

INCEPTION IMPACT ASSESSMENT

Inception Impact Assessments aim to inform citizens and stakeholders about the Commission's plans in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

TITLE OF THE INITIATIVE	<i>Strengthening the principle of equal pay between men and women through pay transparency</i>
LEAD DG (RESPONSIBLE UNIT)	JUST D2 "gender equality"
LIKELY TYPE OF INITIATIVE	<i>Legislative</i>
INDICATIVE PLANNING	Q4 2020
ADDITIONAL INFORMATION	https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/equal-pay_en

The Inception Impact Assessment is provided for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Inception impact assessment, including its timing, are subject to change.

A. Context, Problem definition and Subsidiarity Check

Context

The Commission's Action Plan for 2017-2019 on tackling the gender pay gap¹ announced its intention to assess the possibility of making some or all of the measures on pay transparency foreseen in the 2014 Recommendation on pay transparency binding. The REFIT Scoreboard also recalls this commitment under the "Equal Pay for women and men" section². In June 2019, the Council³ called on the European Commission to actively follow-up on the evaluation of the provisions in Directive 2006/54/EC implementing the Treaty principle on 'equal pay'. The European Parliament has consistently called⁴ for more action at the European level to enhance the application of the equal pay provisions. President von der Leyen committed in her Political Guidelines to introduce binding pay transparency measures.

This initiative follows-up on the ongoing Commission's evaluation of the relevant provisions of Directive 2006/54/EC and previous reports, including the ones on the Commission Recommendation 2014/124/EU⁵, which highlighted the need improve understanding of some existing legal concepts, and unveiled problems in enforcing the principle of equal pay across the EU and fragmented pay transparency measures across the EU. It complements other Commission initiatives addressing further root causes of the gender pay gap (e.g. Work-Life Balance Directive 2019/1158, sectoral initiatives to fight stereotypes and the proposed Directive on improving gender balance on company boards⁶).

Problem the initiative aims to tackle

The evaluation of 2006/54/EC Directive and of the 2014 Recommendation on pay transparency raised concerns about pay transparency and the lack of understanding of some existing legal concepts as the obstacles to effectively implementing the relevant articles of the Directive. It also pointed to variations and inefficiencies in enforcing systems of Member States, leading to the respect of one of the EU fundamental rights being not ensured in a uniform way across the EU and EU citizens not getting proper access to justice.

It is not possible to measure to what extent gender pay differences are due specifically to gender pay

¹ Commission's Action Plan 2017-2019: tackling the gender pay gap, adopted on 20 November 2017, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017DC0678>
<http://publications.europa.eu/webpub/com/refit-scoreboard/en/priority/7/7-20.html>

³ EPSCO Conclusions from June 2019, doc. 10349/19

⁴ European Parliament, Resolution of 8 October 2015 on the application of Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, 2014/2160(INI)

⁵ Implementation report on Directive 2006/54/EC (SWD(2013) 512 final); Impact Assessment accompanying the Pay Transparency Recommendation (SWD(2014) 59 final); Report on the implementation of Commission Recommendation on strengthening the principle of equal pay between men and women through transparency (COM(2017) 671 final).

⁶ COM/2012/0614 final - 2012/0299(COD)

discrimination. Still, the persistence of the gender pay gap might at least partly be explained by the hidden nature of this phenomenon of which victims might not even be aware. Public perception also suggests that the right to equal pay is not properly enforced. Moreover, the lack of pay transparency may hinder an appropriate understanding of pay discrimination and therefore more effective policy actions to eradicate it.

The **asymmetry of information** between employees and employers about pay may give a negotiating advantage to the employers (from hiring time onwards). When employees do not have access to information that would allow them to understand the relative value of their labour, they are unable to negotiate successfully for fair wages.⁷ Indirectly, a lack of information on pay levels across organisations, sectors and regions/countries discourages workers' mobility and contributes to horizontal gender segregation. Lack of pay transparency opens opportunity to perpetuate inequality. At company level, the **lack of information** on the wage structure can make it costly and difficult for a victim of unequal treatment to obtain the information necessary from which prima facie discrimination can be established. This limits the possibility of enforcing the equal pay principle; all more when courts are called to assess whether 'work of equal value' is carried out, since different occupations under the same employer need comparing. The **need to improve understanding of** some existing legal concepts⁸ leaves much room for interpretation when assessing whether pay differences in comparable situations are justified; the lack of gender neutrality in job classification and evaluation systems⁹ may add to the problem, in particular when comparing 'work of equal value'. The assessment of Member States' measures gave evidence of fragmentation and obstacles for implementing appropriate solutions.

Basis for EU intervention (legal basis and subsidiarity check)

The legal basis for intervention is Article 157(3) TFEU, which is the legal basis for any binding measures aimed at ensuring the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. The Founding Treaties reflect the political will to create a competitive level-playing field between Member States by enshrining the principle of equal pay and of gender equality on the labour market, to avoid any downward competition between Member States in labour and equal treatment matters. Action at EU level could put in place a common framework ensuring a competitive level playing field. Currently, the implementation of the principle of equal pay for women and men – for the same work or work of equal value – is not uniformly defined and protected.

The initiative respects the principle of subsidiarity, as it aims to improve the application of well-established EU legislation dating back to the Treaty of Rome, including the principle of equal pay enshrined in Article 157(1) TFEU.

B. Objectives and Policy options

By strengthening access to information on pay levels, improving understanding of some existing legal concepts and enhancing enforcement mechanisms in the EU legal provisions, this initiative could have a positive impact on enforcing the fundamental right of equal treatment between men and women.¹⁰

In the no-change scenario Member States would still be invited to introduce pay transparency measures in line with the 2014 Recommendation on Pay Transparency. The new initiative would introduce compulsory measures such as staff rights to information, pay reporting and/or pay auditing. The specific options will be identified after the consultation process. Mechanisms ensuring adequate enforcement of the selected measures will also be considered. Possible non-legislative measures could include further sharing of best practices¹¹, interpretative guidance on EU Court of Justice's case law and/or targeted awareness-raising campaigns on equal pay rights. The initiative will take into account any possible disproportionate burden on micro- or small enterprises or interference with their freedom to conduct a business. All measures envisaged will be compatible with EU privacy legislation, especially the General Data Protection Regulation 2016/679/EU.

C. Preliminary Assessment of Expected Impacts

Likely economic impacts

⁷ <https://www.sciencedirect.com/science/article/pii/S0007681317300356>See

⁸ Namely, the notion of "pay", "same work", "work of equal value".

⁹ A job classification system is the grouping of jobs into classes usually on the basis of type of work or level of pay. See [SWD\(2013\) 512 final](#) annex 1 for details.

¹⁰ Article 23 of the Charter of Fundamental Rights of the European Union

¹¹ The Commission organised mutual learning seminars linked to equal pay, eg. on IS equal pay standard and on BE Gender Pay Gap Law https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/who-we-work-gender-equality/mutual-learning-programme-gender-equality_en

The initiative could have positive¹² impacts on the efficiency of the labour market by ruling out one factor of unfair competition and incentivising labour mobility¹³ across organisations, sectors and countries. In the short run, should wage conversion happen through lowered wage growth rates for men, tax revenue could be lost, but it is likely to be negligible. Companies could benefit from increased productivity linked to higher morale and employee commitment. This might demand restructuring of pay structures and progressions according to transparent criteria linking rewards to performance and objective criteria.

Likely social impacts

For companies, a good record in this area should facilitate recruiting and retaining skilled workforce and therefore increase the overall efficiency of human resource management. Higher wage transparency should also influence the perception of revenue perspectives and possibly influence positively women's career choices. By contributing to improve economic independence of women, this initiative could, in the long run, contribute to reduce poverty rates particularly for older women with low pension rights. Positive effects were found in several impact assessments¹⁴, including the Impact Assessment accompanying the Pay Transparency Recommendation (SWD(2014) 59 final)¹⁵.

Likely environmental impacts

N.A.

Likely impacts on fundamental rights

The initiative could contribute to ensuring fuller protection and implementation of the principle of equal pay and equal treatment between men and women as laid down in Article 157(1) TFEU and Article 3(3) TEU as well as in Articles 21 and 23 of the Charter of Fundamental Rights of the EU. Indirectly, it will help employees suspecting pay discrimination in a comparable situation on other protected ground (Article 21 of the EU Charter), to seek redress in case of an unexplained gap with average salaries in their job classification. It will also help to promote citizens' freedom to engage in work and choose an occupation (Article 15 of the EU Charter). Any potential negative impact on the protection of personal data will be mitigated.

Likely impacts on simplification and/or administrative burden

Companies are likely to incur administrative costs, which should nevertheless be proportional to their size. These costs will be measured. Member States will incur compliance monitoring and enforcement costs. However, as mechanisms and bodies are already in place to ensure application of the principle of equal pay, such costs should not be substantial. Whilst measures facilitating the implementation and role of labour inspectorates/equality bodies may be costly, this would be offset by efficiency savings in dispute resolution. Workers will incur lower information litigation costs.

D. Evidence Base, Data collection and Better Regulation Instruments

Impact assessment

An Impact Assessment will be developed to underpin the Commission's proposal. It will analyse possible options to determine the best design for the proposal. The Impact Assessment Report will be grounded in the results of the Commission evaluation of the provisions in Directive 2006/54/EC implementing the Treaty principle on 'equal pay' (and its support study), as well as additional information gathered through the consultation process, including targeted consultation with stakeholders and existing networks, in particular social partners and Member States.

Evidence base and data collection

The Commission has collected information relating to the implementation of different elements of pay transparency across the EU and the challenges in enforcement of equal pay law as part of the monitoring of existing legislation (2013, 2017 implementation reports) and in the process of recent evaluation of equal pay provisions (2019). Moreover, the Commission has carried out several studies on related topics e.g. on the decomposition of the gender pay gap, on gender-neutral job classification systems and on costs and benefits of pay transparency measures. Finally, other institutions such as the European Parliament, Eurofound - the European Foundation for the Improvement of Living and Working Conditions - and the International Labour Organisation have also presented studies on equal pay.

Consultation of citizens and stakeholders

¹² EAVA 4/2013, available at: [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)

¹³ Employees are more productive and engaged when pay structures are transparent and predictable, according to [A. Chamberlain \(2015\), /s Salary Transparency More Than a Trend? Lessons from Economic Research](#)

¹⁴ The [EP 2013 European Added Value Assessment study](#), examining the economic impact of the recommendations on equal pay provided in the EP 2012 resolution, concludes that revising Directive 2006/54/EC would be a very effective way of tackling the gender pay gap: binding measures on pay transparency would result in a 2% GPG decrease, in turn resulting in increasing total GDP by some € 34 billion, equivalent to € 67.71 per capita across the EU.

¹⁵ They would highly benefit the economy mostly by increasing the female employment rate, according to the impact assessment support study.

The Commission has already held consultations in support of this initiative, including consultation with representatives of SMEs and micro-businesses, the European Parliament, Member States and stakeholders and non-governmental organisations active in the field of equal pay and gender equality.

In 2018-2019, the Commission already organised several meetings and workshops with stakeholders, in particular social partners, and Member States representatives, including a consultation with members of the High Level Group for Gender Mainstreaming and the Advisory committee for equal opportunities for women and men.

In addition to the feedback received on the Inception Impact Assessment, the Commission will organise further targeted consultations with social partners and Member States and a public consultation.

Will an Implementation plan be established?

No