



Council of the
European Union

Brussels, 5 March 2021
(OR. en)

6750/21
ADD 1

SOC 119
EMPL 82
GENDER 13
ANTIDISCRIM 7

COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 4 March 2021

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.: SEC(2021) 101 final/2

Subject: REGULATORY SCRUTINY BOARD OPINION
Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms

Delegations will find attached document SEC(2021) 101 final/2.

Encl.: SEC(2021) 101 final/2



EUROPEAN COMMISSION

Brussels, 4.3.2021
SEC(2021) 101 final/2

REGULATORY SCRUTINY BOARD OPINION

**Proposal for a Directive of the European Parliament and of the Council to
strengthen the application of the principle of equal pay for equal work or
work of equal value between men and women through pay transparency
and enforcement mechanisms**

{COM(2021) 93 final}
{SWD(2021) 41 final}
{SWD(2021) 42 final}



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Strengthening equal pay through pay transparency

Overall 3rd opinion: POSITIVE

(A) Policy context

The EU Charter of Fundamental Rights and the EU Treaty establish the principle of equal pay between men and women. The EU has introduced different measures to implement this principle, including a Directive and a Commission Recommendation. Effective implementation and enforcement in Member States remain a challenge.

The initiative aims to further support equal pay for equal work or work of equal value across the EU. The impact assessment examines ways to strengthen pay transparency, to clarify legal concepts on equal pay and to facilitate access to justice.

(B) Summary of findings

The Board notes improvements in the report. The report is more transparent about the limited evidence of pay discrimination and does not use the gender pay gap as a direct indicator thereof. It commits to further develop indicators of pay discrimination to better meet future data needs. The report presents policy options with different degrees of ambition and explains the implications of considering the options separately or in combination.

The Board gives a positive opinion. The Board also considers that the report should further improve with respect to the following aspects:

- (1) Some aspects of the policy options remain unclear (e.g. as regards their exact content, the interplay between the different measures and their practical implementation).**
- (2) The report lacks an overview of the global costs and benefits of the preferred package. It does not sufficiently explain why this combination of measures is considered the most proportionate one.**

This opinion concerns a draft impact assessment which may differ from the final version.

Commission européenne, B-1049 Bruxelles - Belgium. Office: BERL 08/010. E-mail: regulatory-scrutiny-board@ec.europa.eu

(C) What to improve

(1) The report should further clarify the content of some of the options and how they would function in practice. For instance, it should better explain the complementarity or possible overlap between the proposed measure to provide individual workers with pay information and the more generalised obligation on pay reporting at company level. It should explain how a measure to report on pay differences, without differentiating between worker categories, would be able to reach the objectives. It should clarify the trigger and foreseen process for requiring companies to carry out a joint pay assessment under the preferred option, and what possibilities employers will have to contest. It should further specify how data protection would be ensured and by whom. The structure of the options would gain in clarity if it would address all objectives by combining the different options into alternative packages.

(2) The impact analysis should draw coherent conclusions as regards the effects of pay discrimination on companies' competitiveness (e.g. likely competitive disadvantages versus productivity gains, talent retention or reputational benefits). The impact analysis of individual pay transparency measures (e.g. ban for employers to ask for previous wage) should better take into account that pay differences play a legitimate role in rewarding performance. The report should explain in more detail the assumptions behind the analysis of economic impacts (Euromod model) and the channels which lead to the expected impacts. It should explain how male wages, business profitability and (male and female) labour market participation would evolve. It should consider the impact of these changes on prices, thus on supply and demand.

(3) The assessment should be clearer on the costs and benefits of the preferred combination of measures and why it is judged to be the most proportionate. The report should provide a clear estimate of the total costs of the preferred package (in the main report and in the summary table in annex).

(4) The executive summary should be fully aligned with the revised impact assessment report.

The Board notes the estimated costs and benefits of the preferred option in this initiative, as summarised in the attached quantification tables.

(D) Conclusion

The DG may proceed with the initiative.

The DG must take these recommendations into account before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council on strengthening the principle of equal pay between men and women through transparency
Reference number	PLAN/2019/5818

Submitted to RSB on	8 January 2021
Date of RSB meeting	Written procedure

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

<i>I. Overview of Benefits (total for all provisions) – Preferred Option</i>		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
<i>Direct benefits</i>		
Promote employee efficiency	Concerns victims of gender pay discrimination/undervaluation by gender	Not possible to quantify.
Help firms present better image	Potentially all employers applying the measure	Not possible to quantify.
Motivate lower paid groups	Concerns victims of gender pay discrimination/undervaluation by gender – depends on specific workplace situation	Not possible to quantify.
Awareness raising	All workers	
Facilitation aimed at uniform application of key concepts	All workers benefit from knowing that their rights are better protected – potential victims benefit more; Employers redress the bias in pay structures and valuation	Not possible to quantify.
Procedural improvement	Potentially all workers	Not possible to quantify.
Strengthened remedies	Potentially all workers	Not possible to quantify.
<i>Indirect benefits</i>		
Promote employee efficiency	Potentially for all workers but real extent depends on specific situation in the workplace	
Decreasing overall gender pay gap	A potential reduction of 3 p.p. of the <u>unexplained</u> GPG has been taken as reasonable estimate	Lacking precise information on the extent of pay discrimination the potential impact of the measure is difficult to assess
Behavioural change		Not possible to quantify.
Decrease in the at-risk-of-poverty rate	This is a likely impact of a potential increase of previously discriminatory low salaries	From the initial 16.3% on average in the EU27 to around 14.6%, with important heterogeneities across countries and by household types

(1) Estimates are relative to the baseline for the preferred option as a whole (i.e. the impact of individual actions/obligations of the preferred option are aggregated together); (2) Please indicate which stakeholder group is the main recipient of the benefit in the comment section.

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Information prior to employment and right to receive information on pay upon request for all workers (Sub-option 1B)	Direct costs	negligible	negligible	negligible	negligible	n.a./negligible	n.a./negligible
	Indirect costs	n.a./negligible	n.a./negligible	n.a./negligible (partly covered under measure 2D below)	n.a./negligible	n.a./negligible	n.a./negligible
Strengthened Pay reporting for 250+ (Sub-option 2D)	Direct costs	n.a./negligible	n.a./negligible	26 - 50 million EUR	n.a./negligible	450,000 EUR (min)	50,000 EUR (min)
	Indirect costs	n.a./negligible	n.a./negligible	n.a./negligible	n.a./negligible	n.a./negligible	n.a./negligible
Joint pay assessment in case of unjustified gender pay differences (Sub-option 2D)	Direct costs	n.a./negligible	n.a./negligible	Not possible to quantify	Not possible to quantify	n.a./negligible	n.a./negligible
	Indirect costs	n.a./negligible	n.a./negligible	Not possible to quantify	Not possible to quantify	n.a./negligible	n.a./negligible
Facilitation and enforcement of the existing legal framework (Option 3)	Direct costs	n.a./negligible	n.a./negligible	If non compliant	If non compliant	n.a./negligible	n.a./negligible
	Indirect costs	n.a./negligible	n.a./negligible	If non compliant	If non compliant	n.a./negligible	n.a./negligible

(1) Estimates to be provided with respect to the baseline; (2) costs are provided for each identifiable action/obligation of the preferred option otherwise for all retained options when no preferred option is specified; (3) If relevant and available, please present information on costs according to the standard typology of costs (compliance costs, regulatory charges, hassle costs, administrative costs, enforcement costs, indirect costs; see section 6 of the attached guidance).



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Strengthening equal pay through pay transparency

Overall 2nd opinion: NEGATIVE

(A) Policy context

The EU Charter of Fundamental Rights and the EU Treaty establish the principle of equal pay between men and women. The EU has introduced different measures to implement this principle, including a Directive and a Commission Recommendation. Effective implementation and enforcement in Member States remain a challenge.

The initiative aims to further support equal pay for equal work or work of equal value across the EU. The impact assessment examines ways to strengthen pay transparency, to clarify legal concepts on equal pay and to facilitate access to justice.

(B) Summary of findings

The Board notes some improvements in the report. The report acknowledges the difficulties to analyse and measure gender pay discrimination. The links between the problems, the objectives and the measures are clearer. The report discusses a broader range of potential impacts, taking into account stakeholders' concerns.

However, the Board maintains its negative opinion, because the revised report still contains the following significant shortcomings:

- (1) The report makes strong claims on pay discrimination, despite the limited evidence. It continues to rely on the gender pay gap indicator to show the existence of pay discrimination, to define the objectives of the initiative, and to measure the expected impacts of the policy options.**
- (2) The report does not demonstrate the proportionality of the preferred option, and the need for and suitability of all included measures.**

This opinion concerns a draft impact assessment which may differ from the final version.

Commission européenne, B-1049 Bruxelles - Belgium. Office: BERL 08/010. E-mail: regulatory-scrutiny-board@ec.europa.eu

(C) What to improve

(1) The report should avoid making strong claims on pay discrimination unless they are supported by strong evidence. Where there is not strong evidence, the text should present the arguments using more balanced language. Given the number of sources, it would be helpful to specify which evidence is most robust and of direct relevance for this impact assessment.

(2) The report acknowledges that the gender pay gap is not a good yardstick for pay discrimination. Nevertheless, it relies on this indicator throughout the report. The report should review the references to gender pay gap. It should avoid defining objectives and measuring the impact of pay transparency measures in terms of the gender pay gap.

(3) Given the limited evidence on pay discrimination and the importance of such information for this policy area, the report should discuss possible solutions to solve the lack of data in the future monitoring framework.

(4) The report should discuss the feasibility of using the concept of ‘work of equal value’ in practice at large scale (not only in specific legal cases) and assess how this may affect the possibility to implement (and the success of) the measure to clarify legal concepts.

(5) The report should justify why the option on ‘access to justice’ does not present alternative ways of addressing the relevant problem drivers.

(6) For the legal option on pay transparency, the report should substantiate why all included measures are necessary and proportionate. For instance, what is the added value of an obligation to report on the gender pay gap, given that this is not a direct indicator for pay discrimination. Why is there a need for a measure on pay reporting if there is a requirement for joint pay assessments? What would an inclusion of equal pay matters in collective bargaining add to these measures? To what extent would gender-neutral job classification systems be a prerequisite (and thus an intrinsic part) of the other measures? How was the frequency of the different reporting requirements decided and why could it not be less often (e.g. some Member States are doing pay audits every four years)? On the basis of these clarifications, the report should consider presenting and assessing alternative groupings of these measures, representing different degrees of ambition.

(7) The impact analysis of individual pay transparency measures should better take into account that pay differences play a legitimate role in rewarding performance. The report should integrate possible negative effects into the comparison of measures. It should also complete the impact analysis of the measure to introduce gender-neutral job evaluation and classification systems. It should provide more detail on the causal links between pay transparency measures and the expected macroeconomic income growth.

(8) The report introduces exemptions for small companies. However, the report should explain how workers’ rights would be respected in exempted companies. This is relevant given the large share of workers that would not be covered by certain measures. The report should also provide more coherent justifications for the different SME exemptions.

(9) The report should fully present the content of the options in the options description. It should not introduce further option characteristics – on, for example, SME exemptions – in the impact analysis. It should number the measures consistently in the options and impacts sections.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

(D) Conclusion

The Board's opinion is in principle final. The DG should seek political guidance on whether, and under which conditions, this initiative may proceed further.

Full title	Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council on strengthening the principle of equal pay between men and women through transparency
Reference number	PLAN/2019/5818
Submitted to RSB on	23 October 2020
Date of RSB meeting	Written procedure

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

<i>I. Overview of Benefits (total for all provisions) – Preferred Option</i>		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
<i>Direct benefits</i>		
Promote employee efficiency		Not possible to quantify.
Help firms present better image		Not possible to quantify.
Motivate lower paid groups		Not possible to quantify.
Awareness		Not possible to quantify.
Legal certainty		Not possible to quantify.
Procedural improvement		Not possible to quantify.
Strengthened remedies		Not possible to quantify.
<i>Indirect benefits</i>		
Decreasing overall gender pay gap		3p.p. of the adjusted GPG has been taken as reasonable estimate of the overall impact of the preferred option
Behavioural change		Not possible to quantify.
Decrease in the at-risk-of-poverty rate		From the initial 16.3% on average in the EU27 to around 14.6%, with important heterogeneities across countries and by household types

(1) Estimates are relative to the baseline for the preferred option as a whole (i.e. the impact of individual actions/obligations of the preferred option are aggregated together); (2) Please indicate which stakeholder group is the main recipient of the benefit in the comment section.

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Clarification of key legal concepts and definitions	Direct costs	n.a/ negligible	n.a/ negligible	n.a/ negligible	n.a/ negligible	n.a/ negligible	n.a/ negligible
	Indirect costs	n.a/ negligible	n.a/ negligible	n.a/ negligible	n.a/ negligible	n.a/ negligible	n.a/ negligible
Legislative action to improve access to justice	Direct costs	n.a/ negligible	n.a/ negligible	If non-compliant	If non-compliant	n.a/ negligible	n.a/ negligible
	Indirect costs	n.a/ negligible	n.a/ negligible	If non-compliant	If non-compliant	n.a/ negligible	n.a/ negligible
Right to pay information	Direct costs	n.a/ negligible	n.a/ negligible	450-750 m. EUR	53-233 m. EUR	n.a/ negligible	4-25,000 EUR
	Indirect costs	n.a/ negligible	n.a/ negligible	n.a/ negligible	n.a/ negligible	n.a/ negligible	n.a/ negligible
Pay reporting	Direct costs	n.a/ negligible	n.a/ negligible	185-340 m. EUR	75-177 m. EUR	450,000 EUR	50,000 EUR
	Indirect costs	n.a/ negligible	n.a/ negligible	n.a/ negligible	n.a/ negligible	n.a/ negligible	n.a/ negligible
Joint pay assesment	Direct costs	n.a/ negligible	n.a/ negligible	93-140 m.	70-109 m.	n.a/ negligible	n.a/ negligible
	Indirect costs	n.a/ negligible	n.a/ negligible	n.a/ negligible	n.a/ negligible	n.a/ negligible	n.a/ negligible



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Strengthening equal pay through pay transparency

Overall opinion: NEGATIVE

(A) Policy context

The EU Charter of Fundamental Rights and the EU Treaty establish the principle of equal pay between men and women. The EU has introduced different measures to implement this principle, including a Directive and a Commission Recommendation. Effective implementation and enforcement in Member States remain a challenge.

The initiative aims to further support equal pay for equal work across the EU. The impact assessment mainly examines ways to strengthen pay transparency. It also looks to improve understanding of legal concepts on equal pay and to facilitate enforcement of the legal provisions.

(B) Summary of findings

The Board notes the additional information provided in advance of the meeting.

However, the Board gives a negative opinion, because the report contains the following significant shortcomings:

- (1) The report does not provide sufficient evidence of the problem it aims to fix. It does not explain clearly the links between the problems, the objectives and the measures.**
- (2) The difference between the main policy options is unclear and some possible options are not analysed. The report does not explain how the specific measures of the options were selected.**
- (3) The analysis of potential impacts is incomplete. The report deals with a few expected impacts only. The analysis relies on experts' views and does not sufficiently consider stakeholders' views.**

(C) What to improve

- (1) The report needs to be clearer about the evidence of pay discrimination and its limitations. It should explain to what extent the gender pay gap provides an indication of pay discrimination and use these different concepts coherently throughout the report. It should be explicit about the extent to which pay differences can be decomposed into discriminatory and non-discriminatory determinants. The problem description should be**

clear to what extent observed pay discrimination concerns not being paid equally for the same job or work of men and women not being valued equally.

(2) The report should analyse whether the problems are linked to the policy or legal framework, to its poor implementation, or to other factors.

(3) With a view to designing well targeted measures, the report should include an analysis of where pay discrimination takes place. It should analyse whether pay discrimination is more widespread in certain sectors, occupations, types of companies, countries, etc., or affects certain groups of workers more than others (e.g. age, type of contract, etc.). To the extent possible, this analysis should be quantitative.

(4) The report should consider using a more selective use of sources, focusing on those that are most relevant. More careful consideration should be given to whether the conclusions of studies in particular countries can be generalised to the EU. If evidence is not available or is incomplete, the report should acknowledge this clearly.

(5) The report should better explain the intervention logic, linking the measures to the problems and the objectives. The report should present a more analytical description of the links between pay transparency, pay discrimination and their consequences on the labour market, competition and productivity. It should show to what extent measures taken by individual Member States have resulted in a reduction in pay discrimination. It should indicate whether measures were implemented at the company, sector or national level.

(6) The report should further elaborate on how the situation would evolve under the existing framework, without further action. It could discuss future trends in wage setting and how they may affect pay discrimination. It should reflect on the likely impact of the COVID-19 pandemic on developments in pay discrimination.

(7) The report should better justify the choice and design of the policy options. It should explain why other possible options were not considered, such as a non-legislative approach of issuing specific recommendations to Member States, or an option with a less comprehensive coverage of pay transparency measures. It should indicate which measures are alternatives and which ones are complementary. It should better justify the inclusion of an obligation to report on the gender pay gap, as it is not part of the identified problem.

(8) The report should explain how the specific pay transparency measures in the two retained options were selected. It should clarify the difference between the two and whether one option is more ambitious than the other.

(9) The report should discuss how the different parameters were decided, e.g. thresholds for exemptions or frequency of reporting or assessments. It should analyse for each measure why it does not take into account the size of the company (based on turnover) for setting thresholds. The report should discuss the legal feasibility of the measures.

(10) The report should clarify whether soft measures are discarded or whether they complement the preferred policy option. In this case, the report should analyse the likely impact of such measures in combination with the binding measures of the main options.

(11) The report should provide a comprehensive analysis of potential impacts, including possible unintended impacts. It should substantiate the expectation that pay transparency not only reduces pay discrimination but also has wage equalising effects. It should provide total cost estimates for the whole EU, at least for those measures that entail significant obligations for business.

(12) The report should better justify the selection of the preferred option. It should build on an improved impact analysis and better balance experts' views with evidence and

stakeholders' views. The analysis should cover the main stakeholder concerns (e.g. on data protection, reward of high performers, etc.) and explain how each of these are addressed in the options.

(13) The report should better justify the exemptions of small companies from certain obligations. To this end, the report should show the magnitude of the problem in small vs. big companies, possibly differentiating by sector and country (problem definition). It should discuss whether these exemptions will have an impact on the effectiveness of the initiative.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.

Full title	Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council on strengthening the principle of equal pay between men and women through transparency
Reference number	PLAN/2019/5818
Submitted to RSB on	2 September 2020
Date of RSB meeting	23 September 2020