has been discrimination. Yet, neither the acquis nor the law of most Member States give the victim a right to obtain information from the employer on the pay of other employees.

Therefore, addressing the problem of non-transparency of pay appears to be a crucial prerequisite to allow employers and social partners to effectively tackle discrimination or to allow employees to obtain the information necessary to compare their wage to others and to establish possible cases of discrimination. While this would assist individual victims of discrimination in obtaining the necessary information to bring a successful claim the purpose of the measures envisaged in this impact assessment is not to increase equal pay litigation as the desired means to bring about an improvement. Rather on the contrary, increased **transparency should provide a strong incentive for preventive action to rectify shortcomings in pay structures** where they are detected and to avoid court proceedings which are costly and a burden for both sides. The increased pay transparency could help to prevent, tackle and correct pay discrimination and enable employers, employees and social partners to take appropriate action to ensure effective implementation of the equal pay principle⁴².

2.9.2. *Lack of incentives to improve the fairness of the pay systems*

Rewarding employees fairly for their work and tackling unequal pay increases satisfaction and motivation, efficiency and productivity by attracting the best employees. It increases competitiveness of businesses helping them to save costs in recruiting competent staff and to avoid costs related to potential litigation in pay discrimination cases.

Nevertheless, employers appear to often lack an incentive to address potential problems of unequal pay as they do not sufficiently take into account the (more medium- and longer-term) benefits of equal pay and losses that could be incurred due to failing to reward adequately the skills and experience that women bring to the labour force. Yet, any (short-term) wage savings originating from paying less to women for a work of equal value are most unlikely to “pay off” in the medium and longer term since they should translate into lower productivity on the part of those employees who consider that they are not being fairly treated. The failure to take into account these circumstances explains why employers in their vast majority do not

⁴² It is noteworthy that the particular importance of transparency has recently been recognised by the incoming government of Germany, one of the Member States with the highest gender pay gap in the EU and also one of the Member States which has not taken any of the measures assessed in this IA. The coalition agreement now envisages both reporting obligations for companies and a right of access to pay information for employees.

take sufficient initiative themselves to analyse their pay structures in order to reveal possible pay discrimination and take appropriate actions to tackle it.

2.10. Evolution of the problem in absence of further action (baseline scenario)

In the absence of further EU action it would have to be expected that no significant change in the gender pay gap as well as in its inherent element of pay discrimination will occur in the foreseeable future. In spite of the long history of legislation being in place at EU and national level, its implementation and litigation and clarifications being provided by national courts as well as the CJEU, the gender pay gap has remained a stable phenomenon, with little progress in its reduction over the past years⁴³, showing that just the existence of the legal principles and the availability of their enforcement through the courts will not bring about significant improvements in pay equality without additional measures. The gender pay gap persists in all Member States, in almost all of them exceeding 10 %.

Based on the information provided by Member States⁴⁴ and the assessment in the Matrix study⁴⁵, over a third of Member States don't have any measures addressing pay transparency. Measures corresponding to regular reporting of companies on pay levels are available in 12 Member States, while measures providing for entitlement for employees or their representatives or equality bodies to obtain information on pay levels exist in 10 Member States.

Table 3. Measures aiming to increase pay transparency in Member States⁴⁶

Member States	Measures on Wage Transparency			
	(A) Entitlement for employees/employees' representatives/equality bodies to obtain information on pay levels upon request	(B) Regular reporting of companies on pay levels	(C) Pay audits	(D) Consideration of equal pay as a separate issue by social partners in collective bargaining
Austria	x	x		
Belgium		x		
Bulgaria				
Czech Republic				
Cyprus	x			

⁴³ See Tables 1 and 2.

⁴⁴ In response to the questionnaire on equal pay sent in July 2012.

⁴⁵ P. 51, table 16 of the Matrix study.

⁴⁶ Based on the information provided by Member States in response to the questionnaire on equal pay (2012) and on the assessment of Commission's Network of legal experts in the field of gender equality (2012).

Croatia				
Denmark		x		
Estonia	x			
Finland	x	x		
France		x		x
Germany				
Greece				
Hungary		x		
Ireland	x			
Italy		x		
Latvia	x			
Lithuania				
Luxembourg		x		
Malta				
Netherlands	x			
Poland				
Portugal		x		
Romania				
Slovakia	x			
Slovenia				
Spain		x		x
Sweden	x	x		
United Kingdom	x	x (public sector)		

Initiating the analysis and, where necessary, the modification of pay structures by employers and social partners appears to be a crucial element in that respect. If the principle of equal pay is promoted without the impetus of a binding or non-binding legislative initiative, however, even in a best-case scenario this would appear to be incapable of inducing more than a very slow gradual process of reduction in the gender pay gap, as experienced over the past years.

The analysis of the situation shows that in almost all the Member States the overall gender pay gap is a very stable phenomenon and changes only very slowly in one direction or the other. There are hardly any Member States with a constant downward trend. Even those Member States where in comparison with a certain benchmark (as 2006 in table 2 above) a noticeable reduction has taken place by 2011 reveal a rather erratic development at a closer look⁴⁷. The figures that have been collected over a considerable period of time do not show a clear (or depending on the benchmarks for comparison indeed any) downward trend that would suggest significant positive developments in the foreseeable future.

And there is no other evidence available that would point to any likelihood of a more than marginal decrease in the gender pay gap and specifically its discrimination component without any EU action. While it is true that some Member States have legislation on pay transparency in place, only a handful of them have adopted such legislation in the more recent past⁴⁸. There is no discernible trend to more generally adopt legislation in this area even in Member States where no such legislation currently exists or where existing legislation has proven to be ineffective. In particular, there is no basis to predict that any “success story” in one Member State will be picked up by a significant number of other Member States on their own initiative. Firstly, against the background of the current situation there are very few success stories available. Secondly, in the area of wage policies, which are determined to a very large extent by national circumstances and traditions (level of wage determination at the collective level, e.g. by social partners or at plant or even individual level) there appears to be no established habit of drawing inspiration from other Member States⁴⁹. Finally, it is the very difference in the contextual circumstances between Member States that would render it difficult to transfer solutions identified for one Member States to other Member States.

2.11. The EU's right to act and EU's added-value

2.11.1. Europe 2020

The Europe 2020 Strategy for Smart, Sustainable and Inclusive Growth⁵⁰ established that an "increased female labour force participation is a precondition for boosting growth and for tackling demographic challenges in Europe". As a result of demographic change, such as the ageing of the workforce and the EU's low average birth rates, Europe's workforce is shrinking and a smaller number of workers are supporting a growing number of inactive people. The economic crisis has exacerbated this precarious situation.

With an employment rate reaching 74.5% for men and 62.3%⁵¹ for women, it has become mainstream thinking that the EU can only reach the Europe 2020 headline target (75% of the population aged 20-64 should be employed by 2020) if there is a clear commitment to gender equality. Reducing the gender pay gap would encourage more women to enter the labour market and contribute to achieving the target of 75% employment rate. It would help achieve

⁴⁷ For example, for Poland the overall gender pay gap of 7.5% in 2006 first surged to 14.9% in the following year to then recede back to the 2006 level and somewhat beyond. Similar developments can be observed in other Member States with a reduction when only comparing 2006 and 2011, e.g. Lithuania or the Czech Republic.

⁴⁸ And those cases, most notably Austria and France have been assessed in the case studies carried out by Matrix to help estimate the effects of measures taken at EU level.

⁴⁹ Or even if so only to a limited extent (e.g. between Scandinavian countries).

⁵⁰ COM (2010) 2020 final.

⁵¹ Eurostat 2012.

inclusive growth and ensure economic and social cohesion and competitiveness, in line with the objectives set in the Europe 2020 Strategy.

EU level action aiming to strengthen the application of the equal pay principle and tackling the gender pay gap would improve the ability of EU Member States to meet the priorities for smart, sustainable and socially inclusive growth of the Europe 2020 Strategy.

2.11.2. Legal basis: Article 157(3) TFEU

The EU's right to act in issues of gender equality in employment and occupation follows from Article 157(3) TFEU. This provision is the specific legal basis for any binding measures aiming at ensuring the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation including measures aimed to ensure a better implementation of the principle of equal pay which is laid down in Article 157(1) TFEU. Unlike for an internal market basis the existence of an internal market problem is not a prerequisite to the availability of Article 157(3) as a legal basis, the pursuit of equal treatment is sufficient in that respect⁵². If a measure took the form of a Commission Recommendation, the legal basis would be Article 292 TFEU.

2.11.3. Subsidiarity and proportionality

According to the principle of subsidiarity, the EU shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States (necessity test), but can rather, either by reason of its scale or effects, be better achieved at EU level (test of EU added value).

The baseline scenario shows that no considerable change in the gender pay gap as well as pay discrimination can be expected to occur if the issue is dealt with at Member State level only. In spite of the legislative framework at EU and national level, the gender pay gap persists in all Member States.

In principle Member States could take effective measures to tackle pay discrimination by measures enhancing the transparency of wages. However, the question of whether they could potentially do it has to be distinguished from the question whether they actually and effectively do it or can be expected to do it. The current situation shows that Member States have not taken sufficiently effective measures in this area so far and cannot be expected to do so in the near future.

In that respect the overall figures speak for themselves. The gender pay gap of a considerable size persists in all Member States. There are only 4 Member States with an overall gender pay gap figure below 10 %. Member States with a downward trend as regards the gender pay gap statistics are rather exceptions from the rule and are counterbalanced by other Member States in which the gender pay gap even grows. Despite the existing legislative framework in place, the gender pay gap for the EU has remained practically unchanged in the last three decades (Table 1). A high number of Member States have not taken effective action, in particular on pay transparency as one of the identified key drivers of pay discrimination, aiming to reduce the gender pay gap and its discrimination element. Irrespective of the general possibility for Member States to act effectively, the projections based on the available

⁵² The economic and internal market dimension as described and assessed in this document therefore provide policy guidance but have no bearing on the legal assessment of whether the EU can take measures.

information clearly demonstrate that action by Member States individually will not achieve sufficiently significant progress in reducing the gender pay gap in the foreseeable future. There is a clear horizontal dimension to this issue which can only be addressed by EU-level instrument in view of the lack of effective measures taken by the vast majority of Member States.

In this context the existence of no more than a handful of Member States with encouraging developments does not appear to be a convincing argument in order to state that Member States can and do take equally effective measures to address the problem or can be expected to do so any time soon. The considerations underpinning the baseline scenario⁵³ also apply here.

The current situation shows that just the existence of the legal principles will not bring about significant improvements in pay equality without a new impetus. The measures introduced by some Member States vary broadly in effectiveness, and some of Member States have not taken any action in this area. Some Member States might perceive that putting an additional burden on domestic employers would place them in a competitive disadvantage vis-à-vis foreign companies, while not taking into account the economic and social benefits of equal pay that are looked at in more detail in this impact assessment. That could be one of the reasons explaining the lack of action at the national level in this area. The lack of a coordinated approach to the issue jeopardises the attainment at the national level of the pay equality between men and women, enshrined in Article 157(1) TFEU.

The country-specific recommendations in the context of the Europe 2020 Strategy can be considered an efficient contribution to tackle some of those root causes of the gender pay gap which do not amount to discrimination within the meaning of the Directive such as the availability of childcare and education facilities or fiscal disincentives to work. Only one of these recommendations in 2013 actually concerned the gender pay gap as such, in rather general terms, asking for a reduction of the overall figure. However, none of these recommendations specifically addressed the discrimination-based element of the gender pay gap due to the lack of the implementation of the principle of equal pay as such. Country-specific recommendations appear to be less used for issues concerning the better implementation of existing legislation in all Member States. Since the gender pay gap is present in all Member States, in all of them but four exceeding 10%, there is a clear horizontal dimension to this issue and a need to enhance the effectiveness of application of the principle of equal pay, a fundamental principle laid down not only in Directive 2006/54/EC but in the Treaty itself in Article 157 TFEU, in practice in all Member States.

An issue of such a clear horizontal nature can be addressed by an EU-level instrument (which is sufficiently flexible to take account of existing divergences) in complementarity with the country-specific recommendations addressed in the Europe 2020 framework. A focus of country-specific recommendations on the various non-discrimination elements causing the gender pay gap, such as segregation of the labour markets, combined with another EU instrument which would focus on tackling the persisting sex-based pay discrimination by promoting and facilitating implementation of the existing EU law provisions on equal pay would ensure a more holistic EU policy approach comprehensively addressing the different components of the gender pay gap from different angles by the most efficient tools in a complementary and mutually reinforcing fashion.

EU action in relation to pay transparency would represent added value straightforwardly in the case of binding legislation, which would oblige Member States, including and in

⁵³ See above point 2.10.

particular those that have been inactive in this field, to take measures in compliance with the efficiency levels required under the terms of a binding agenda. A non-binding instrument would not legally require or guarantee a particular follow-up by Member States but it would place the issue as well as the recommended measures on the agenda of a pan-European as well as national discussion and create political pressure for Member States as well as social partners to take steps as recommended to enhance pay transparency with tangible results to be expected⁵⁴.

It can therefore be concluded that the discrimination element of the gender pay gap across the EU can only be tackled effectively through a common approach, and the objective of reducing the gender pay gap as well as the potential for gender equality, competitiveness and growth can be better achieved through coordinated action at EU level, rather than through national initiatives of varying scope and effectiveness. An EU-level initiative addressing the gender pay gap through a number of measures aiming to increase wage transparency would fully respect the principle of subsidiarity, as it would ensure a comparable level of promotion of pay equality, throughout the Union.

Moreover, the fact that the founding members of the European Community included the principle of equal pay as a goal in the Treaty of Rome indicates that they regarded it as a fundamental value of the Union and the pay gap to be an issue to be tackled at European level, in order to ensure a level-playing field for all Member States and exclude unfair competitive advantages (at least in the shorter term) that could be derived from pay discrimination in the internal market.

According to the principle of proportionality, the content and form of EU action shall not exceed what is necessary to achieve the objectives of the Treaties. Any EU measure should, in line with the proportionality principle, be limited to setting common objectives and general rules – in line with the approach of minimum harmonisation – thereby giving Member States sufficient freedom to determine how these common objectives should be best achieved at national level, taking into account national, regional or local circumstances including national anti-discrimination law and labour law practices. The gender pay gap currently still stands at 16.2% throughout the EU, with only a slight reduction during the last years. The EU level initiative would therefore not aim at replacing national actions in this field but to assist Member States in finding the right approaches for effective application of the equal pay legislation through increasing pay transparency.

2.11.4. Compliance with the EU Charter of Fundamental Rights

An EU initiative in this field would pursue the objective of ensuring the full protection and implementation of the right to equal pay and equal treatment as laid down in Article 157(1) TFEU and Article 3(3) TEU but also in Articles 21 and 23 of the Charter of Fundamental Rights of the European Union ('Charter'). It would also help to promote the freedom to choose an occupation (Article 15). On the other hand, depending on the exact content of the measure envisaged, it would imply a certain restriction on the freedom to conduct a business (Article 16). Measures enhancing the transparency of pay could also have an impact on the use and processing of pay data as personal data, the protection of which is guaranteed by Article 8. However, the measures assessed in this impact assessment do not include disclosure of individual wages but rather disclosure of wages by categories of employees doing the same work or work of equal value. Therefore, the number of situations where such measure

⁵⁴ For the specific assumptions in that respect see section 5.3.2.1.

would affect personal data issues protected under Article 8 is very limited. Moreover, restrictions of the rights provided in Articles 16 and 8 of the Charter are admissible if justified by a legitimate objective. Since such a legitimate objective certainly exists in the protection and promotion of another fundamental right, compliance with the Charter presents no problem, provided that the restrictions are proportionate in nature. A strict requirement in an EU instrument to ensure compliance with national and particularly EU data protection legislation would ensure the proportionality and legality of measures taken under that instrument.

3. POLICY OBJECTIVES

The policy response to the persistent gender pay gap needs to meet the general objective:

Eliminating inequalities and promoting equality between women and men as laid down in Article 8 of the TFEU as well as Articles 2 and 3(3) of the TEU.

In order to meet this general objective, the following specific objectives have been identified:

- (1) To promote the full implementation of the principle of equal pay by contributing to the reduction or elimination of those **elements of the gender pay gap⁵⁵ that are explained by discriminatory practices** by enhancing the transparency of pay (in order to enable social partners and individual employees to assess whether and to what extent the principle of equal pay appears to be respected and whether enforcement action or collective bargaining is warranted);
- (2) To raise awareness of social partners and individual employers of the pay structures in companies or industries and the potential non-compliance with the principle of equal pay inherent in these structures and to incentivise them to remedy this situation where necessary.

4. POLICY OPTIONS

4.1. Discarded policy options

In view of the specific policy objectives identified above and particularly the aim to tackle the discrimination component of the gender pay gap a number of policy options were discarded.

4.1.1. *Stronger use of country-specific recommendations*

As set out above⁵⁶, the tool of country specific recommendations within the European Semester exercise has been used by the Commission and accepted by the European Council in relation to issues such as improved childcare availability/quality, full-day school places and elderly care services, promotion of flexible working arrangements, harmonisation of pensionable ages and rights, fiscal disincentives for women to work and in one individual case also to advocate a reduction in the overall gender pay gap and gender pension gap. The country specific recommendations of 2013 addressed to Austria lists tackling the gender pay gap as one of the recommended key measures to increase labour market participation of

⁵⁵ The projected impacts reducing discrimination would equally affect both the unadjusted and the adjusted gender pay gap.

⁵⁶ See point 2.6.

women⁵⁷. While several of these recommendations can be considered a contribution to tackle some of those root causes of the overall gender pay gap it needs to be underscored that all the above examples concern factors contributing to the gender pay gap which do not amount to discrimination within the meaning of the Directive 2006/54/EC. Only one of them actually concerned the gender pay gap as such in rather general terms asking for a reduction of the overall figure. None of these recommendations specifically addressed the discrimination-based element of the gender pay gap due to the lack of the implementation of the principle of equal pay as such.

Country specific recommendations are a key policy tool that is used as one part of the efforts tackling the overall gender pay gap but their labour market policy orientation makes them particularly valuable concerning the aspects not related to pay discrimination. They would complement and mutually reinforce measures of a horizontal nature targeting all Member States specifically aimed at reducing pay discrimination but could not replace such measures. They have therefore not been further considered in the context of this impact assessment focused on pay discrimination.

4.1.2. *Measures unrelated to the transparency of wage structures*

A broad array of measures is conceivable with a view to tackling the discrimination component, and the Matrix study reflects the wealth of possibilities by assessing options ranging from an 'equal pay label' as a marketing incentive for companies, to amendments to the part-time work Directive 97/81/EC⁵⁸ or Directive 2006/54/EC in relation to sanctions for discrimination, to a number of measures enhancing the transparency of pay.

While all these measures could have some impact on the size of the gender pay gap and the discrimination element, a pre-selection was carried out to focus on measures that deal with pay discrimination directly (and not only as a consequence of measures in another area) and comprehensively (and not only with one area in which pay discrimination occurs). On the basis of this consideration it was chosen not to assess the option of an amendment to the part-time Directive. Pay discrimination of part-time workers often coincides with indirect discrimination on the basis of sex since women make up the vast majority of part-time workers. However, this is only one facet out of many of pay discrimination and it was not considered advisable to assess a policy option only targeting this aspect in the context of a reflection on measures to reduce pay discrimination across the board. In addition the pre-selection was guided by the identification of the lack of pay transparency as the key problem driver explaining the persistence of the insufficient implementation of the principle of equal pay⁵⁹. In view of the importance of this issue it was considered suitable to carry out a detailed assessment only of measures that have a direct bearing on the transparency of pay⁶⁰. On that

⁵⁷ Commission Recommendation for a Council Recommendation on Austria's 2013 national reform programme and delivering a Council opinion on Austria's stability programme for 2012-2017, COM(2013) 370 final, point 3.

⁵⁸ 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 14/9, 20.1.1998.

⁵⁹ See point 2.9 above. See also the Commission report on the application of Directive 2006/54/EC, COM(2013) 861 final, point 4.2.

⁶⁰ The recent UK legislation making it unlawful for employers to prevent employees from disclosing their pay to others does concern the transparency of pay but has not been retained because it has only a very indirect transparency-enhancing effect. It only removes an obstacle to disclosure in situations where one employee wants to inform others about his or her salary (which in practice may not so often be the case where that employee suspects that he or she has a higher salary than others doing equal work or work of equal value) but obliges neither the employer nor the employee to disclose pay levels..

basis it was chosen not to include measures such as an equal pay label or the strengthening of sanctions.

4.2. Retained policy options

Having identified the policy objectives underlying a possible EU initiative to promote a better implementation of the principle of equal pay and against the background of the preliminary screening as described above, the measures under consideration have been grouped into the following three policy options for further impact analysis:

- Option 1:** No further action at EU level (baseline scenario).
- Option 2:** Entitlement for employees to obtain information on pay levels upon request
- Option 3:** Regular reporting of companies on pay levels
- Option 4:** Pay audits
- Option 5:** Consideration of equal pay as a separate issue by social partners in collective bargaining.

Options 2 – 5 are assessed both on the basis of their introduction by binding instrument and on the basis of a non-binding instrument, as impacts will obviously have to be expected to differ between measures of a mandatory and voluntary nature.

5. IMPACT ANALYSIS

Each retained policy option has been assessed in terms of its economic and social impacts compared to the baseline and the extent to which it meets both the policy objectives and the broader EU objectives.

5.1. Methodology to assess the impacts

5.1.1. Effectiveness

Impact on the gender pay gap

Most straightforwardly, the effects have been assessed in terms of the reduction in the gender pay gap that could reasonably be expected from the different policy options and the individual components of these options (i.e. the individual measures to be recommended or made mandatory).

The estimate of the overall effects on the gender pay gap in the Matrix study takes as a point of departure case studies carried out in Member States that have already introduced similar measures, in order to collect qualitative and quantitative information on the effects that these measures have had on the gender pay gap.

Extrapolating from these case studies, including the consultation of stakeholders, the different measures were scored in a standardised and comparable manner, based on the following specific criteria:

- a) Scope of the measure
- b) Similarity with the measure assessed in the study
- c) Conditions for the manifestation of the effects (mainly effective monitoring and enforcement)
- d) Scope of the effects
- e) Effect on direct or indirect discrimination

f) Change in national level gender pay gap

This extrapolation methodology takes into account the difference of contextual frameworks between Member States and therefore includes an assessment of the extent to which the effects observed in one Member State can also be expected to materialise in other Member States.

This scoring methodology led to an estimate of the change in the gender pay gap resulting from the implementation of the measure in question. Results vary between a reduction of 0 – 1 percentage points for less effective measures to a reduction of 2 – 3 percentage points for the more effective measures.

In order to grasp the overall economic significance of these results beyond the fact of the reduction of the gender pay gap as such, it is useful to take into account that the European Added Value Assessment carried out by the European Parliament estimates that each 1% reduction in the gender pay gap would translate into an increase in the EU gross domestic product (GDP) of 0.1%.

5.1.2. *Economic impacts*

Impacts on key economic indicators

The most straightforward economic consequences of better implementation of the principle of equal pay would materialise in the form of higher wages for previously underpaid employees who are victims of discrimination. Since these higher wages represent increased costs for employers concerned those two effects cancel each other out when looking at the overall net financial impact of the measures assessed. Even though the costs for employers exceed the higher salary paid to the victim of discrimination costs and benefits are equivalent at the aggregate level taking into consideration that the employers' higher costs for tax and social security contributions translate into higher revenues for public authorities.

Although the increase in wages itself is thus neutral from a macro-economic perspective it represents an additional cost for the companies concerned. These costs have been estimated for the different policy options and will be indicated for each of them. Nevertheless, this can by definition not be considered a (potentially disproportionate) burden for employers in view of the fact that any “cost savings” in the past were the result of pay discrimination and thus of prohibited practices. In other words, these are compliance costs that should always have been incurred and that remove an unfair advantage for employers who have not comprehensively implemented the principle of equal pay so far⁶¹. Including them in an impact assessment as a cost in terms of a negative factor would amount to equating a higher degree of compliance with a fundamental existing legal obligation per se with a higher burden on companies. If this were to influence the choice between options in order to limit the burden on companies this would amount to the possibility of advocating lesser compliance with the law for the benefit of those companies that are in breach of the law and thus place a premium on pay discrimination⁶². Moreover, as has been argued above, paying workers what they perceive as unfairly low wages can be expected to reduce their productivity, implying that productivity should be expected to rise in response to higher wages that result from the removal of

⁶¹ It was the explicit objective of including the right to equal pay in the Treaty of Rome to prevent such unfair competitive advantages.

⁶² This would be roughly comparable to a reflection on measures to fight tax evasion, which when assessing several options of different effectiveness in increasing tax revenue, should not factor in these revenues as potentially detrimental cost for those companies that have not paid these taxes in the past.

discrimination. Given this rise in productivity to be expected in the event of a better implementation of the principle of equal pay⁶³, higher wages for workers who had previously been discriminated against cannot be expected to have negative effects for the effectiveness of EU companies.

In addition the impact of these costs for the companies concerned should not be overestimated. First it should be recalled that as the benefits the wage increases indicated are calculated over an extended period of time averaging roughly 20 years⁶⁴. Furthermore it should be borne in mind that in practice the consequence of a finding of discrimination is not necessarily the immediate levelling-up of the salaries of those discriminated against to the same amounts of those who have benefitted from discrimination in the past. This is only the immediate consequence of a finding of pay discrimination by a court which will order an employer to increase the salary of the victim of discrimination. Where prohibited unequal treatment is spotted in a pay system or collective agreement, for example as a result of a report on pay structures, a pay audit or in the process of collective bargaining or even where a new pay system is introduced as a result of litigation, there is scope for transitional solutions which more gradually lead to the full elimination of the discrimination in question⁶⁵. Such solutions would not reduce the overall effectiveness of the measure but simply stretch the implementation over time to some extent where this is necessary to facilitate the adjustment process. It is reasonable to assume that, particularly where the industry or the company in question is subject to intense competitive pressure, in discussions and collective bargaining over a new distribution of the overall wages, the employer side will seek solutions amounting to avoiding the increase of overall wage costs or their reduction to the extent possible, for example by defining new wage levels for both groups in-between the lower and the higher end of the previous spectrum⁶⁶.

In addition the assessment also looks at the wider societal short-, medium- and long-term economic effects of these measures and more specifically at the developments to be expected in relation to low income benefit payments, increase in productivity levels, employment levels, the representation of both sexes in senior management positions and fertility rates.

The Matrix study developed a methodology for estimating these effects and their monetary value⁶⁷ which involves three steps:

1. Defining the positive effects of a change in the size of the gender pay gap.
2. Measuring the positive effects of a change in the size of the gender pay gap.
3. Valuing the positive effects in monetary terms.

In order to estimate the effect of a change in the gender pay gap the effect of a reduction in the gender pay gap was conceptualized. The scientific literature was reviewed to understand how a change in the gender pay gap, and hence the female wage, affects the circumstances and decisions of the female population both in the short and longer term with a focus on

⁶³ For a detailed description of these benefits see section 2.8.3.2 above.

⁶⁴ For the details leading to this average see Matrix study, p. 92.

⁶⁵ In its decision in *Hennigs and Mai* (C-297/10) the CJEU has indicated the possibility of a transitional regime where a pay system that has been found discriminatory on grounds of age is replaced by a new system.

⁶⁶ Such wage levels could be accompanied by a clause protecting employees against any lowering of their salaries which could then effectively be “frozen” until the wage under the new system has reached their salary level.

⁶⁷ This methodology is described in detail in point 8.8 of the study. All costs and benefits estimates are provided in 2010 prices.

immediate and medium-term effects. In addition to the immediate effect on income, the effects of potential earnings were considered for those currently outside the job market, i.e. those under working age and inactive females of working age. Given that a change in the size of the gender pay gap is likely to affect differently on individuals depending on their economic status, the female population was split into four groups⁶⁸.

For the valuation of the effects of the measures, a distinction was made between those effects to which an economic value expressed in monetary terms can be directly attached (increase in female wages, low income positive effects, increase in employment, education) and those effects for which this is not the case because they have no financial value in themselves (entry into higher level jobs, fertility rate). For these latter effects monetary values were estimated through a Discrete Choice Experiment (DCE), a well-established survey methodology in the valuation literature⁶⁹.

The results of this assessment are expressed in one single figure representing the **net economic benefit** (excluding the salary increase which is offset by higher wage costs for employers) bringing together all the individual components set out above⁷⁰. This one figure is based on the calculation of the impacts for a number of sub-groups of the female population from the point of implementation of the policy until their retirement age and thus over a long timeframe (on average 19 years for women in working age). In calculating this one overall figure, impacts that occur in future years are discounted to current prices. The following sections report for each measure that has been assessed both the total discounted present value of the benefits, and their average annual (undiscounted) value. Among the various monetised economic effects the additional employment of women, i.e. the consequences of a higher labour market participation due to the reduction in pay discrimination, is the single most important element⁷¹.

The amounts indicated as overall economic benefits in the Matrix study as well as certain adjustments made to the underlying assumptions in this impact assessment cannot be taken to be precise projections and – as any economic modelling – are subject to a certain margin of error in the estimates made – but they should be understood as a sufficiently solid indication of the dimension of the economic effects of the different policy options.

The impact assessment recently carried out on pay audits in the UK does not monetise the economic benefits at the level of individual companies but shows, on the basis of a survey, that the vast majority of employers who carried out a pay audit did so because they saw it as good business sense and identified economic benefits for example in demonstrating commitment to staff and to fairness, ensuring that they are making maximum use of their employees' capacity and in protecting themselves from the cost of legal action. These factors are not separately assessed for each measure or quantified but need to be taken into consideration nevertheless.

⁶⁸ Adults employed under fixed salary – i.e. working age adults for whom there is no salary gain associated with an increase in the number of hours worked; Adults employed under non-fixed salary – i.e. working age adults for whom there is a salary gain associated with an increase in the number of hours worked; Inactive working age adults –i.e. working age adults that do not participate in the labour market; Inactive under working age or young adults –i.e. young adults at pre-higher or third level education age.

⁶⁹ Matrix study, Section 8.8.4.

⁷⁰ See the table on positive effects in section 5.3 of the Matrix study which looks at the economic benefits broken up into its component parts, benefits resulting from additional employment being the single most important element.

⁷¹ See Table 31 (p. 94) of the Matrix study.

The specific impact of all policy measures for SMEs has been carefully assessed⁷² but it has also been screened ex ante whether the different policy options are suitable for SMEs and this has already influenced the very design of the policy options assessed.

The logic of the ex ante analysis of the inclusion of SMEs in the policy options is based on two different criteria:

- the specific administrative or financial burden of the measure in question for SMEs; and
- the effectiveness of the measure in question for SMEs.

The result of this assessment is provided in the detailed assessment of the impact of the different policy options.

Administrative burden for companies

The administrative burden for companies (in addition to any obligations to pay higher wages) was assessed in terms of the expenses that would be necessary in order to implement the measures under the envisaged policy options, specifically by estimating the administrative burden incurred in complying with transparency obligations (e.g. through the salary costs to draw up a report on pay). SMEs were excluded or partially excluded from the scope of the two measures that are deemed to incur a higher administrative burden.

Monitoring costs for Member States

The cost of Member States' monitoring of compliance in order to oversee the implementation of rules and take enforcement measures where appropriate was also estimated, again in terms of salary costs for the civil servants carrying out these tasks. For the purposes of cost calculation, it is estimated that Member States would monitor compliance with the measures listed under this option on a case-by-case basis, reacting to complaints concerning alleged non-conformity.

5.1.3. Social impacts

The above description demonstrates that to a very large extent the methodology of calculating the overall net economic benefit includes a quantification of central elements of the social benefits of the reduction of pay discrimination.

Through economic modelling and where necessary by the specific method of a Discrete Choice Experiment (DCE) social issues such as a higher labour market integration of women as well as a longer stay in the labour market and an increased advancement of women to senior positions have been incorporated into the measurement of the economic impact. In addition, the estimates of the reduction in the overall gender pay gap also have a significant social dimension given the adverse effects of the existence of this gap⁷³. The economic modelling methodology shows that what is measured beyond some clearly quantitative aspects (such as wage increase or the reduction of social benefits to supplement low wages) is largely the monetised impact of qualitative and social impacts. The effect of bigger job satisfaction and the resulting stronger incentives for women to enter the labour market, to

⁷² The Matrix study calculated the effects separately for companies of different sizes.

⁷³ See point 2.8.1.above.

work more hours or full-time rather than part-time, to stay longer in the labour market and keep career interruptions shorter or even choices as to many children to have are clear illustrations of the qualitative and social impacts of a reduction in pay discrimination.

Beyond quantifiable effects, measures to improve the implementation of the principle of equal pay in the EU will have a positive effect on society as a whole in terms of enhanced gender equality, and will bring specific benefits on associated elements such as job satisfaction, family relationships, the social effects of a different distribution of family income (e.g. in the event of a later divorce or separation) or health effects.

The Matrix study focused on effects that can be directly linked to the size of the gender pay gap and that are likely to be measures in quantitative terms (estimated and monetised partly through as set out above). The impact assessment recently carried out on pay audits in the UK does not monetise the economic benefits at the level of individual companies but also demonstrates the significant overlap between economic and social benefits in this particular context by pointing to the economic benefits of factors such as the demonstration of commitment to staff and to fairness which are also and arguably primarily improvements of a social nature.

Against this background it is reasonable to assume in general terms that these unquantified social impacts can be estimated to be roughly proportionally linked to the size of the reduction of the gender pay gap resulting from the different measures in qualitative terms even if no amounts can be specified in that respect.

5.2. Option 1: No new action at EU level (baseline scenario)

Since this policy option is identical with the baseline scenario it can obviously not produce any impacts compared to the baseline⁷⁴.

5.3. Option 2: Entitlement for employees to obtain information on pay levels upon request

The policy option considered in this impact assessment would provide individual employees (and possibly their representatives at company level) with a right to obtain information on the pay levels for categories of other employees doing the same work or work of equal value broken down by gender thus putting them in a better position to substantiate equal pay claims and also potentially reducing managerial discretion in wage setting. This measure is distinct from a general reporting obligation in that the obligation of an employer to provide that information only arises in the event of a specific request to that effect and only in relation to the categories of professions comparable to the activity of the claimant.

By contrast, the Matrix study evaluated the effects of a measure that would create a general disclosure obligation, including both disclosure of wages of individuals and wages of categories of workers broken down by gender, for all companies and thus entail an all-encompassing need to collect and analyse wage levels and wage structures.

The limitations of the policy measure envisaged in this impact assessment will therefore substantially reduce the cost and administrative burden compared to the results of the study. On the other hand a model leading to wage disclosure only upon request can be reasonably expected to lead to more targeted claims in situations where an employee makes a request because there is a reason to entertain doubt as to the correct implementation of the principle

⁷⁴ See point 2.2 above.

of equal pay. Therefore the reduction in benefits that will materialise would have to be expected to be much smaller than the reduction in cost. It is assumed that the cost and administrative burden will be reduced to 25% of the estimate in the Matrix study while the economic effects will be reduced to 50%⁷⁵.

An entitlement for employees to obtain information on pay levels upon request would hardly imply any administrative burden or cost for companies as the obligation does not go beyond making available existing wage-related information where and only where that is requested. On the other hand the information received is valuable for the party requesting it irrespective of the size of the company as long as there are any potential comparators. Therefore there was no reason to limit this measure to companies of a certain size.

The European employees organisations (ETUC) and the European Women's Lobby (EWL) expressed their support to the measure providing for employees' entitlement to obtain pay information as one of the most effective measures to tackle the gender pay discrimination. Employers' organisations mainly expressed concerns relating to data protection in disclosing pay information, which was addressed by including the possibility to obtain information only on pay levels rather than on individual wages in the scope of the measure assessed. The European centre for employers and enterprises providing public services (CEEP) however expressed their support regarding disclosure of wages by professional categories.

5.3.1. *Binding instrument*

The effects of a binding legal obligation were estimated on the assumption of full compliance.

5.3.1.1. Effectiveness

On that basis this measure can be expected to reduce the gender pay gap in the dimension of 1 – 1.5 percentage points⁷⁶ and thus have a medium level of effectiveness.

A measure along these lines was introduced in Portugal where employers are obliged to put all employees in a position to compare their salaries with those of the other workers in the same company through the personal records that are accessible to other workers. Following a recent modification of the relevant legislation in 2009 employers are no longer required to inform about the specific salaries of individual workers but at least have to provide averages for the categories of workers concerned. This entitlement is perceived by stakeholders as an important factor contributing to the relatively small gender pay gap in Portugal.

5.3.1.2. Economic impacts

The net present value of the economic effects would be estimated at around €158 billion EU-wide in total, or about €8 billion per year.⁷⁷

⁷⁵ Even if the size of the reduction had to be adjusted differently the relative proportions between the decrease in costs and benefits would have to be considered conservative on the basis that only a small proportion of employees would have to be expected to make a request and that the percentage of discrimination being identified in these cases must be considered substantially higher than in the case of an obligation concerning all employees.

⁷⁶ In line with the above assumptions 50% of the benefit estimated in the Matrix study (2 – 3 percentage points).

⁷⁷ 50% of the overall net benefit as estimated in the Matrix study. See section 5.1.2 above and the Matrix study for an explanation of the calculation of the net present value and annual average value of the benefits.

The single biggest factor by far contributing to these overall figures is the effect of higher labour market integration of women (additional employment), followed by the move of women from part-time towards full time (additional hours worked), the saving of low income benefits and with modest contributions of women staying longer in the labour market (additional years worked) and advancing to more senior positions (additional female managers)⁷⁸.

The income increase for women is estimated at €252 billion in total with related increased wage costs for employers. The State would benefit in the dimension of €271 billion in total⁷⁹.

The average annual administrative burden for companies to comply with this obligation is assessed as varying between a minimum of €10 for micro-enterprises (0 – 19 employees) and a maximum of €466 for large enterprises (1000+ employees), leading to a total effect across the EU of €258 million⁸⁰.

As far as the monitoring costs for Member States are concerned, the expected effect would be a cost of €3.000 per Member State and thus €81.000 EU-wide every three years (or €27.000 per year)⁸¹.

5.3.1.3. Social impacts

The measure is expected to bring medium level positive social impacts, as in line with general assumptions based on the methodology used, which largely includes social impacts in the calculation of the total economic benefits⁸² social impacts are estimated to be comparable to the size of the reduction of the gender pay gap. This would be estimated to go along with a considerable improvement in job satisfaction as one particular element of the social impacts of a reduction in pay discrimination⁸³. The entitlement of the individual employees to obtain information being paid fairly and potentially increase the trust in the employer, which would result in more job satisfaction, and consequently in lower turnover and absenteeism as well as increased productivity and quality of output. At the same time these social effects are somewhat circumscribed that the level of involvement required from the employer is rather limited (only providing factual information and that only upon request).

5.3.2. *Non-binding instrument*

5.3.2.1. General assumption concerning the follow-up to a Recommendation

The principal difficulty in estimating the impact of a Recommendation resides in the uncertainty concerning the take-up rate of a non-binding measure by Member States. The range of options includes no follow-up at all, implementation through voluntary measures, implementation through binding measures but changing some key parameters (such as the

⁷⁸ See table 31 of the Matrix study at p. 94/95.

⁷⁹ As the overall benefit itself these figures are 50% of the average between minimum and maximum assumptions in the Matrix study. The wage related costs for the employers are equivalent to income increase for female employees in addition to social security contributions for the state on that increased income. For the distributional effects per different groups of stakeholders see Table 33 of the Matrix study, p. 96.

⁸⁰ This is 25% of the average between minimum and maximum assumptions in the Matrix study.

⁸¹ 25% of the cost assumptions in the Matrix study.

⁸² See above section 2.8.3.3.

⁸³ This was separately assessed in the Matrix study; see Table 32 on p. 95.

scope of companies covered) as well as full implementation through binding measures exactly along the lines of the Recommendation or even in a more ambitious fashion.

The Matrix study considered that the likelihood of implementation in such a scenario is much bigger for large companies (1000+ employees) than for smaller enterprises. On that basis the working assumption was that all these large companies but no enterprises below that size would take action voluntarily, thus affecting one third of the EU workforce⁸⁴. That scenario is slightly different from the one analysed in this impact assessment but it appears to be reasonable to assume that a non-binding measure at EU level (which, as explained, could lead to binding, non-binding or no measures at Member State level) has the same effect as non-binding measures taken in each Member State.

The assumption that measures are much more likely to be implemented in large enterprises has to be seen in the context that in such companies there is more scope for comparison of different categories and the correction of inequalities can be assumed to have greater horizontal impact⁸⁵. Against that background, it appears to be a conservative starting point to assume benefits and costs equivalent to that share in the dimension of one third of the effects of binding measures. The following estimates are based on that assumption unless indicated otherwise.

5.3.2.2. Effectiveness

On the basis of the same general considerations as for a binding initiative this measure can be expected to reduce the gender pay gap in the dimension of 0.33 – 0.5 percentage points and thus have a rather low level of effectiveness.

5.3.2.3. Economic impact

The net present value of the economic effects would be estimated at around €53 billion EU-wide in total, or about €3 billion per year⁸⁶.

The income increase for women is estimated at €84 billion in total with related increased wage costs for employers. The State would benefit in the dimension of €90 billion in total⁸⁷.

The average annual administrative burden for companies to comply with this obligation is assessed at a maximum of €466 for the large enterprises (1000+ employees) that are expected to implement the measure, leading to a total effect across the EU of €9 million⁸⁸.

As far as the monitoring costs for Member States are concerned, the expected effect would be a cost of €1.000 per Member State and thus €27.000 EU-wide every three years (or €9.000 per year)⁸⁹.

⁸⁴ The effects are therefore estimated at one third unless otherwise specified.

⁸⁵ This is not meant to imply that there is generally a greater degree of discrimination in larger enterprises. Rather it implies that the identification of a case of discrimination is likely to have bigger impacts due to the higher number of persons likely to benefit from the rectification.

⁸⁶ See section 5.1.2 above and the Matrix study for an explanation of the calculation of the net present value and annual average value of the benefits

⁸⁷ As the overall benefit itself these figures are 50% of the average between minimum and maximum assumptions in the Matrix study. The wage related costs for the employers are equivalent to income increase for female employees in addition to social security contributions for the state on that increased income. For the distributional effects per different groups of stakeholders see Table 33 of the Matrix study, p. 96.

⁸⁸ This is 25% of the average between minimum and maximum assumptions in the Matrix study for large enterprises in line with the approach chosen under point 5.3.2.1.

⁸⁹ 25% of the cost assumptions in the Matrix study.

5.3.2.4. Social impacts

In view of the estimate in line with general assumptions based on the methodology used, which largely includes social impacts in the calculation of the total economic benefits⁹⁰, that the social impacts are comparable in the size to the reduction of the gender pay gap, it is expected that the measure would bring a rather limited level of the positive social impacts.

5.4. Option 3: Regular reporting of companies on pay levels

This policy measure would oblige individual companies to report on the level of the gender pay gap informing the employees and workers' representatives on an annual basis about the average remuneration by category and profession, broken down by gender. This implies higher costs for companies than for Option 2 as reporting needs to be done irrespective of the existence of a request and needs to cover the company as a whole. The reporting will make transparent the pay structures of all companies covered and thus offer a significantly higher potential in revealing shortcomings in the implementation of the principle of equal pay and larger benefits resulting from their rectification as a consequence of both individual claims and, more importantly, amendments to pay systems by employers or social partners.

This measure was evaluated in the Matrix study in the same form. However, this impact assessment is based on a reduction of the scope of the measure excluding small and micro enterprises, i.e. enterprises with less than 50 employees. Regular reporting of companies on pay levels would incur a modest cost which would however not be entirely negligible for very small companies. In terms of expected effectiveness it needs to be taken into account that in order to be meaningful a company report by various professional categories and broken down by gender requires a certain minimum size in order to populate the different categories. Against this background it was chosen to assess this measure only as applicable to companies with more than 50 employees, thus exempting micro and small enterprises. This is also based on the practice in MS that have legislated in this field and have generally introduced a threshold for the size of the company. The benefit and cost assumptions had to factor in this limitation of scope.

In view of the fact that in larger companies there is more scope for comparison between different activities and the correction of inequalities can be assumed to have greater horizontal impacts⁹¹ it appears appropriate to reduce the benefits as calculated by Matrix for all companies by 20%. On the cost side the Matrix study differentiates between micro, small, medium and large enterprises and the figures for a reduced scope were adjusted on that basis.

ETUC and the EWL expressed their support for this measure.

5.4.1. Binding instrument

The effects of a binding legal obligation were estimated on the assumption of full compliance.

⁹⁰ See above section 2.8.3.3.

⁹¹ This is not meant to imply that there is generally a greater degree of discrimination in larger enterprises. Rather it implies that the identification of a case of discrimination is likely to have bigger impacts due to the higher number of persons likely to benefit from the rectification.

5.4.1.1. Effectiveness

On that basis this measure can be expected to reduce the gender pay gap in the dimension of 2 – 3 percentage points and thus have a high level of effectiveness.

Several Member States have introduced measures requiring companies to report on pay levels. For instance, the Austrian Law on Equal Treatment (*Gleichbehandlungsgesetz, GIB*), amended in March 2011, establishes that private companies and public sector bodies with more than 150 employees⁹² have to publish the average employees' wages by occupational groups and gender. The wages have to be reported every other year. The wage report is used internally, thus not as an instrument to inform the authorities about wage structures, but as an instrument to create more transparency at company level, increase the bargaining power of employees and work councils and raise awareness. The ultimate objective of the introduction of this measure in Austria was the reduction of the country gender pay gap. Since the policy was introduced rather recently, its effects are yet to manifest; however, stakeholders suggest that it is likely to help significantly reduce the gender pay gap.

The Swedish equal treatment legislation introduced an obligation on employers to survey and analyse regulations and practices on a yearly basis concerning pay and pay differentials between women and men who perform work that can be considered equal or of equal value. The wage mapping requirement was introduced because Sweden seemed to be lagging behind with respect to other EU countries in terms of Equal Pay legislation. A national study conducted in 2011⁹³ claims that, among the different active measures introduced by the government, the wage mapping has had the biggest effect against discrimination. In addition, a review of the wage mapping carried out by the Equality Ombudsman⁹⁴ between 2006 and 2008 concludes that approximately 6000 persons have received wage adjustments following the identification of the gender pay gap through the obligatory mapping of wages.

In Italy the requirement for companies with more than 100 employees to compile a report on the working conditions of women and men in the company was introduced for the first time through Law 125 of 1991. It was then incorporated in Article 46 of the Legislative Decree n. 198 (April 2006) which summarises Italian legislation and positive actions in the field of equal opportunities across genders. The report is drafted every two years and contains information about many factors, including the pay gap between women and men in the organisation. The report needs to be transmitted to trade unions and to regional counsellors of equality (*Consigliere Regionale di parita*). The counsellors then analyse the data and transmit the results to the national equality counsellor, to the Ministry of Labour and to the Department of Equal Opportunity. The aim of this exercise is to evaluate the situation of women and men in employment and to monitor the implementation of gender equality legislation. The information on the salary of employees is also supposed to increase wages transparency and allow female (and male) employees and trade unions (on their behalf) to negotiate better conditions and better salaries. The report constitutes a valid monitoring tool of the general situation of equal opportunities in Italy.

⁹² From 2012, the requirement was extended to companies with more than 500 employees, from 2013 to companies with more than 250 employees and from 2014 to companies with more than 150 employees.

⁹³ Statskontoret: Aktiva åtgärder mot diskriminering – effekter och kostnader; 2011:4.

⁹⁴ JämO: JämOs miljonmaskning etapp 1 – Granskningsrapport; November 2007.

5.4.1.2. Economic impacts

The net present value of the economic effects would be estimated at around €366 billion EU-wide in total, or about €18 billion per year⁹⁵.

The single biggest factor by far contributing to these overall figures is the effect of higher labour market integration of women (additional employment), followed by the move of women from part-time towards full time (additional hours worked), the saving of low income benefits and with modest contributions of women staying longer in the labour market (additional years worked) and advancing to more senior positions (additional female managers)⁹⁶

The income increase for women is estimated at €568 billion in total with related increased wage costs for employers. The State would benefit in the dimension of € 608 billion in total⁹⁷.

The average annual administrative burden for companies to comply with this obligation is assessed as varying between a minimum of €221 for the smaller covered enterprises (50 – 99 employees) and a maximum of €2,028 for large enterprises (1000+ employees), leading to a total effect across the EU of €244 million⁹⁸.

As far as the monitoring costs for Member States are concerned, the expected effect would be a cost of € 12.000 per Member State and thus € 324.000 EU-wide every three years (or €108.000 per year).

5.4.1.3. Social impact

In line with the general assumptions based on the methodology used, which largely includes social impacts in the calculation of the total economic benefits⁹⁹, the measure is expected to bring a high level of positive social impacts. Specifically, it is likely to lead to a high increase in job satisfaction by employees as one particular element of the social impacts of a reduction in pay discrimination¹⁰⁰. The same considerations as in Option 2 apply but a bigger effect can be partly traced back to a more proactive visible involvement of the employer in tackling any potential problem.

5.4.2. *Non-binding instrument*

5.4.2.1. Effectiveness

On the basis of the general considerations concerning the effects of a Recommendation as for Option 2 this measure can be expected to reduce the gender pay gap in the dimension of 0.66 – 1.5 percentage points and thus have a medium level of effectiveness-

⁹⁵ 80% of the average between minimum and maximum assumptions in the Matrix study. See section 5.1.2 above and the Matrix study for further details.

⁹⁶ See table 31 of the Matrix study at p. 94/95.

⁹⁷ As the overall benefit itself these figures are 80% of the average between minimum and maximum assumptions in the Matrix study. The wage related costs for the employers are equivalent to income increase for female employees in addition to social security contributions for the state on that increased income. For the distributional effects per different groups of stakeholders see Table 33 of the Matrix study, p. 96.

⁹⁸ This is the average between minimum and maximum assumptions in the Matrix study.

⁹⁹ See above section 2.8.3.3.

¹⁰⁰ This was separately assessed in the Matrix study; see Table 32 on p. 95.

5.4.2.2. Economic impacts

The net present value of the economic effects would be estimated at around €122 billion EU-wide in total, or about €6 billion per year¹⁰¹.

The income increase for women is estimated at €190 billion in total with related increased wage costs for employers. The State would benefit in the dimension of €202 billion in total¹⁰².

The average annual administrative burden for companies to comply with this obligation is assessed at a maximum of €2,028 for the large enterprises (1000+ employees) that are expected to implement the measure, leading to a total effect across the EU of €38 million¹⁰³.

As far as the monitoring costs for Member States are concerned, the expected effect would be a cost of €4.000 per Member State and thus €108.000 EU-wide every three years (or €36.000 per year).

5.4.2.3. Social impacts

In line with the level of the reduction of the gender pay gap, this measure is expected to have a medium level of positive social impacts.

5.5. Option 4: Pay audits

A pay audit includes a report on the wage structures of a company and thus fully includes the previous measures but goes beyond the mere gathering, organization and presentation of data on pay and pay differentials. In addition, an integral part of a pay audit is an analysis and assessment of those structures and of the job evaluation and classification system. This analytical element, which beyond the identification of a potential bias also offers an explanation of that gender bias and thus also at least a starting point for adequate measures in order to eliminate, represents the decisive added value of a pay audit.

While the Matrix study did not assess pay audits as a separate measure, it contains the material necessary to estimate the benefits of such a measure. The study measures the impacts of the measures obliging individual reporting of the gender pay gap at the company level as well as the development of software tools for employers to calculate the gender pay gap¹⁰⁴. It is reasonable to assume that the effects of a pay audit would at least be equivalent of those of a company reporting obligation (point 5.4. above) combined with the use of existing software tools that have been developed for the analysis of a company's salary structure¹⁰⁵, the latter being a measure evaluated by the study. The addition of the benefits of those two measures appears to represent a rather conservative assumption since a thorough pay audit carried out not only by the application of IT tools but involving the work of internal or

¹⁰¹ See section 5.1.2 above and the Matrix study for further details.

¹⁰² As the overall benefit itself these figures are 80% of the average between minimum and maximum assumptions in the Matrix study. The wage related costs for the employers are equivalent to income increase for female employees in addition to social security contributions for the state on that increased income. For the distributional effects per different groups of stakeholders see Table 33 of the Matrix study, p. 96.

¹⁰³ This is the average between minimum and maximum assumptions in the Matrix study for large enterprises.

¹⁰⁴ Matrix study: measures 2 and 6.

¹⁰⁵ Such as LOGIB-D, a tool provided by the Federal Ministry for Women, Seniors, Family and Youth for companies to identify the gender pay gap and analyse their salary structure.

external experts on this matter is likely to yield better insight into the nature of problems and more refined solutions.

On the other hand pay audits imply higher costs specifically due to the bigger investment in a more analytical investigation of the status quo, often with the assistance of specialized consultants. The cost of a pay audit has been estimated by the UK impact assessment at £ 12,800 or roughly €15,000¹⁰⁶. This estimate is used and extrapolated for the purposes of this impact assessment as the best available evidence.

As pay audits imply a much higher cost and administrative burden than Options 2 and 3 and could amount to a disproportionate burden for smaller companies. Since an extended analytical assessment of pay structures seems to promise benefits mostly for companies of a certain size, this option was assessed as applicable only to large companies, having more than 250 employees and thus excluding SMEs. Adjustments were also made due to that limitation in the scope of the policy measure¹⁰⁷.

The discrimination-related roots of the pay gap are today often hidden in the technicalities of determining the value of work and the level of pay through job classification systems in the pay structures of companies or collective agreements at plant or industry level. Such structures are much more common and more complex in larger enterprises. In larger companies there is by definition more scope for comparison between different employees or categories of employees. In addition, the economic impact of remedying discrimination that has been identified in a pay structure will generally have a much bigger impact for larger companies because the effects of adjusting the pay structure will materialise for a greater number of employees¹⁰⁸.

In view of these circumstances it appears appropriate to reduce the benefits as calculated by Matrix for all companies by 30%. On the cost side the Matrix study differentiates between micro, small, medium and large enterprises and the figures for a reduced scope were adjusted on that basis.

ETUC and the EWL as well as European public employers (CEEP) indicated the measure on pay audits as an effective measure to tackle the pay gap and pay discrimination. ETUC noted that gender equality plans and pay audits should be made compulsory in all Member States. Gender equality plans (which could be comparable to pay audits as regards the obligation of the companies to analyse their pay structures prior to taking action to tackle pay inequalities) were also listed by the national gender equality bodies as one of the key measures recommended at EU level to tackle the pay gap.

5.5.1. *Binding instrument*

The effects of a binding legal obligation were estimated on the assumption of full compliance.

¹⁰⁶ The UK 2012 Impact Assessment, Annex 1: costs of a pay audit to the employer.

¹⁰⁷ In view of the fact that most pay discrimination issues will arise in larger companies where there is more scope for comparison between different activities it appears appropriate to reduce the benefits as calculated by Matrix for all companies by 30%. On the cost side the Matrix study differentiates between micro, small, medium and large enterprises and the figures for a reduced scope were adjusted on that basis.

¹⁰⁸ This is not meant to imply that there is generally a greater degree of discrimination in larger enterprises. Rather it implies that the identification of a case of discrimination is likely to have bigger impacts due to the higher number of persons likely to benefit from the rectification.

5.5.1.1. Effectiveness

On that basis this measure can be expected to reduce the gender pay gap in the dimension of 2 – 4 percentage points and thus have a high level of effectiveness.

5.5.1.2. Economic impacts

The net present value of the economic effects would be estimated at around €396 billion EU-wide in total, or about €20 billion per year¹⁰⁹.

The single biggest factor by far contributing to these overall figures is the effect of higher labour market integration of women (additional employment), followed by the move of women from part-time towards full time (additional hours worked), the saving of low income benefits and with modest contributions of women staying longer in the labour market (additional years worked) and advancing to more senior positions (additional female managers)¹¹⁰

The income increase for women is estimated at €594 billion in total with related increased wage costs for employers. The State would benefit in the dimension of € 645 billion in total¹¹¹.

The average annual administrative burden for the companies covered (250+ employees) to comply with this obligation is assessed at an average amount of €15.000, leading to a total effect across the EU of €440 million¹¹². However, this higher cost is to some extent offset by the fact that as opposed to company reporting at regular intervals and the recurring nature of the related (annual) costs a pay audit is in principle a one-off measure.

As far as the monitoring costs for Member States are concerned, the expected effect would be a cost of maximum € 12.000 per Member State and thus € 324.000 EU-wide every three years (i.e. €108.000 per year)¹¹³.

5.5.1.3. Social impacts

In line with the general assumptions based on the methodology used, which largely includes social impacts in the calculation of the total economic benefits¹¹⁴, the measure is expected to bring a high level of positive social impacts. Specifically, it is likely to lead to a high increase in job satisfaction by employees as one particular element of the social impacts of a reduction in pay discrimination¹¹⁵. In comparison with Options 2 and 3 employers would even play a bigger role visible to their employees in analysing their pay structures and addressing any

¹⁰⁹ 70% of the addition of the average benefits of company reporting and the use of an analytical IT tool in the Matrix study. See section 5.1.2 above and the Matrix study for further details.

¹¹⁰ See table 31 of the Matrix study at p. 94/95.

¹¹¹ As the overall benefit itself these figures are 70% of the average between minimum and maximum assumptions in the Matrix study. The wage related costs for the employers are equivalent to income increase for female employees in addition to social security contributions for the state on that increased income. For the distributional effects per different groups of stakeholders see Table 33 of the Matrix study, p. 96.

¹¹² This is an estimate based on the average between minimum and maximum assumptions for company reporting in the Matrix study for companies with at least 250 employees and on the further assumption that EU-wide a pay audit is around five times as expensive as company reporting.

¹¹³ Based on the assumption that the monitoring of a pay audit obligation for a restricted scope of companies will in any case not exceed (and in all likelihood be significantly lower than) those of monitoring reporting obligations for a much broader set of companies.

¹¹⁴ See above section 2.8.3.3.

¹¹⁵ This was separately assessed in the Matrix study ; see Table 32 on p. 95; here as well the effects of pay reporting and the use of IT tools should be combined for a conservative estimate.

problems resulting from that assessment which would in turn positively impact on social effects.

5.5.2. *Non-binding instrument*

5.5.2.1. Effectiveness

On the basis of the general considerations concerning the effects of a Recommendation as for Option 2 this measure can be expected to reduce the gender pay gap in the dimension of 0.66 – 2 percentage points and thus have a medium level of effectiveness.

5.5.2.2. Economic impacts

The net present value of the economic effects would be estimated at around €132 billion EU-wide in total, or about €7 billion per year¹¹⁶.

The income increase for women is estimated at €198 billion in total with related increased wage costs for employers. The State would benefit in the dimension of €215 billion in total¹¹⁷.

The average annual administrative burden for the large companies (1000+ employees) that are expected to implement this measure is assessed at an average amount of €10,000, leading to a total effect across the EU of €188 million¹¹⁸. However, this higher cost is to some extent offset by the fact that as opposed to company reporting at regular intervals and the recurring nature of the related (annual) costs a pay audit is in principle a one-off measure.

As far as the monitoring costs for Member States are concerned, the expected effect would be a cost of maximum €4,000 per Member State and thus €108,000 EU-wide every three years (i.e. €36,000 per year)¹¹⁹.

5.5.2.3. Social impacts

On the basis of the level of the reduction of the gender pay gap, this measure is expected to have a medium level of positive social impacts.

5.6. **Option 5: Consideration of equal pay as a separate issue by social partners in collective bargaining**

This measure would oblige social partners to consider equal pay issues as a separate point in collective bargaining. The main effect would be to draw the attention of social partners to these issues and oblige them to discuss the gender pay gap and appropriate ways to reduce it

¹¹⁶ See section 5.1.2 above and the Matrix study for further details.

¹¹⁷ As the overall benefit itself these figures are 70% of the average between minimum and maximum assumptions in the Matrix study. The wage related costs for the employers are equivalent to income increase for female employees in addition to social security contributions for the state on that increased income. For the distributional effects per different groups of stakeholders see Table 33 of the Matrix study, p. 96.

¹¹⁸ This is an estimate based on the average between minimum and maximum assumptions for company reporting in the Matrix study for companies with at least 1000 employees and on the further assumption that EU-wide a pay audit is around five times as expensive as company reporting (€10,000 for a pay audit corresponds to about five times the cost of company reporting in large enterprises estimated at around €2,000).

¹¹⁹ Based on the assumption that the monitoring of a pay audit obligation for a restricted scope of companies will in any case not exceed (and in all likelihood be significantly lower than) those of monitoring reporting obligations for a much broader set of companies.

in their wage negotiations, while respecting the autonomy of the social partners. The scope of such a measure would be reduced to pay structures laid down in collective agreements not including individual pay claims and salary systems put in place by employers unilaterally (i.e. not on the basis of collective bargaining). On the other hand, discriminatory pay rules in collective agreements by definition have the biggest impact since they generally affect large individual companies or whole industries. Consequently, addressing equal pay issues at the level of collective agreements may in principle offer substantial benefits, the drawback being that the real uptake not only as a formality but in the sense of seriously addressing equal pay issues is difficult to predict and may be rather low.

The measure was supported by ETUC, the EWL as well as CEEP. Other employers' organisations (UNEAPME) stressed the importance of the collective bargaining autonomy of the social partners in general but did not indicate that the measure could be potentially be inconsistent with the principle of autonomy¹²⁰. In its and the opinion of 2009 the Advisory Committee on Equal Opportunities for Women and Men, composed by delegates from Member States and social partners, also expressed support to the incorporating equal pay in collective bargaining.

5.6.1. Binding instrument

The effects of a binding legal obligation were estimated on the assumption of full compliance.

5.6.1.1. Effectiveness

On that basis this measure can be expected to reduce the gender pay gap in the dimension of 0 – 1 percentage points and thus have a rather limited level of effectiveness.

Measures on including equal pay in collective bargaining have been introduced in France where legislation introduced in March 2006 obliges employers and trade unions to discuss specific topics during the collective agreements negotiations. The gender pay gap is one of the topics to be discussed every year both at the company and at the sector level. As a result of the introduction of this obligation, the share of collective agreements dealing with the gender pay gap has increased substantially (from 3% in 2007 to 10% in 2010). In addition, most of these collective agreement not only contain a brief diagnosis of the situation, but they also present specific indicators and a list of measures to be undertaken in order to close the gap. In particular, the majority of the agreements negotiated after 2008 emphasise the need to abolish the unjustified gender pay gap. This indicates that the obligation to include equal pay in collective bargaining has the potential to effectively increase the incentives to address the problem of the gender pay gap during the negotiations between social partners.

5.6.1.2. Economic impacts

The net present value of the economic effects would be estimated at around €50 billion EU-wide in total, or about €3 billion per year¹²¹.

The single biggest factor by far contributing to these overall figures is the effect of higher labour market integration of women (additional employment), followed by the move of women from part-time towards full time (additional hours worked), the saving of low income

¹²⁰ It needs to be underscored that the mere obligation to consider a specific issue in collective bargaining does not imply any obligation to take any measures or even to take specific measures and therefore leaves the autonomy of social partners as to the content of collective agreements untouched.

¹²¹ See section 5.1.2 above and the Matrix study for further details.

benefits and with modest contributions of women advancing to more senior positions (additional female managers)¹²².

The income increase for women is estimated at €64 billion in total with related increased wage costs for employers. The State would benefit in the dimension of €72 billion in total¹²³.

The average annual administrative burden for companies to comply with this obligation is in principle nil since the obligation only concerns social partners and only requires the consideration of equal pay issues which per se does not imply any cost. However, where social partners choose to seriously analyse the status quo this would require the gathering of pay data which ultimately companies would have to provide. The related costs are assessed at a maximum total amount across the EU of €36 million¹²⁴.

In view of the very limited monitoring needed for a measure obliging social partners, which in this case can be expected to be monitored by trade unions, the monitoring costs for Member States can be estimated at a cost of around €800 per Member State and thus €22.000 EU-wide every three years (i.e. €7.300 per year).

5.6.1.3. Social impacts

In line with the general assumptions based on the methodology used, which largely includes social impacts in the calculation of the total economic benefits¹²⁵, this measure is expected to have a rather limited level of positive social impacts. Specifically, it is likely to lead to a relatively low increase in job satisfaction by employees as one particular element of the social impacts of a reduction in pay discrimination¹²⁶. While measures taken by the social partners by definition have a broader scope of application the fact that they are not taken by an employer but rather far removed from the company itself implies certain limits concerning the social benefits resulting from a visible involvement of the employer.

5.6.2. *Non-binding instrument*

5.6.2.1. Effectiveness

On the basis of the general considerations concerning the effects of a Recommendation as for Option 2 this measure can be expected to reduce the gender pay gap in the dimension of 0 – 0.33 percentage points and thus have a rather limited level of effectiveness.

5.6.2.2. Economic impacts

The net present value of the economic effects would be estimated at around €17 billion EU-wide in total, or about €1 billion per year¹²⁷.

¹²² See table 31 of the Matrix study at p. 94/95.

¹²³ As the overall benefit itself this is the average between minimum and maximum assumptions in the Matrix study. The wage related costs for the employers are equivalent to income increase for female employees in addition to social security contributions for the state on that increased income. For the distributional effects per different groups of stakeholders see Table 33 of the Matrix study, p. 96.

¹²⁴ Based on the assumption that all social partners would carry out such work and would ask all large companies (1000+ employees) to report on their pay structures the cost corresponds to the average between minimum and maximum assumptions in the Matrix study for reporting obligations for these large enterprises. These assumptions will in all likelihood lead to an overestimation of the costs of these measures since not all social partners will take the obligation up in this fashion and those that do will in all likelihood only do sample studies of pay structures.

¹²⁵ See above section 2.8.3.3.

¹²⁶ This was separately assessed in the Matrix study ; see Table 32 on p. 95; here as well the effects of pay reporting and the use of IT tools should be combined for a conservative estimate.

¹²⁷ See section 5.1.2 above and the Matrix study for further details.

The income increase for women is estimated at €21 billion in total with related increased wage costs for employers. The State would benefit in the dimension of €24 billion in total¹²⁸.

The average annual administrative burden annually for companies to comply with this obligation is in principle nil since the obligation only concerns social partners and only requires the consideration of equal pay issues which per se does not imply any cost. However, where social partners choose to seriously analyse the status quo this would require the gathering of pay data which ultimately companies would have to provide. The related costs are assessed at a maximum total amount across the EU of €12 million¹²⁹.

In view of the very limited monitoring needed, the monitoring costs for Member States can be estimated at a cost of around €400 per Member State and thus €11.000 EU-wide every three years (i.e. €3.700 per year).

5.6.2.3. Social impacts

On the basis of the level of the reduction of the gender pay gap, this measure is expected to have a rather limited level of positive social impacts.

6. COMPARISON OF POLICY OPTIONS

All policy options – both in a binding or non-binding variety - are expected to address the main drivers of the problem and would help to better implement the principle of equal pay and to reduce the discrimination-related element of the gender pay gap. All the individual measures considered for introduction on a mandatory or voluntary basis are estimated to produce very sizeable net economic benefits, to a large part at the macro-economic level. They also produce costs for individual companies and, at least for binding measures, for the Member States to monitor compliance but for all the options considered, these costs are fairly limited – particularly taking into account that the exclusion of small or even small and medium enterprises from the scope is suggested for the more costly measures. In any event the benefits by far exceed these costs.

As can be concluded from the overview tables 4 and 5 below, the policy options differ in terms of their impact on the objectives.

Options 2 – 5 if introduced by binding legislation (Directive) are estimated to produce substantially larger benefits than if introduced on the basis of a non-binding initiative in the form of a Commission Recommendation. Comparing the individual measures considered the biggest benefits would be derived from introducing a reporting obligation or even the obligation of a pay audit for companies exceeding a certain size (**option 4**), individual entitlements to information on pay structures and obligations for social partners to consider equal pay in collective bargaining entailing a markedly smaller yet sizeable overall positive economic and social impact. There appears to be a strong relationship between the effectiveness of measures and their costs for companies, reporting obligations and pay audits being among the more cost-intensive measures. For all options costs are clearly outweighed by benefits. Administrative costs for Member States for monitoring and enforcement purposes are very small for all options (2-5) considered.

¹²⁸ As the overall benefit itself this is the average between minimum and maximum assumptions in the Matrix study. The wage related costs for the employers are equivalent to income increase for female employees in addition to social security contributions for the state on that increased income. For the distributional effects per different groups of stakeholders see Table 33 of the Matrix study, p. 96.

¹²⁹ Based on the assumption of one third of the costs estimated above under point 5.6.1.2.

Options 2 - 5 if introduced on a voluntary basis (in the form of a Commission Recommendation) are estimated to entail benefits that are considerably smaller than if introduced by binding legislation (roughly one third) with a proportionate reduction on the cost side. The ranking of the different individual measures in terms of their benefits and costs is the same as for binding measures.

When considering the choice between those approaches it is of particular importance to highlight the divergence of the factors influencing the gender pay gap and its component parts related to shortcomings in the implementation of the principle of equal pay. Circumstances in Member States differ substantially not only with regard to the size of the problems but also in respect of the regulatory, political, social and cultural factors feeding into them. Therefore, the prevalence of the concrete causes of the gender pay gap considerably varies in different Member States. This complex and multi-faceted nature of the phenomenon of the gender pay gap makes it difficult to devise one uniform “one size fits all” approach to tackle it. On that basis the Matrix study includes a mapping exercise suggesting, against the background of an assessment of the contextual circumstances, which measures are considered suitable for what selection of Member States¹³⁰.

By their very nature, binding measures are less amenable to the high degree of flexibility that appears to be warranted in these circumstances. Measures, which are made mandatory under a Directive – and here a choice would have to be made among the different measures considered in this impact assessment – have to be implemented in every Member State whether or not they are fully appropriate in view of the situation in that Member State in general or in view of the specific companies concerned.

By contrast, a Recommendation is by definition a flexible instrument in that it leaves Member States the possibility to adjust both the specific content of measures and the binding nature of these measures at the national level to the circumstances prevailing in that Member State¹³¹. In addition, for a Recommendation as a more flexible soft-law instrument one could envisage encouraging Member States to take one or more of the measures listed in Options 2 - 5. A Recommendation thus would offer the possibility of including all the individual measures assessed in this document and encourage Member State to choose and match one or more of them or adjust their individual features and their scope to their respective situations with a view to devising a tailor-made combination of measures with the best cost-benefit ratio in view of these specific circumstances. As a result, in contrast to a binding instrument, which would imply bigger net benefits but would achieve these benefits only in the sub-group of Member States where the contextual factors would make the specific measure in question effective, a non-binding instrument has a greater potential of producing results across the EU as a whole with the potential of further follow-up measures increasing the initially more limited but still very tangible benefits once the measures begin to show effects. **A Recommendation represents an attempt to combine the need for horizontal action with the flexibility that is necessary to do justice to the complexity of the issues and the divergence of circumstances in Member States.**

¹³⁰ Point 5.2.1 of the Matrix study which shows that every policy option can be only be considered an effective measure in a certain sub-group of Member States.

¹³¹ For the purpose of illustration, the UK currently considers (and has assessed the impact of) a mandatory pay audit only for employers where the loss of an equal pay case has revealed the likelihood of systemic problems in its wage structure. This may be a usefully targeted approach in a Member State with a very high number of equal pay cases litigated every year but less reasonable in a Member State where hardly any such litigation takes place due to a different litigation culture.

Therefore, in spite of the nominally bigger benefits of binding measures it is this flexibility that appears to tilt the balance in favour of a Recommendation. Binding measures are an option that could be further considered, if necessary, after having evaluated the follow-up given by Member States to a Recommendation and the effects of measures taken by Member States offering further evidence on the effectiveness, the benefits and the costs of such measures.

Table 4. Net positive economic effects of policy options

Policy Options	Net positive EU-wide economic effects in billion (overall)	Net positive annual EU-wide economic effects in billion	Decrease in gender pay gap (in percentage points)	
			Min. Impact	Max. Impact
Option 1	-	-	-	-
Option 2 binding (A)	€158	€8	1 %	1.5 %
Option 3 binding (B)	€366	€18	2 %	3 %
Option 4 binding (C)	€396	€20	2 %	4 %
Option 5 binding (D)	€50	€3	0 %	1 %
Option 2 voluntary (A)	€53	€3	0.33 %	0.5 %
Option 3 voluntary (B)	€122	€6	0.66 %	1.5 %
Option 4 voluntary (C)	€132	€7	0.66 %	2 %
Option 5 voluntary (D)	€17	€1	0 %	0.33 %

(A) Entitlement for employees to obtain information on pay levels upon request

(B) Regular reporting of companies on pay levels

(C) Pay audits

(D) Consideration of equal pay as a separate issue by social partners in collective bargaining

Table 5. Estimated annual administrative burden and compliance costs of policy options

Policy Options	Annual administrative burden for companies EU-wide in billion (average)	Annual monitoring costs for Member States EU-wide
Option 1	-	-
Option 2 binding (A)	€0.258	€27,000
Option 3 binding (B)	€0.244	€108,000
Option 4 binding (C)	€0.440	€108,000
Option 5 binding (D)	€0.036	€7,300
Option 2 voluntary (A)	€0.009	€9,000
Option 3 voluntary (B)	€0.038	€36,000
Option 4 voluntary (C)	€0.188	€36,000

7. MONITORING AND EVALUATION ARRANGEMENTS

In case of policy options 2-5 being based on a legally binding measures at EU level, Member States would have to monitor whether companies and, where appropriate, social partners comply with their obligations. The Commission would, in turn, monitor whether a legally binding instrument has been correctly transposed and implemented at national level. The Commission would report to the European Parliament and the Council on the progress made in practice at regular intervals.

In case of a non-legally binding measure at EU level, Member States would be free to decide whether and if so, what type of action they will take at national level. The Commission would monitor the situation to assess process made and report to the European Parliament and the Council. If, on the basis of those progress reports, not enough progress is made, the Commission may propose legally binding measures at EU level at a later stage.

The main indicator to monitor and evaluate progress towards to the policy objectives would be the reduction in the gender pay gap and more specifically in those elements of it that relate to pay discrimination, as a result of measures taken by Member States in line with the proposed EU level measures. Since the overall gender pay gap is influenced by a multitude of factors and there is not necessarily a linear relationship between a better implementation of the principle of equal pay and a decrease in the overall gender pay gap this indicator should be complemented by efforts to monitor the development of the proportion of the gender pay gap that is explained by pay discrimination. This could be done by isolating the discrimination component of the gender pay gap applying methodology used by the Belgian Presidency in its report on the gender pay gap of 2010¹³². In addition, the monitoring should cover other parameters directly linked to the activities by Member States and companies to implement the EU instrument.

Such parameters would include:

- the number of new legislative or non-legislative initiatives adopted by Member States,
- the number of pay audits and pay reporting by companies, and
- the presence of specific measures aimed at fostering equal pay in collective agreements.

¹³² See section 2.5 above.