



Brussels, 7.3.2014
SWD(2014) 58 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Commission Recommendation

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

{C(2014) 1405 final}
{SWD(2014) 59 final}

1. PROBLEM DEFINITION

A substantial divide between pay levels of women and men still persists throughout the EU: the gender pay gap – the overall difference between gross hourly earnings of male and female employees - currently stands at 16.2% on average for the EU Member States, ranging from 2.3% to 27.3% across the Member States. It is in general higher in the private than in the public sector. The gender pay gap is a multifaceted phenomenon explained by multiple reasons including 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. A considerable proportion of the gender pay gap can only be explained by discriminatory practices. This is despite equality between men and women being enshrined in the Treaties since 1957, further embedded in secondary legislation since 1975 and clarified both by the case law of the Court of Justice of the European Union ("CJEU") and by national courts.

In addition, 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, particularly as regards the target of a 75% employment rate.

The existing evidence indicates a sizeable problem concerning the effective implementation of the principle of equal pay in practice. Non-transparency of pay is a key contributing factor to the persistent pay discrimination and tackling this problem would help to better implement the principle of equal pay and reduce the gender pay gap.

There is a strong economic and business case for specifically tackling the discriminatory component of the gender pay gap: better use of women's skills allowing them to better contribute to the economy as a whole; recruitment and retention of good employees; increasing motivation, innovativeness and productivity and decreasing absenteeism; improving competitiveness and company image; and reducing the risk of lengthy and costly litigation for employers.

2. ANALYSIS OF SUBSIDIARITY

The gender pay gap across the EU can only be tackled effectively through a common approach, and the potential for gender equality, competitiveness and growth can be better achieved through coordinated action at EU level, addressing the gender pay gap through a number of measures aimed at increasing wage transparency. This would fully respect the principle of subsidiarity, as it would leave sufficient freedom to Member States to implement measures while taking into account national circumstances.

3. OBJECTIVES OF AN EU INITIATIVE

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

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:

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 gap¹ 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);

To raise awareness by 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

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 five 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 legislation (Directive) and on the basis of a non-binding initiative (Recommendation) as impacts will obviously 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 their specific national circumstances.

5. ASSESSMENT OF IMPACTS

5.1. 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 baseline.

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

This would provide individual employees 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.

5.2.1. Binding Legislation

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

¹ The projected impacts reducing discrimination would equally affect both the unadjusted and the adjusted gender pay gap.

5.2.1.1. Effectiveness

This measure can be expected to reduce the gender pay gap in the dimension of 1 – 1.5 percentage points and thus have a medium level of effectiveness.

5.2.1.2. Economic impacts

The overall net positive economic effects would be estimated at around €158 billion EU-wide in total, or about €8 billion per year.

The average annual administrative burden for companies to comply with this obligation is assessed as 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 million.

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).

5.2.1.3. 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 benefits, social impacts are estimated to be comparable to the size of the reduction of the gender pay gap. This would be estimated to accompany a considerable improvement in job satisfaction, as one particular element of the social impacts of a reduction in pay discrimination.

5.2.2. Recommendation

The principal difficulty in estimating the impact of a Recommendation is in the uncertainty concerning the take-up rate of a non-binding measure by Member States.

The assumption that measures are much more likely to be implemented in large enterprises, where more scope for comparison of different categories exists and where the correction of inequalities can be assumed to have greater horizontal impact, rather suggests an estimate under which the overall benefits would be bigger than the share of workers employed in such companies among the entire workforce. Against that background, it is assumed that the benefits and costs would be equivalent to one third of the effects of the binding measures.

5.2.2.1. Effectiveness

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.

5.2.2.2. Economic impacts

The overall net positive economic effects would be estimated at around €53 billion EU-wide in total, or about €3 billion per year.

The average annual administrative burden for companies to comply with this obligation is estimated 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 million.

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).

5.2.2.3. Social impacts

In view of the estimate that the social impacts are comparable in 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. This estimate is in line with general assumptions based on the methodology used, which largely includes social impacts in the calculation of the total economic benefits.

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

This would oblige individual companies to report on the level of the gender pay gap by informing employees and workers' representatives of the average remuneration by category and profession, broken down by gender. This implies higher costs for companies as reporting needs to be done irrespective of the existence of a request and needs to cover the company as a whole. The reporting would make the pay structures of all companies covered transparent and thus offer a significantly higher potential of revealing shortcomings in the implementation of the principle of equal pay and larger benefits resulting from their rectification.

5.3.1. Binding Legislation

5.3.1.1. Effectiveness

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.

5.3.1.2. Economic impacts

The overall net positive economic effects would be estimated at around €366 billion EU-wide in total, or about €18 billion per year.

The average annual administrative burden for companies to comply with this obligation is assessed at 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 million.

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).

5.3.1.3. 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 benefits, 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 discrimination.

5.3.2. Recommendation

5.3.2.1. Effectiveness

On the basis of the same general considerations for a binding initiative, 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.

5.3.2.2. Economic impacts

The overall net positive economic effects would be estimated at around €122 billion EU-wide in total, or about €6 billion per year.

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 million.

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).

5.3.2.3. 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.

5.4. Option 4: Pay audits

A pay audit includes a report on the pay structure of a company and thus fully includes the previous measures but goes beyond the mere gathering, organisation 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.

5.4.1. Binding Legislation

5.4.1.1. Effectiveness

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.

5.4.1.2. Economic impacts

The overall net positive economic effects would be estimated at around €396 billion EU-wide in total, or about €20 billion per year.

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 million. 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).

5.4.1.3. 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 benefits, 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 discrimination.

5.4.2. Recommendation

5.4.2.1. 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 0.66 – 2 percentage points and thus have a medium level of effectiveness.

5.4.2.2. Economic impacts

The overall net positive economic effects would be estimated at around €132 billion EU-wide in total, or about €7 billion per year.

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 million. 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).

5.4.2.3. 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.

5.5. 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 force them to discuss the gender pay gap and appropriate ways to reduce it in their pay negotiations. The scope of such a measure would cover pay structures laid down in collective agreements (not including individual pay claims and salary systems put in place by employers unilaterally) and would thus offer substantial benefits.

5.5.1. Binding Legislation

5.5.1.1. Effectiveness

This measure can be expected to reduce the gender pay gap in the dimension of 0 – 1 percentage points and thus have a rather low level of effectiveness.

5.5.1.2. Economic impacts

The overall net positive economic effects would be estimated at around €50 billion EU-wide in total, or about €3 billion per year.

The average annual administrative burden for companies to comply with this obligation will depend on the thoroughness of the exercise. However, where social partners choose to seriously analyse the status quo and gather pay data the related costs are assessed at a maximum total amount across the EU of €36 million.

In view of the very limited monitoring needed, 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).

5.5.1.3. 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 benefits, 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 discrimination.

5.5.2. Recommendation

5.5.2.1. 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 – 0.33 percentage points and thus have a rather low level of effectiveness.

5.5.2.2. Economic impacts

The overall net positive economic effects would be estimated at around €17 billion EU-wide in total, or about €1 billion per year.

The average annual administrative burden for companies to comply with this obligation will depend on the thoroughness of the exercise. However, where social partners choose to seriously analyse the status quo and gather pay data the related costs are assessed at a maximum total amount across the EU of €12 million.

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).

5.5.2.3. Social impacts

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

6. COMPARISON OF OPTIONS/PREFERRED OPTION

All policy options – both binding and non-binding - 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 discriminatory element of the gender pay gap. All the individual measures 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-sized enterprises from the scope is suggested for the more costly measures. In any event the benefits far exceed these costs.

If introduced by binding legislation (Directive) options 2-5 are estimated to produce substantially larger benefits than if introduced on the basis of a non-binding initiative (Recommendation) due to the binding nature of measures considered. Comparing the individual measures, the biggest benefits would come from a reporting obligation or from the obligation to produce a pay audit for companies exceeding a certain size. Individual entitlements to information on pay structures and obligations for social partners to consider equal pay in collective bargaining entails a markedly smaller yet sizeable overall positive economic and social impact. For all options costs are clearly outweighed by benefits.

However, binding measures are less amenable to the high degree of flexibility that appears to be warranted in these circumstances.

Options 2-5 introduced in a form of a non-binding initiative would represent 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 individual Member States.

The ranking of the different individual measures in terms of their benefits and costs is the same as for binding measures.

7. MONITORING AND EVALUATION

In the case of policy options 2-5 being based on a legally binding measure, Member States would have to monitor compliance. In the case of a non-legally binding measure, Member States would be free to decide what type of action, if any, to take at national level. The Commission would monitor the situation to assess progress made and report to the European Parliament and the Council. If, on the basis of those progress reports, not enough progress was being made, the Commission would propose legally binding measures at EU level.