

AN EQUINET REPORT ON GENDER EQUALITY

EQUAL PAY FOR EQUAL WORK AND WORK OF EQUAL VALUE: THE EXPERIENCE OF EQUALITY BODIES

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An Equinet Report on Gender Equality

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Equinet brings together 41 organisations from 31 European countries which are empowered to counteract discrimination as national equality bodies across the range of grounds including age, disability, gender, race or ethnic origin, religion or belief, and sexual orientation. Equinet works to enable national equality bodies to achieve and exercise their full potential by sustaining and developing a network and a platform at European level.

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PREFACE

This report represents an important moment in the life of Equinet – the European Network of Equality Bodies, being the first publication prepared by its new Working Group on Gender Equality.

The Working Group on Gender Equality was established in 2013 following the incorporation of the work of the Network of Gender Equality Bodies into Equinet, as Equinet's new platform for staff members of equality bodies working on gender issues. The working group aims to enable mutual learning, exchange of good practices, discussion, reflection, and cooperation among staff members of equality bodies, as well as action by equality bodies on promoting gender equality and combating gender discrimination.

During its very first meeting, hosted by the Defender of Rights in France, working group members exchanged views on the importance of tools relating to equal pay for equal work and work for equal value in their everyday work. The topic of Equal Pay was therefore selected for the first Equinet Training on Gender Equality, which took place in Lisbon and was hosted by two Portuguese Equinet member equality bodies: the *Commission for Equality in Labour and Employment* and the *Commission for Citizenship and Gender Equality*.

Following this engaging and productive training, and in order to share experiences and provide ideas from the ground on how to tackle the gender pay gap, the Working Group decided to collect examples of experiences and projects organised or supported by equality bodies for the practical implementation of the principle of equal pay for equal work and work of equal value. This publication is the outcome of discussions on this complex topic by staff of equality bodies and we hope it will be a useful contribution to the work of equality bodies at national level as well as to discussions at EU level.

A special acknowledgement goes to Professor Susanne Burri from Utrecht University and Coordinator of the European Network of Legal Experts in the Field of Gender Equality, who agreed to contribute to this report with an overview on the EU legal framework (see Chapter 2).

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President of the Portuguese Commission for Equality in Labour and Employment (CITE)

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EXECUTIVE SUMMARY

Equality bodies are mandated by EU gender equality legislation to ensure the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the ground of sex in matters of employment and occupation. As part of their work, the practical implementation of the principle of equal pay for equal work and work of equal value is central. Their experience on the ground at national level confirms that, notwithstanding a long presence of the principle in EU and national legislation, equal pay in practice is still to be achieved.

As part of the activities of Equinet, the European Network of Equality Bodies, experts from equality bodies have exchanged on good practices emerging from their work on equal pay. They considered such practices in the wider context of the legal framework within which they work, some barriers that they still face in their work on equal pay, and lessons learnt from their activity on the ground. The outcome of such exchanges is presented in this report with detailed information on the different activities to facilitate their reproduction in other contexts.

The projects presented do not aim to cover the whole range of activities of equality bodies on the topic. The legal work of assistance to victims of discrimination, key in their everyday activity, is not presented in this report. What this Equinet report aims to do is share ideas and tools created by equality bodies, for supporting the work of other equality bodies addressing the same issues.

The tools presented cover three main areas and nine types of actions.

The first area is the work aimed at enhancing the understanding of both the legal protection accorded to equal pay and the structural issues concerning pay inequalities at stake. Equality bodies' work on this include the provision of information to the general public and potential victims, the raising of awareness amongst different actors, and the creation of tools to facilitate the evaluation of jobs as well as diagnosing the causes of pay inequalities.

Projects are presented which cover:

1. The provision of information and awareness raising with the public
2. The capacity building of stakeholders via training and seminars.
3. The creation of diagnostic tools for improving the calculation of pay inequalities.
4. The creation of methodologies for job evaluations to ensure that pay systems are free from gender biases and/or assess the discriminatory potential of pay practices.

The second area aims at exemplifying aspects of the work by equality bodies at monitoring level. It includes the monitoring of wages in companies and the monitoring of the compliance of employers with equal pay legislation, in particular when there are positive obligations on employers to take certain steps. Such area depends clearly on the type of binding or non-binding provisions present at national level.

Projects presented include:

5. The voluntary monitoring of wages in companies when no positive duties are placed on employers on equality planning and equality auditing

6. The monitoring of equal pay planning and compliance, where positive obligation on assessing the discriminatory potential of existing remuneration, or equal pay planning is put on the employer.
7. The monitoring of compliance of job advertisements

The third area includes activities to overcome the difficulty to access relevant information and data necessary to promote equal pay and to give assistance to victims of discrimination. Equality bodies' work on this topic depends on legislative provisions concerning pay transparency and access to information concerning remuneration as well as on cooperation with other actors.

Tools presented include:

8. Cooperation with labour inspectors or other inspection authorities
9. The creation of pay transparency tools

Some lessons learnt emerged from the projects presented. They include possible ways forward for equality bodies in raising awareness, developing job evaluation methods free from gender biases, supporting enterprises monitoring pay schemes, playing a role in combating gender stereotypes, cooperating with labour inspectors, social partners and civil society.

Possible ways forward for national policy makers include the importance of ensuring a comprehensive legal framework including positive duties, non-discriminatory pay regulations, access to relevant information for equality bodies and transparency of pay. Possible ways forward for European level policy makers include the relevance of monitoring the implementation in practice of EU legislation and case-law and the assessment of the possibility to introduce in EU legislation positive obligations to employers as well as measures increasing the transparency of pay. The support to strong, independent and effective equality bodies in their provision of information, creation of tools and methodologies, access to key information, interaction with societal stakeholders such as social partners and networking with equality bodies in other countries is another key and necessary contribution to ensuring equal pay.

1. INTRODUCTION

1.1 EQUALITY BODIES – KEY ACTORS FOR EQUAL PAY

This report draws on the experiences of equality bodies working on equal pay for equal work and work of equal value and against pay discrimination on the basis of gender.

Equality bodies are independent organisations assisting victims of discrimination, monitoring and reporting on discrimination issues, and promoting equality. They are legally required to promote equality and to combat discrimination in relation to one, some, or all of the grounds of discrimination covered by European Union (EU) law – gender, race and ethnicity, age, sexual orientation, religion or belief and disability.

EU gender equality legislation requires Member States to set up equality bodies with competence to deal with equal opportunities and equal treatment of men and women in matters of employment and occupation (the 2006/54 Recast directive), the principle of equal treatment between men and women in the access to and supply of goods and services (the 2004/113 Goods and services directive) and the principle of equal treatment between men and women engaged in an activity in a self-employed capacity (the 2010/41 Self-employed Directive). These gender-based provisions sit alongside provisions in the Race Equality Directive 2000/43 which requires EU member states to set up an equality body working on the principle of equal treatment between persons irrespective of racial or ethnic origin. As a matter of fact, in most countries equality bodies work on several grounds of discrimination.

Equality bodies across Europe came together to create Equinet, the European Network of Equality Bodies, in order to support equality bodies in achieving their full potential and exercise it via a European-level platform. Equinet brings together 31 organisations from 41 European countries and engages in advancing equality in practice by facilitating the contributions and a stronger voice of national equality bodies to the wider European debate.

This report is part of Equinet activities to support equality bodies by providing tools for the exchange of good practice and by providing other stakeholders with the opportunity to learn from equality bodies.

In September 2013 Equinet organised a training event on Equal Pay for Equal Work and Work of Equal Value as part of its activities for supporting exchanges between staff of equality bodies. The event was co-hosted by Equinet members from Portugal: the Commission for Citizenship and Gender Equality (CIG) and the Commission for Equality in Labour and Employment (CITE). The event was attended by staff members of national equality bodies who have a special interest in equal pay for equal work and work of equal value and the fight against the gender pay gap. It allowed a common reflection on good practices and common challenges in this field.

As a follow up to this event the Gender Equality Working Group of Equinet wrote this report with the aim of providing a tool for equality bodies working on equal pay, as well as for other stakeholders wishing to build on the learning from equality bodies to achieve a Europe free of pay discrimination.

1.2 EQUAL PAY – A KEY TOPIC FOR EQUALITY BODIES

In their work for the promotion of equality and for combating discrimination, equal pay is a particularly challenging topic for equality bodies, as it is for the whole society. In the EU, women's gross hourly earnings were on average 16 % below those of men in 2011 for the economy as a whole. The gap varied by 25 percentage points, ranging from 2 % to 27 %.¹ This is despite the fact that the principle of equal pay for men and women was contained in the Treaty of Rome in 1957 and in 1975, before any other equal treatment directive, the at that time European Economic Community adopted a Directive on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.

Nonetheless still in 2013 the gender pay gap in Europe is as high as 16%, notwithstanding when other grounds of discrimination add to the gender one: figures on pay gaps when the gender ground intersects with other grounds of discrimination as ethnic origin or disability are often not available.

The structural aspect of pay inequalities is tackled in the work of equality bodies which, while supporting victims of direct and indirect pay discrimination, seek to promote an understanding of the gender inequalities which underpin the gender pay gap.

A piece of research supported by the Equality Authority in Ireland has highlighted, for example, how gender stereotyping may contribute to maintaining women's gender segregation in the labour market, which in turn has had an impact on the gender pay gap, even during periods when women's participation to the labour market increased. The issue of gender pay gap cannot therefore be disjointed from the issue of discrimination at institutional and organisational level: "Employer discrimination' is where employers/personnel managers have internalised such stereotypes and tend to hire, fire and promote in accordance with them (Reskin and Roos, 1990; Correll et al., 2007). 'Institutional discrimination' is where these essentialist views are institutionally embedded in personnel practices, education systems and firm promotions"². The importance of approaching gender inequalities from an organisational and policy perspective is supported by another piece of research, which has found that workplaces with formal equality policies are associated with a lower rate of unfair treatment of women³.

Similarly, the general business case for equality and diversity points at the need of addressing equality issues from a whole-organisational perspective:

"Companies that have policies in place in relation to areas such as gender are transferring the expertise they gained in this area to other areas. Examples here include Lufthansa, that started with general diversity initiatives in the 1970s with the support of the works council and then in 2000 began a

¹ Eurostat Gender Pay Gap Statistics – retrieved 05/12/2013 at http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Gender_pay_gap_statistics

² A Woman's Place - Female Participation in the Irish Labour Market [2009] - By Helen Russell, Frances McGinnity, Tim Callan and Claire Keane. available at <http://www.equality.ie/en/Research/Research-Publications/A-Woman%E2%80%99s-Place-Female-Participation-in-the-Irish-Labour-Market.html>

³ Pregnancy at Work: A National Survey [2011] Helen Russell, Dorothy Watson and Joanne Banks available at

broader diversity programme, and Deutsche Telekom which developed a comprehensive diversity policy entitled 'Living Diversity' that built on previous initiatives that had focused primarily on gender. While a variety of approaches might be adopted, there is evidence that organisations that derive most benefits from equality and diversity initiatives are more likely to have integrated these into their organisational culture so that they become an integral part of the way in which they operate. This integration can take various forms but will include structures that embed diversity into the fabric of the organisation⁴.

Equality bodies work with research, promotional, communication and policy activities in order to address the different components of unequal pay. For instance, they promote the understanding that the fact that men and women do not occupy the same jobs and do not have the same careers can be problematic. First, the gender specific professional segregation situation is commonly not perceived as part of a gender pay gap and structural gender inequalities but rather evolving from purely individual choices. Second, the discrepancy in career evolution between men and women and vertical segregation, with women less likely to access higher positions, is often perceived in line with gender stereotypes. While many analyses also mention the impact of pregnancy, maternity and family care as a remaining key barrier to the achievement of equal pay, it needs to be pointed out that not only the actual effect of these care related tasks, but also the stereotypes related to men and women with regards to work-life balance are contributing to this negative effect on pay equality. In such a complex context, equality bodies work in providing evidence-based content in order to ensure the promotion of equal pay for equal work and work of equal value.

What is evident is that the cumulated effects of different gender inequalities is of a commonly underestimated magnitude, which becomes clearer when comparing the gender pay gap, at a level of 16%, and the consequent gender pension gap at 39%⁵.

In short, equal pay between men and women is still, almost 60 years after its first mention in EU treaties, a challenge for equality in Europe, and therefore a challenge for the work of equality bodies.

There are various reasons for the existence and size of a gender pay gap. Several barriers to equality, being historical structural inequalities and unequal allocation of power and resources between genders, or direct or indirect discrimination, add up to create a complex interaction.

In this framework equality bodies created several tools for overcoming barriers to equal pay between men and women and for the most effective implementation of equal pay for equal work and work of equal value.

In this report some of these tools will be presented (in section 4), after an overview of the legal framework in which equality bodies operate (in section 2), and of the barriers which they identify in their work as impediments for the implementation of legal provisions (in section 3). Following the presentation of good practices, some ways forward will be suggested (in section 5) as an outcome of lessons learnt.

⁴ The Business Impact of Equality and Diversity [2007] - by Kathy Monks available at <http://www.equality.ie/en/Research/Research-Publications/The-Business-Impact-of-Equality-and-Diversity.html>

⁵ F. Bettio, P. Tnios, G. Betti, The gender gap in pensions in the EU, available at http://ec.europa.eu/justice/gender-equality/files/documents/130530_pensions_en.pdf, retrieved 29/11/2013

2. THE EU LEGAL FRAMEWORK: EQUAL PAY – SCOPE, DEFINITIONS AND CASE LAW

A contribution by Dr. Susanne Burri, Associate Professor, Utrecht University, the Netherlands, Coordinator of the European Network of Legal Experts in the Field of Gender Equality

It is certainly no easy task to provide an overview of the EU scope, definitions and case law in the field of equal pay. There have been some significant changes in the past and there is much case law. The first case dates from 1976 and, since then, many requests for preliminary rulings have been asked. This is particularly true for the principle of equal pay between men and women, which will be addressed here in more depth. There are other equal pay issues, for example in the field of labour law (part-time work, fixed-term contracts) but, generally speaking, the equal pay issue between men and women is at the centre of policies both at EU and national level. And that is where the interpretation of this principle by the Court of Justice of the EU is of paramount importance. This section sets out some insight in the main findings of the Court.

First, it is important to begin with an overview of the relevant legal provisions in the field of equal pay between men and women.

2.1 EQUAL PAY: LEGAL PROVISIONS

2.1.1 Treaty on the Functioning of the EU (TFEU)

The main legal provision on equal pay for male and female workers for equal work or work of equal value is Article 157 TFEU, the former Article 119 EEC and 141 EC. Article 119 EEC was included in the Treaty on the Economic European Community in 1957. The definition of the principle of equal pay in this Article has not changed since. The background to this provision in 1957 was purely economic; the Member States, in particular France, wanted to eliminate distortions in competition between undertakings established in different Member States. France had adopted provisions on equal pay for men and women much earlier and it feared that cheap female labour in other Member States would put French undertakings and the economy at a disadvantage. However, in 1976 the Court of Justice ruled in the *Defrenne II* case that Article 119 EEC (now 157 TFEU) not only had an economic, but also a social aim. As such, it contributed to social progress and the improvement of living and working conditions.⁶ Later on, the ECJ (Court of Justice) even ruled that the economic aim is secondary to the

⁶ ECJ 8 April 1976, Case 43/75 *Gabrielle Defrenne v Société Anonyme Belge de Navigation Aérienne Sabena* [1976] ECR 455 (*Defrenne II*), at paras 10-12.

social aim (*Schröder*).⁷ It also held that the principle of equal pay is an expression of a fundamental human right (*Defrenne III*).⁸

The text of Article 157 TFEU as far as equal pay is concerned (Sections 1 and 2) is the following:

1. *Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.*
2. *For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.*

Equal pay without discrimination based on sex means:

- a) *that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement*
- b) *that pay for work at time rates shall be the same for the same job.*

In a landmark case the Court of Justice decided that Article 157 TFEU (then Article 119 EEC) has horizontal direct effect, i.e. that it can be relied upon by individuals before national courts not only against (organs of) the state, but also against individuals, such as private employers (*Defrenne II*). We will see that this Article has played a very important role in the implementation of the equal pay principle, both in relation to direct and indirect sex discrimination.

Article 119 EEC should have been implemented by the Member States by the 1st of January 1962, but the Member States were unwilling or unable to implement this Article. Therefore a directive on equal pay was adopted in 1975, Directive 75/117/EEC.⁹ This directive is since 2006 integrated in the so-called Recast Directive, Directive 2006/54/EC.¹⁰ With effect from 15 August 2009 onwards, it has repealed the Directive on equal pay for men and women, among others.

2.1.2 The Recast Directive 2006/54/EC

The Recast directive contains a similar definition of 'pay' as in Article 157 TFEU in Article 1(1) (e) and includes also a chapter on equal pay, with a single provision, Article 4.

This Article is now the relevant Article (in addition to Article 157 TFEU), and stipulates:

For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

⁷ ECJ 10 February 2000, Case C-50/96 *Deutsche Telekom AG, formerly Deutsche Bundespost Telekom v Lilli Schröder* [2000] ECR I-743 (*Schröder*), at para 57.

⁸ ECJ 15 June 1978, Case 149/77, *Gabrielle Defrenne v Société Anonyme Belge de Navigation Aérienne Sabena* [1978] 1365 (*Defrenne III*), para 26-27.

⁹ Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women *OJ L 45, 19.2.1975, pp. 19–20.*

¹⁰ 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) *OJ L 204, 26.7.2006, pp. 23–36.*

In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.

In addition, the prohibition on direct and indirect sex discrimination explicitly applies to pay (see Article 14 (1) (c)).

It is important to stress that the principle of equal pay has to be applied to all aspects of remuneration and to each element of the elements of remuneration. This follows from the need for genuine transparency, permitting an effective review, according to the ECJ in *Barber*.¹¹ Thus no package deals are allowed.

Article 157 TFEU and Article 4 of the Recast Directive both clarify that the principle of equal pay also applies to work of equal value. Article 4 does not alter the meaning of Article 157 TFEU which is in any event impossible since the Treaty is a higher source of law. The ECJ stated in *Worringham* that the Directive 75/7/EEC explains that the concept of same work in (the former) Article 119 EEC (now 157 TFEU) includes work to which equal value is attributed.¹²

The principle of equal pay applies to equal work and work of equal value and also, *a fortiori*, to work of higher value. The ECJ adopted this view stating that otherwise the employer would easily be able to circumvent the principle of equal pay by assigning additional or more onerous duties to workers of a particular sex, who could then be paid a lower wage (*Murphy*).¹³

In the Recast Directive a definition of occupational social security schemes and a chapter on equal treatment in social security schemes is also included (Chapter 2) , in which some significant case law of the Court of Justice is now codified.

2.1.3 The European Charter of Fundamental Rights and Freedoms

Finally Article 23 of the Charter of Fundamental Rights and Freedoms also addresses the issue of equal pay between men and women. It reads:

Equality between women and men must be ensured in all areas, including employment, work and pay.

2.2 WORKER

Article 157 TFEU applies to male and female workers. The concept of a ‘worker’ has a Community-law meaning and it cannot be interpreted more restrictively in national law. A worker is a person who, for a certain period of time, performs services for and under the direction of another person in return for which he or she receives remuneration.¹⁴ The concept of a worker does not include independent

¹¹ ECJ 17 May 1990, Case C-262/88 *Douglas Harvey Barber v Guardian Royal Exchange Assurance Group* [1990] ECR I-1889 (*Barber*), para 34

¹² ECJ 11 March 1981, Case 69/80 *Susan Jane Worringham and Margaret Humphreys v Lloyds Bank Limited* [1981] ECR 767 (*Worringham*), para 21.

¹³ ECJ 4 February 1988, Case 157/86 *Mary Murphy and others v An Bord Telecom Eireann* [1988] ECR 673 (*Murphy*), para 9-10.

¹⁴ ECJ 3 July 1986, Case 66/85 *Deborah Lawrie-Blum v Land Baden-Württemberg*, [1986] ECR 2121 (*Lawrie-Blum*), at para 17. This case concerned the free movement of workers. However, in ECJ 14 December 1995, Case 317/93 *Inge Nolte v Landesversicherungsanstalt*

providers of services who are not in a subordinate relationship with the person who receives the services. But once a person can be considered as a ‘worker’ in the sense of Article 157 TFEU, the nature of his or her legal relationship with the other party to the employment relationship is not relevant for the application of that article. This may imply, *inter alia*, that even when a person is considered as being self-employed under national law, Article 157 TFEU must nevertheless be applied. (*Allonby*).¹⁵

2.3 THE CONCEPT OF PAY

2.3.1 A broad concept

According to the – extensive and sometimes ground-breaking – case law of the ECJ on this issue, pay includes not only basic pay, but also, for example, overtime supplements,¹⁶ special bonuses paid by the employer,¹⁷ travel facilities,¹⁸ compensation for attending training courses and training facilities,¹⁹ termination payments in case of dismissal²⁰ and occupational pensions²¹. Any consideration, in cash or in kind, which the worker receives directly or indirectly *in respect of his employment* falls under the concept of pay. This is the decisive criterion.

In particular the extension of Article 157 TFEU to occupational pensions has been very important.

In *Defrenne I* the Court had to consider the relationship between the concept of pay in Article 157 and social security systems. The ECJ ruled that although consideration in the form of social security benefits is not alien to the concept of pay, this concept does not include those social security schemes or benefits, in particular retirement pensions, which are directly governed by legislation without any element of agreement within the undertaking or the occupational branch concerned, and which apply, on an obligatory basis, to general categories of workers. These schemes ensure certain benefits for workers which are not so much a matter of the employment relationship, but rather a matter of – general – social policy. This distinction between statutory social security schemes and occupational schemes of social security has induced the EU legislator to adopt two different directives, one in 1978 on statutory schemes, Directive 79/7/EEC²² and another in 1986 on occupational schemes (Directive 86/378/EEC).²³ The provisions on occupational social security schemes are now included in Title II, Chapter 2 of the Recast Directive (2006/54). Directive 79/7/EEC on statutory schemes has not been amended.

Hannover [1995] ECR I-04625 (*Nolte*) and ECJ 14 December 1995, Case 444/93 *Ursula Megner and Hildegard Scheffel v Innungskrankenkasse Vorderpfalz, now Innungskrankenkasse Rheinhessen-Pfalz* [1995] ECR I-04741 (*Megner*) the ECJ made clear that the same definition applies in the areas of gender discrimination.

¹⁵ ECJ 13 January 2004, Case C-256/01 *Debra Allonby v Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional and Secretary of State for Education and Employment* [2004] ECR I-873 (*Allonby*), at paras 65-71.

¹⁶ See, for example, ECJ 6 December 2007, Case 300/06 *Ursula Voß v Land Berlin* [2007] ECR 2007, I-10573 (*Voß*).

¹⁷ See for example ECJ 21 October 1999, Case C-333/97 *Susanne Lewen v Lothar Denda* [1999] ECR 7243 (*Lewen*).

¹⁸ See for example ECJ 9 February 1982, Case 12/81 *Eileen Garland v British Rail Engineering Limited* [1982] ECR 359 (*Garland*).

¹⁹ See for example ECJ 4 June 1992, Case C-360/90 *Arbeiterwohlfahrt der Stadt Berlin e.V. v Monika Bötzel* [1992] ECR I-3589 (*Bötzel*).

²⁰ See for example ECJ 27 June 1990, Case C-33/89 *Maria Kowalska v Freie und Hansestadt Hamburg* [1990] ECR I-2591 (*Kowalska*).

²¹ See for example ECJ 13 May 1986, Case 170/84 *Bilka – Kaufhaus GmbH v Karin Weber von Hartz* [1986] ECR 1607 (*Bilka*) and ECJ 17 May 1990, Case C-262/88 *Douglas Harvey Barber v Guardian Royal Exchange Assurance Group* [1990] ECR I-1889 (*Barber*).

²² Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security *OJ L 6, 10.1.1979, pp. 24–25*.

²³ Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes, *OJ L 225, 12.8.1986, pp. 40–42*.

2.3.2 Occupational pension schemes

After *Defrenne I* the ECJ was confronted with cases on pensions. After a period of uncertainty about the question of whether and how far occupational pensions are covered by the equal pay principle, the ECJ decided in the famous *Barber* judgment, building on what it had already said in *Defrenne I*, that Article 157 TFEU does apply to schemes which are:

- i. *the result of either an agreement between workers or employers or of a unilateral decision of the employer;*
- ii. *wholly financed by the employer or by both the employer or the workers; and*
- iii. *where affiliation to those schemes derives from the employment relationship with a given employer.*

In this case, there was a close relation between the scheme at stake and the statutory pension scheme. The redundancy benefits were related to different pensionable ages of women and men.

The formulation of the Court as regards the scope of pay is very broad: 'pay comprises all benefits the worker is entitled to receive from his employer by reason of the existence of the employment relationship'.

The *Barber* judgment and the following case law had the effect, *inter alia*, that certain aspects of the Occupational Schemes Directive were contrary to Article 157 TFEU and had to be amended. The effect of the judgement was limited in time by the Court. *Barber* applies to period of services after the date of the judgement: 17 May 1990. This case law also had a considerable impact on equal treatment in occupational pension schemes in those Member States where it had been believed that Article 157 TFEU was not applicable and certain forms of (direct) discrimination were still allowed. Now the main case law is included in the Recast Directive under the Chapter on Equal Treatment in occupational social security schemes (Chapter 2). See in particular Article 9(1)(f): Fixing different retirement ages for men and women is prohibited in occupational pension schemes.

The Court decided in *Beune* that a pension scheme for public servants falls under the concept of pay.²⁴

2.4 DIRECT SEX DISCRIMINATION IN THE FIELD OF PAY

2.4.1 Occupational pension schemes

The Court of Justice has interpreted the prohibition of direct discrimination in the field of pay for example in relation to different pensionable ages of men and women in the area of occupational pensions. When Article 157 TFEU is applicable, no exception to direct sex discrimination is allowed, except positive action (Article 157 (4) TFEU). Thus the contracted-out scheme which was at stake in *Barber* was contrary to EU law.

²⁴ ECJ 28 September 1994, Case C-7/93, *Bestuur van het Algemeen Burgerlijk Pensioenfonds v G. A. Beune*, ECR [1994] p. I-4471 (*Beune*).

In the *Griesmar* case for example, French provisions awarding a service credit for the calculation of the retirement pension only to female civil servants who have had children were also considered contrary to EU law.²⁵ Male civil servants who were able to demonstrate that they assumed responsibility for the upbringing of their children were excluded from entitlement to that credit. The Court considered that ‘even if the credit in issue is granted, in particular, to female civil servants in respect of their biological children, the grant of that credit is not linked to maternity leave or to the disadvantages which a female civil servant incurs in her career as a result of being absent from work during the period following the birth of a child. On the contrary, that credit is linked to a different period, namely that devoted to bringing up the children. Second, by not permitting a male civil servant who has brought up his children to receive the credit in issue, even if he is in a position to prove that he did in fact assume the task of bringing up his children, the national provision introduces a difference in treatment on grounds of sex in regard to those male civil servants who have in fact assumed the task of bringing up their children.’ According to the Court, positive action measures must, in any event, contribute to helping women conduct their professional life on an equal footing with men. The measure in question is limited to granting female civil servants who are mothers a service credit at the date of their retirement, without providing a remedy for the problems which they may encounter in the course of their professional career.

2.4.2 Bonus

The issue of direct discrimination in relation to pay also arises in relation to pregnancy and motherhood. In *Lewen* for example, the Court considered that it is contrary to the principle of equal pay to take periods of protection of mothers into account when calculating a Christmas bonus (thus reducing the bonus pro rata).²⁶

2.5 INDIRECT SEX DISCRIMINATION IN THE FIELD OF PAY

The Court has considered the issue of indirect sex discrimination in the field of pay in particular in relation to part-time work in many judgements and has developed the concept of indirect discrimination in this field. The landmark case is *Bilka*, which concerned access to an occupational pension scheme.²⁷ According to this scheme, part-time employees may obtain pensions under the scheme if they have worked for at least 15 years full time over a total period of 20 years. The ECJ found that if a much lower proportion of women work full time than men, the exclusion of part-time workers would be contrary to Article 119 EEC (now Article 157 TFEU), where, taking into account the difficulties encountered by women workers working full time, that measure could not be explained by factors that exclude any discrimination on grounds of sex. The measures could, however, be objectively justified if they correspond to a real need on the part of the undertaking, and are appropriate and necessary to attain that aim. The same objective justification test has been applied in many different ECJ judgments and is now included in the definition of indirect discrimination in the most recent directives.

²⁵ ECJ 29 November 2001, Case C-366/99, *Joseph Griesmar v Ministre de l'Economie, des Finances et de l'Industrie et Ministre de la Fonction publique, de la Réforme de l'Etat et de la Décentralisation*, ECR [2001] p. I-9383 (*Griesmar*).

²⁶ ECJ 21 October 1999, Case C-333/97, *Susanne Lewen v Lothar Denda*, ECR [1999] p. I-7243 (*Lewen*).

²⁷ ECJ 13 May 1986, Case 170/84 *Bilka-Kaufhaus GmbH v Karin Weber von Hartz* [1986] ECR 1607 (*Bilka*).

2.6 WORK OF EQUAL VALUE

The principle of equal pay applies not only to equal work, but also to work of equal value. The equal value of different jobs is not so easy to establish, in particular due to job segregation. According to the case law, a comparison must be made, but this does not necessarily mean that both workers have to be employed by the same employer. However, there must be a single source that is able to redress the inequality (*Lawrence, Allonby*)²⁸.

The Court considered the nature of the work decisive in *Macarthy's*.²⁹ And a comparison is possible between a male and a female worker who are not working at the same time. The case law shows that other factors can be relevant, such as training requirements, the activities that have to be fulfilled; the responsibilities workers have etc. (see for example *Royal Copenhagen* and *Wiener Gebietskrankenkasse*).³⁰ The case law is summarized in the preamble of the Recast Directive as follows (para 9):

In accordance with settled case-law of the Court of Justice, in order to assess whether workers are performing the same work or work of equal value, it should be determined whether, having regard to a range of factors including the nature of the work and training and working conditions, those workers may be considered to be in a comparable situation.

The Court considered in *Brunnhöfer* that the fact that a female employee who claims to be the victim of discrimination on grounds of sex and the male comparator are classified in the same job category under the collective agreement governing their employment is not in itself sufficient for concluding that the two employees concerned are performing the same work or work to which equal value is attributed since this fact is only one indication amongst others that this criterion is met.³¹

2.7 JOB CLASSIFICATION SCHEMES

As regards job classification schemes, the *Rummler* case is relevant.³²

The facts of the case were the following: Ms. Rummler wanted to be placed in a higher wage scale (from Group III to IV). She had to pack parcels which weighed more than 20 kg, which was for her a heavy physical work. Her employer wanted to classify her in group II. She argued that the classification system did not meet the conditions of art. 1 of the Directive 75/117/EEC (now Article 4 Recast). The national court asked in a preliminary ruling on whether a classification system may include muscular effort as a criterion of evaluation and, if that criterion may be taken into account, whether the amount

²⁸ ECJ 17 September 2002, Case C-320/00, *A. G. Lawrence and Others v Regent Office Care Ltd, Commercial Catering Group and Mitie Secure Services Ltd*. ECR [2002] p. I-7325 (*Lawrence*) and ECJ 13 January 2004, Case C-256/01 *Debra Allonby v Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional and Secretary of State for Education and Employment* [2004] ECR I-873 (*Allonby*).

²⁹ ECJ 27 March 1980, Case 129/79, *Macarthy's Ltd v Wendy Smith* [1980] ECR 1275 (*Macarthy's*).

³⁰ ECJ 31 May 1995, Case C-400/93, *Specialarbejderforbundet i Danmark v Dansk Industri, formerly Industriens Arbejdsgivere, acting for Royal Copenhagen A/S*, [1995] ECR I-1275 (*Royal Copenhagen*) and ECJ 11 May 1999, Case C-309/97, *Angestelltenbetriebsrat der Wiener Gebietskrankenkasse v Wiener Gebietskrankenkasse* [1999] ECR I-2865 (*Wiener Gebietskrankenkasse*).

³¹ ECJ 26 June 2001, Case C-381/99, *Susanna Brunnhofer v Bank der österreichischen Postsparkasse AG*, [2001] ECR I-4961 (*Brunnhöfer*).

³² ECJ 1 July 1986, Case 237/85, *Gisela Rummler v Dato-Druck GmbH* [1986] ECR 2101 (*Rummler*).

of such an effort for women should play a role. The employer argued that pay criteria must be established to reflect the duties actually performed and that muscular effort is not related to personal characteristics. There were also other criteria used such as ability, mental effort, and responsibility.

But the same muscular effort is in general heavier for women than for men and therefore valuing physical effort could be a form of indirect discrimination.

The Court of Justice gave guidance on the conditions that should apply to job classification system:

- *the job classification system must be based on criteria which do not differ whether the work is carried out by a man or by a woman. Work which is objectively the same, has to be paid the same. Job classification systems must not be organized as a whole, in such a manner that it has the practical effect of discriminating generally against workers of one sex. Criteria have to correspond to duties.*
- *a potentially discriminatory criterion, like muscular effort, has to be considered within the system as a whole, in relation to other criteria. To be non-discriminatory, a classification system has to include, if the nature of the tasks permits it, jobs to which equal value is attributed and in which there are other criteria for which women have a particular aptitude.*
- *about how physical effort has to be measured: Values reflecting the average performance of workers of each sex should not be used. The Court is again applying the Bilka test of necessary and appropriate means.*

2.8 BURDEN OF PROOF

In the Recast Directive, the provision on the burden of proof applies. Article 19 reads:

Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

In *Enderby* the Court considered that where significant statistics disclose an appreciable difference in pay between two jobs of equal value, one of which is carried out almost exclusively by women and the other predominantly by men, the employer has to show that that difference is based on objectively justified factors unrelated to any discrimination on grounds of sex.³³ In *Brunnhofer*, the Court considered that 'as a general rule, it is for employees who consider they are the victims of discrimination to prove that they are receiving lower pay than that paid by the employer to a colleague

³³ ECJ 27 October 1993, Case C-127/92, *Dr. Pamela Mary Enderby v Frenchay Health Authority and Secretary of State for Health* [1993] ECR I-5535 (*Enderby*).

of the other sex and that they are in fact performing the same work or work of equal value, comparable to that performed by the chosen comparator'.³⁴

In the *Danfoss* case, the Court considered that when a pay system lacks totally transparency, the claimant has to prove that the average pay for women is less than for men. Then it is for the employer to provide an objective justification for the indirect discrimination in the field of pay.³⁵

2.9 SOME CONCLUSIONS

In the field of pay, the case law of the Court of Justice has played a very important role. In particular the broad interpretation of the concept of pay has provided tools to address forms of direct and indirect sex discrimination. The development of the concept of indirect discrimination has brought many potentially discriminatory pay practices under the scope of EU and national law.

Regarding job classification schemes, there is hardly any case law. It is therefore even more important to exchange practices on gender-neutral evaluations of jobs.

³⁴ ECJ 26 June 2001, caseCase C-381/99, *Susanna Brunnhofer v Bank der österreichischen Postsparkasse AG*, ECR [2001] ECR, I-4961.

³⁵ ECJ 19 October 1989, caseCase 109/88, *Handels- og Kontorfunktionærernes Forbund I Danmark v Dansk Arbejdsgiverforening, acting on behalf of Danfoss*, ECR 1989, 3199. See also ECJ 27 October 1993, case C-127/92, *Dr. Pamela Mary Enderby v Frenchay Health Authority and Secretary of State for Health*, ECR [1993] I-5535 (*Enderby*).

3. WHY DOES THE GENDER PAY GAP PERSIST? SOME BARRIERS TO BE OVERCOME

In the work of equality bodies on equal pay for equal work and work of equal value some barriers have been identified.

Many of them have their source in lack of knowledge and/or lack of awareness. This constitutes not only an obstacle for implementing effective policies to tackle the issue of equal pay but also plays a decisive role in individual equal pay claims brought to court.

To start with, individuals are most of the time unaware of the broad interpretation of “equal pay”. Contrary to the legal definition of equal pay which includes all different elements of remuneration, the concept of pay is often understood excluding many elements of the overall benefits, thus for instance only comparing the basic wage or salary. This goes hand in hand with a common understanding of equal pay which does not include work of equal value. Equality bodies have been addressing this with awareness raising campaigns targeting both employees and employers, as well as trade unions and employers associations and other labour market stakeholders (as work consultants, trade associations, job centre operators and training bodies, as in the good practice from the Italian National Equality Councillor). Training events and Seminars have also been provided by equality bodies to help build the capacity of key stakeholders, as in the case of training for members of work councils and seminars for employers (mainly human resources staff) in good practices by the Austrian Ombud for Equal Treatment. In addition, the creation of diagnostic tools which are easy to use, as in the case of the good practice from the Portuguese Commission for Equality in Labour and Employment, allows companies to gain awareness on their own gender pay gap situation,

Furthermore, when addressing the issue of equal pay for work of equal value, the very idea of the value of a job is often misunderstood. The general expectation that the economic value of a job is not related to the gender of the worker makes it difficult to perceive the biases in the parameters used to attribute value to jobs and employees. Traditional attitudes about what is considered to be skills and talents worth economic recognition as well as persisting gender stereotypes in work distribution are often not seen. However, job evaluation systems are often directly or indirectly discriminatory. Equality bodies have been addressing this with the creation of methodologies for the evaluation of jobs which are not gender biased (as in the good practices from the Portuguese Commission for Equality at Work and Employment and the French Defender of Rights).

Apart from the above mentioned lack of awareness and knowledge concerning the concept of equal pay, the modification of remuneration systems is dependent on not only accessible know-how on how to improve evaluation systems in a gender sensitive way but also combating the existing resistance of employers, employers’ associations and, not least, trade unions and other employees’ representatives. In this context, the effectiveness of national laws and EU directives could be improved insofar as to ensure incentives or positive duties in order to actually implement equal pay or combat pay discrimination, such as an obligation to review pay schemes. Equality bodies have been supporting companies by doing equal pay reviews and monitoring wages in companies also in absence of a direct provision making compulsory for companies to undergo such monitoring, as is the case of the good practice from the German Federal Antidiscrimination Agency. In such cases, equality bodies have to

clearly build their monitoring activity keeping in mind the need to convince companies to take part in the process.

The situation is different when positive duties are in place. In such cases equality bodies' role is to ensure monitoring of the compliance with legislation, as in the good practices from the Swedish Equality Ombudsman and the Finnish Equality Ombudsman. As the Swedish example shows, continuity in the process of monitoring equal pay planning is a necessary mean for ensuring long term results, but there is a general cost in terms of human and financial resources.

In equal pay cases equality bodies face another practical barrier, namely the difficulty to find information about salaries and to make evaluations in order to compare different positions for the purposes of an equal pay claim. In particular, the confidentiality which applies in most countries on wage conditions, and the lack of legislation on transparency of remuneration, make it hard to reveal inequalities in the wages for equal work or work of equal value between men and women. Victims or potential victims of discrimination in relation to pay may not be aware of discrepancies in their salaries or benefits due to confidentiality and thus they may not be aware of potential discrimination. Such barriers can be more or less difficult to overcome depending on the powers given to equality bodies for investigating possible cases of discrimination, and in particular on the obligations on employers or other institutions, such as institutions in charge of occupational social security schemes to disclose relevant information when equality bodies' investigation takes place. Equality bodies have been building partnerships with other stakeholders which could ensure access to key information in antidiscrimination cases, labour inspectors or other inspection authorities mandated to ensure the application of labour law including provision on equal pay. This is the case in the good practices from the Portuguese Commission for Equality in Labour and Employment, the Czech Public Defender of Rights and the Cypriot Equality Authority.

The existence of legal obligations allows for further work to be done by equality bodies. The obligation on companies to submit information on aspects of the work of the personnel, including the pay, allowed the Portuguese Commission for Equality in Labour and Employment to implement a system of collection of information and of potential detection of violation of the equality principle in the workplace. In addition, the legal provisions obliging employers to indicate on the job announcements the entry level salary for the post allows the Austrian Ombud for Equal Treatment to make surveys on this phenomenon to monitor compliance as well as raise awareness on the legal provision.

A difficult interaction with trade unions can be considered a barrier, considering the important role of collective agreements and social bargaining for the definition of remuneration regulations.

The current socioeconomic climate brings about another barrier identified by equality bodies in their work for equal pay. The economic and social crisis supports the tendency to disregard equal pay claims as secondary goals and in a way luxury problems, comparing it with the need to 'keep the job'. At the same time the austerity measures taking place in several European countries are often eliminating various elements of support, be it social security provisions, healthcare services or childcare facilities, all of them having a positive correlation with the participation of women in the labour market. The ongoing cuts in the public administration, where women are overrepresented, impact adversely on women's position in the labour market as well.

The work of equality bodies on pay equality also encounters a barrier which is common to other equal treatment provisions: underreporting. The fewer claims about pay inequalities that are reported to

equality bodies and national courts, the less likely that there will be advancement in the field. Awareness campaigns by equality bodies on this topic aim at overcoming this barrier.

As underlined by Equinet in previous publications³⁶, barriers to the work of equality bodies, not only in the field of equal pay, also relate to the challenges to the independence and to the effectiveness of equality bodies. Changes in the legal structures of equality bodies can limit the independence of equality bodies, as well as the reduction of human and financial resources can jeopardise their effectiveness. Activities such as equal pay audits require both financial and human resources which are not always available.

Challenges to the functions and powers of equality bodies are ultimately the key barriers to the work of equality bodies in the promotion of equal pay for equal work and work of equal value.

³⁶ Equinet, Equality bodies: Current Challenges, 2012, available on www.equineteurope.org

4. ENSURING EQUAL PAY: PROJECTS AND TOOLS FROM NATIONAL EQUALITY BODIES

Equality bodies have tried to overcome such barriers by creating actions and projects for the implementation and effectiveness of the principle of equal pay, in addition to supporting individual victims of discrimination.

For each project it is underlined how the legal framework helps the achievement of the objectives of the initiative, in particular pointing to the mandate of the equality body allowing the initiative and legal provisions imposing duties to employers or other actors. In the same way we underlined the key actors involved as well as the cost of the initiative and the implementation steps as to allow other equality bodies or institution to be able to reproduce them. An overview of achievements is indicated as well, when available.

The projects reported cover three main areas and nine types of actions:

The first area is the work aimed at enhancing the comprehension of the issues at stake concerning equal pay, the awareness rising amongst different actors, and the creation of tools to facilitate the evaluation of jobs as well as the diagnostic of pay inequalities.

Projects and tools are presented which cover:

- The provision of information and awareness raising with the public
- The capacity building of stakeholders via trainings and seminars.
- The creation of diagnostic tools for improving the calculation of pay inequalities.
- The creation of methodologies for job evaluations to ensure that pay systems are free from gender biases and/or assess the discriminatory potential of pay practices.

The second area includes the monitoring of wages and of compliance with equal pay legislation when positive duties are requested by employers. Such area depends clearly on the type of binding or non-binding provisions present at national level.

Projects and tools presented include:

- The monitoring of wages in companies.
- The monitoring of equal pay planning and compliance, where positive obligation on assessing the discriminatory potential of existing retributions, or equal pay planning is put on the employer.
- The monitoring of compliance of job advertisements

The third area includes activities to overcome the difficulty to access to relevant information and data necessary to promote equal pay and to give assistance to victims of discrimination.

Projects and tools presented include:

- The cooperation with the labour inspectors or other inspection authorities
- The creation of pay transparency tools

4.1 PROVISION OF INFORMATION AND AWARENESS RAISING

4.1.1 NATIONAL EQUALITY COUNCILLOR (ITALY)

NAME OF INITIATIVE	"Combating the gender pay gap: how and why" (brochure)
SUMMARY	<p>The brochure includes information on:</p> <ul style="list-style-type: none"> • What is the gender pay gap; • Why it is important to combat it; • The factors that may contribute to these gaps; • Legal provisions; • The components of remuneration that may determine hidden gender pay gaps; • Gender pay gap contacts.
LEGAL FRAMEWORK	<p>a) Mandate of the equality body: the National Equality Councillor adopts all measures which are conducive to ensuring compliance with the principle of non-discrimination, and which foster equal opportunities for men and women workers in the public and private sectors. The Councillor is a public officer, and can take legal action (with national applicability) on behalf of individuals in the event of reports of direct or indirect discrimination which is collective in nature, including discrimination in the field of remuneration.</p> <p>b) The legal framework applying to pay equality: in the general provisions of Art. 1 of the Code for Equal Opportunities, the system of the judicature and rules of Italy already uphold the general principle of pay equality for men and women. In the Code, it is expressly stated that equality among men and women, in regard to treatment and opportunities, must be ensured in all fields, including those of employment, work and remuneration. Specifically, Art. 28 of the Code includes the principles sets forth in Art. 4 of Directive 2005/54/EC, as follows: <i>"All direct and indirect discrimination concerning any aspect or condition relating to remuneration for the same work, or work to which the same value is ascribed, is forbidden"</i>, thus strengthening and rendering binding the EU's requirements. Law no. 92 of 28 June 2012 <i>"Measures concerning labour market reform"</i>, focuses once more on the need to foster equality in regard to remuneration among men and women. It also concretely provided for a monitoring system for the purpose of examining the effects of application of the aforesaid reform through the creation of a complex system of data banks capable of periodically providing data on female employment trends and monitoring correspondence between pay levels and the principle of equal treatment.</p>
PURPOSE	<p>The aim of the brochure has been to implement an information and awareness campaign targeting women and men in employment, employers, trade unions and all other labour market stakeholders, concerning the need to foster pay equality among men and women and to work toward pay gap</p>

	prevention, with a view to increasing the numbers of female employees and improve the situation in regard to female employment and professional qualifications, while reducing the current gap, in line with the European Strategy for Gender Equality 2010-2015
STAKEHOLDERS	Men and women in employment Equality Councillors Work consultants Labour inspectors Trade unions Trade associations Job centre operators Training bodies Companies
IMPLEMENTATION	<ol style="list-style-type: none"> 1. Initial elaboration of the project and selection of partners; 2. Drafting contents; 3. Feasibility study; 4. Presentation of the brochure to the Ministry for Labour; 5. Press conference for presenting the initiative; 6. Widespread distribution of the brochure within all territorial units.
RESOURCES	Budget: € 3000 Staff involved: three persons Time taken: 1 month
SUCCESS FACTORS	Reader-friendly brochure with full information as to contents and aims
CONTACT PERSON	Alessandra Servidori (aservidori@lavoro.gov.it)

4.1.2 COMMISSION FOR EQUALITY IN LABOUR AND EMPLOYMENT (CITE, PORTUGAL)

NAME OF INITIATIVE	Pay Gap National Day
SUMMARY	Following the European Commission recommendations, CITE launched in 2013 the first pay gap national day. The day is chosen every year according to the pay gap data. In 2013 the day was 6 March and in 2014 it will be same date, for the pay gap remains at 18%.
STAKEHOLDERS	Media Social partners Municipal councils and other public services
IMPLEMENTATION	<ol style="list-style-type: none"> 1. Conducting pay gap data analyses; 2. Conducting marketing activities to mark the pay gap day (including outreach to media outlets, participation in a TV show dedicated to the issue, and implementing partnerships with municipalities and public transport authorities to publicize the pay gap national day in public spaces and on public transportation).
RESOURCES	Budget: up to 10.000€

	Staff involved: two persons from CITE and outsourcing of the pay day's "brand identity" and design to a marketing agency. Time taken: 1 month/year
CONTACT PERSON	Sandra Ribeiro (secretariado@cite.gov.pt)

4.2 TRAINING AND SEMINARS FOR STAKEHOLDERS

4.2.1 OMBUD FOR EQUAL TREATMENT (AUSTRIA) I

NAME OF INITIATIVE	Training on equal pay for members of works councils
LEGAL FRAMEWORK	<p>Since 2011, according to the Austrian Equal Treatment act, companies of a certain size have to compile anonymized reports on average salaries of male and female employees at different positions and pay levels in Austria. As these reports have to be disclosed within the company but kept confidential in public, it is mainly up to the employees representatives (in Austria, the work councils) to use this tool for analysis and possibly promoting further measures. Additionally, the income reports can be used in individual equal pay cases and may therefore be shown to the Ombud for Equal Treatment.</p> <p>The Austrian Ombud for Equal Treatment is, among its other tasks, entitled to provide recommendations on all issues regarding discrimination. This includes running seminars and training events on these issues. Apart from that the Ombud also has the general competence to provide support and counsel.</p>
STAKEHOLDERS	<p>The women's organization within the Austrian Trade Union Federation. This brought the Ombud into contact with the work councils in the different regional provinces of Austria)</p> <p>Work councils</p>
IMPLEMENTATION	<ol style="list-style-type: none"> 1. Getting into contact with the women's organization within the Trade Union Federation; 2. The latter liaised with trade unions in the Austrian provinces and encouraged them to contact the Ombud on joint training events; 3. Conceptualising these events (the Ombud focusing on legal framework, while the Federation on how to read an income report; both organisations then delivered the conclusions and explained future steps); 4. The Federation arranged for the training venues in the provinces; 5. The Ombud contributed staff to run the training and some budget for catering.
RESOURCES	Staff involved: around 5 legal officers from the Ombud's regional offices. Staff members from the Trade Union Federation also provided support.

RESULTS	<p>The training event on equal pay has been integrated, beside general equal treatment issues, in the compulsive training schedule for members of the work councils. The Ombud continues to offer such events frequently.</p> <p>Finally, the Trade Union Federation published a handbook for work councils on how to operate with the income reports.</p>
SUCCESS FACTORS	The legal framework, as explained above, was beneficial to establishing good cooperation with the Trade Union Federation.
CONTACT PERSON	Sandra Konstatzky (sandra.konstatzky@bka.gv.at)

4.2.2 OMBUD FOR EQUAL TREATMENT (AUSTRIA) II

NAME OF INITIATIVE	Seminars on equal pay for employers (mainly human resources staff)
SUMMARY	The concept included providing a social science background on the pay gap, explaining the legal framework and providing tools on how to do an equality check and to identify work of equal value
STAKEHOLDERS	<p>The Ministry for Women’s Affairs, which is part of the Austrian federal chancellery</p> <p>An external organization with experience in this field, that also developed the seminars</p> <p>The Austrian Federal Economic Chamber also advertised the seminars to their members</p>
IMPLEMENTATION	The Ministry for Women’s Affairs contacted the targeted companies; subsequently the seminar took 2 days and was held once a year
RESOURCES	<p>Budget: the training was provided to employers free of charge; the ministry covered all the expenses.</p> <p>Staff involvement: 2 legal officers</p> <p>Time taken: six two-day seminars (+ preparation time)</p>
RESULTS	<ul style="list-style-type: none"> • Participants of the seminar received course materials about the legal framework and cases; • Since only a limited number of seminars were financed by the ministry, a handbook for employers on income reports and equal pay issues (with contributions from the Ombud for Equal Treatment) was produced.
BARRIERS	Smaller companies were more difficult to reach, in contrast to large ones that are comparatively fewer in Austria.
CONTACT PERSONS	<p>Cornelia Amon-Konrath (cornelia.amon-konrath@bka.gv.at)</p> <p>Kerstin Witt-Löw, Institute “Sofia” (responsible for the concept of the seminars: kerstin.witt-loew@institut-sofia.at)</p>

4.3 DIAGNOSTIC TOOLS

4.3.1 COMMISSION FOR EQUALITY IN LABOUR AND EMPLOYMENT (CITE, PORTUGAL)

NAME OF INITIATIVE	Study and Development of a Diagnostic Tool for Gender Pay Gap in Companies
SUMMARY	<p>The aim of this study is to contribute to a better understanding of the concept of gender pay gap, to raise awareness among economic agents (especially managers and policy makers) that women have to work more days than men to earn the same, and to adopt measures for eliminating the gap in Portugal.</p> <p>The diagnosis tool can be used by companies electronically to instantly calculate the gender pay gap and identify concrete situations of pay gap between women and men. The companies' awareness of their own gender pay gap situation will enable them to tackle the underlying causes and correct the gaps uncovered.</p>
STAKEHOLDERS	Various companies and gender experts
IMPLEMENTATION	<ol style="list-style-type: none"> 1. The electronic tool of automatic calculation, Calculadora DSG (Gender Pay Gap Calculator), is a software for online use based on 3 dimensions of analysis within companies: organizational culture and strategy (conditions), human resources management (process) and impact (outcome). These dimensions are organized into sub-groups and assessed at two levels. 2. The tool will display a list of questions related to these three dimensions. The answers given by a company to these questions will be scored according to the two levels of assessment for each of the dimensions. The final score will be an average sum of these scores.
RESOURCES	<p>Budget: 69 715.62€ co-financed at 80% by the European Social Fund</p> <p>Staff involvement: one person from CITE + an outsourced consultancy team</p> <p>Time taken: January 2013 – December 2014</p>
RESULTS	<ul style="list-style-type: none"> • The use of this tool will allow companies to know their situation regarding the gender pay gap and implement a continuous and systematic process of comparing their performance to what is considered 'the highest level'. This is meant to induce companies not only to match their levels of performance to the best, but rise above this level with a view to continuously improve (i.e. benchmarking). • The use of the Gender Pay Gap Calculator will be supported by an instructions manual and will be available free of charge on CITE's website.

CONTACT PERSON

Sandra Ribeiro (secretariado@cite.gov.pt)

4.4 JOB EVALUATIONS**4.4.1 COMMISSION FOR EQUALITY IN LABOUR AND EMPLOYMENT (CITE, PORTUGAL)**

NAME OF INITIATIVE	Revaluing Work to Promote Gender Equality. A Guide to applying a methodology for accessing the value of work free of from gender bias ³⁷
SUMMARY	<p>This was a job evaluation pilot project carried out in Portugal between 2005 and 2009 in the Restaurant and Beverages sector.</p> <p>The prime purpose and key objective of the project was to develop a methodology for assessing the value of work free from gender bias which would guarantee gender pay equity and compliance with the principle of equal pay for equal work or work of equal value.</p> <p>The project developed a job evaluation method based on job content without reference to the personal characteristics of those who occupy certain jobs³⁸. The job evaluation method free from gender bias that was developed by this project confirmed that it is possible, in a systematic and rigorous way, to measure and compare jobs whose contents are different but are of equal value.</p> <p>The job evaluation method free from gender bias that was developed by this project had as objectives:</p> <ul style="list-style-type: none"> • Measuring the value of work; • Comparing different jobs, using common criteria; • Assessing and prioritizing jobs according to their value.
STAKEHOLDERS	The project was developed in Portugal by a partnership comprising trade unions, employers' representatives, public bodies working in the area of gender equality in the labour market, and the International Labour Organisation, with the aim to develop and test a job evaluation method free from gender bias, centred on the value of work, allowing the application of the principle of "equal pay for equal work or work of equal value" without the gender bias.
IMPLEMENTATION	<p>1. Constitution of a working group</p> <p>The working group was tasked with conceptualising and applying the job evaluation method, and was made up of representatives from each of the organisations involved in the project.</p>

³⁷ http://www.cite.gov.pt/asstscite/downloads/guia_revalorizar_en.pdf retrieved 9/12/2013

³⁸ corresponding to paragraph 1 of Article 3 of ILO Convention No. 100

2. Selection of the jobs to be compared

Evaluating the value of work was done by comparing different jobs using a particular criterion. Predominantly female jobs were compared with predominantly male jobs.

3. The job evaluation method free from gender bias – analytical points rating method

Each job chosen for the comparison was analysed using a number of factors (i.e. skills, responsibility, effort and working conditions) and sub-factors that enable the consideration of all the characteristics of the different jobs in great detail. These factors and sub-factors were applied equally to all jobs considered to be comparable in order to estimate their value.

4. Information gathering on the jobs to be evaluated

Elaboration of a structured questionnaire as a data collection tool to be administered in workplaces. The questionnaire sought to identify the tasks performed in a particular job and to ascertain whether the tasks comply with the existing job description and also to identify the demands of each job according to skills, responsibility, effort and working conditions. The questionnaire was administered in 25 establishments and 79 jobs were observed and surveyed.

5. Determining the value of the jobs

Factors and sub factors were weighed in order to establish their relative importance by assigning point scores to each of them.

6. Assigning point scores and identifying jobs of equal value

The construction of this methodology was an experimental process, long and complex, requiring specialized training of the working team and was a job that required a permanent dialogue and discussion between the parties involved.

RESOURCES

Staff involvement: 2 persons from CITE and 2 persons from each partner

RESULTS

The result of the project, besides the concrete evaluation of the typical jobs of the Restaurant and Beverages sector, was a guide for applying a methodology for assessing the value of work free from gender bias and a training handbook for equal pay for men and women. Both were designed to support organisations that want to conduct a job evaluation process that is free from gender bias, with the purpose of revaluing work, contributing to greater objectivity in human resource management and work organisation processes, and promoting equal pay between men and women.

The guide comprises two main parts. In the first part, the process of building a methodology for assessing the value of work free from gender bias is put into context, and some background is given to illustrate this type of

methodology's evolution, particularities and usefulness. This is followed by a brief characterisation of the Restaurant and Beverages sector in which the methodology proposed by the Revaluing Work to Promote Equality project was developed. The second part covers the process of building the Evaluation Methodology, and describes each stage, from the set-up of the working group to the scoring and appraisal of the jobs that had been observed. A checklist of the most important points in every stage was therefore included at the end of each section.

The training handbook can also be offered as a 25 hours training course that gives employers and employees the chance to learn about:

- The main concepts associated with equal pay;
- The underlying causes of gender discrimination;
- Employment statistics that reveal gender-based pay differentials;
- Principal legal instruments – national and international, that deal with pay equity;
- Evaluation methodologies for assessing the value of work in order to put men and women's pay equity into practice;

Finally, some trade unions are using the methodology developed in the project in their own sectors (e.g. clothing and footwear).

SUCCESS FACTORS	The tripartite nature of the project
BARRIERS	Professional segregation in the beverage sector
CONTACT PERSON	Sandra Ribeiro (secretariado@cite.gov.pt)

See also:

- Tools for equal pay from the Equality and Human Rights Commission: <http://goo.gl/jWu2Oy>
- Checklist for gender neutrality in job evaluation and classification from the Belgian Institute for the Equality of Women and Men: <http://goo.gl/Ot6iTT>
- A step-by-step guide for a gender-neutral job evaluation from the International Labour Organisation: <http://goo.gl/MUcFfL>
- Tools for gender equality from the European Commission: <http://goo.gl/OhH4q4>
- An equal pay self-test tool from the Swiss Federal Office for Gender Equality <http://goo.gl/aGhDvL>

Did you know?

In March 2013 the French Defender of Rights published a guide reflecting the work of a multidisciplinary group of experts and institutions over a period of three years, including researchers in economics, sociology, but also representatives of social partners. It also involved lawyers, the public body specialized in working conditions, and public institutions such as the Observatory of gender parity and the General Labour Department of the Ministry of Work, etc.).

The work was coordinated by two researchers in economics, Rachel Silvera and Severine Lemière, who initiated in France the very first research on the development of a methodology to compare predominantly male and female jobs, focusing on the International Labour Office's publications on job evaluation and the initiatives taken by foreign countries (Quebec, Oregon, Switzerland). This first work was published by the High Commission against Discrimination and for Equality (the HALDE) in 2010.

The aim of the guide is to promote the principle of equal pay for work of equal value in collective agreements and to propose a methodology to social partners to insure its effectiveness. It has therefore been created to inform and assist social partners who negotiate collective agreements and are engaged in the process of jobs classification, the evaluation managers, but also stakeholders involved in the reduction of the gender pay gap. The guide comprises three parts (I. Understanding, II. Questioning, III. Taking action) corresponding to the three objectives of the guide:

1. Provide knowledge on a complex subject: the causes of the gender pay gap, the problem of professional gender segregation, the remedies available under European law and national law, and the existing methods of jobs classification.
2. Deconstruct the classification and job evaluation systems in order to make visible the gender biases which undervalue predominantly female job. The working group questioned the notion of "apparently neutral criteria or provision" used and its potential indirect discriminatory impact on women jobs through the analysis of two recent classification systems, in the trade and retail sector and in the insurance sector. It also analysed the Hay method, leading method of job evaluation in developed countries.
3. Suggest an approach (criteria, vigilance points, attributed value...) for a job evaluation method free from gender bias favouring the analysis of predominantly female jobs. The guide provides recommendations to develop a 7 steps job evaluation method free from gender bias, and promote the necessary re-evaluation of the classifications relating to predominantly female jobs.

Want to know more?

Contact Néphéli Yatropoulos (nepheli.yatropoulos@defenseurdesdroits.fr)

4.5 MONITORING OF WAGES IN COMPANIES

4.5.1 FEDERAL ANTI-DISCRIMINATION AGENCY - FADA (GERMANY)

NAME OF INITIATIVE	Equal Pay
LEGAL FRAMEWORK	<p>The General Act on Equal Treatment states in section 8 subsection 2 that “the agreement of a lower rate of remuneration for the same or equivalent work on any of the grounds referred to under Section 1 shall not be justified on account of special regulations applying for any of the reasons referred to under Section 1” (i.e. gender). The jurisprudence of the labour courts deduced the legal basis for the claim for equal pay from that section.</p> <p>According to Section 27 of the General Act on Equal Treatment FADA shall take on and independently carry out measures to prevent discrimination on any of the grounds referred to in Section 1; and academic studies into such discrimination. The General Act on Equal Treatment does not impose specific duties on employers to carry out equal pay reviews. That is why FADA had to find companies that would take part in the project on a voluntary basis.</p>
PURPOSE	<p>So far only a few German companies carry out equal pay reviews. There are two good tools available in Germany to do so: “eg-check.de” and “Logib-D”. The purpose of the initiative was to raise awareness among employers on the equal pay issue. Other aims were to show how the tool “EG-Check” works, that it is easy to use, and to set an example for other companies to use the tool.</p>
STAKEHOLDERS	<p>Deutsche Telekom, the State Capital of Munich and the K+S Aktiengesellschaft (agricultural chemical and salt company) took part in the project. The reviews were carried out by the developers of the tool, Dr. Andrea Jochmann-Döll and Dr. Karin Tondorf.</p>
IMPLEMENTATION	<ul style="list-style-type: none"> • Identification of suitable companies • Targeted approach of these companies • Demonstration of the advantages • Guidance by the experts • Partial financing • Confidentiality of the results • Certificate and public relations activities
RESOURCES	<p>Budget: FADA partially financed the project with about 8.000 €. The participating companies covered travelling expenses.</p> <p>Staff involvement: one FADA staff member was in charge of the project, while the reviews were carried out by the two developers of “eg-check.de”</p> <p>Time taken: April 2013 to October 2013</p>
RESULTS	<ul style="list-style-type: none"> • The participants got internal reports to work with and they provided assurances that they will draw conclusions from the reports.

	<ul style="list-style-type: none"> • The companies received a certificate for taking part in the project. • FADA published an abstract about the project and carried out public relations activities.
SUCCESS FACTORS	Factors for success included FADA promising not to make the results available to the public and that FADA as an important public body supported the project. Also the public presentation of the certificate was an important factor.
BARRIERS	FADA had to convince the companies of the advantages of taking part and also to take part financially. More preliminary talks were necessary than were anticipated at the beginning.
MONITORING	During the project the equal pay reviews were monitored and that resulted in the reports. Since the participation in the project was voluntary, FADA cannot monitor or evaluate what happens after the termination of the project.
CONTACT PERSON	Nathalie Schlenzka (Nathalie.Schlenzka@ads.bund.de)

4.6 MONITORING EQUAL PAY PLANNING AND COMPLIANCE

4.6.1 THE EQUALITY OMBUDSMAN (EO, SWEDEN)

NAME OF INITIATIVE	Follow up on the project “Monitoring equal pay of a million Swedish employees”
LEGAL FRAMEWORK	<p>According to the Swedish Discrimination Act employers are required to take active measures to ensure that all employees have equal rights and opportunities regardless of their sex, ethnicity or religion or belief. These obligations include undertaking pay surveys and analyses every third year. In addition, employers with 25 or more employees are required to draw up an action plan for equal pay.</p> <p>Compliance with the provisions on active measures is supervised by the Equality Ombudsman.</p>
PURPOSE	<p>Between 2006 and 2008, the Equality Ombudsman set out to monitor the provisions on pay surveys for a large part of the Swedish labour market, covering the salaries of 1 million employees in total (20 % of the total labour market), by inspecting almost 600 of the largest companies and government agencies.</p> <p>The EO focused on the employers’ work on analysing pay differentials between women and men performing equal work and work of equal value (in accordance with chapter 3, sections 10 and 11 of the Discrimination Act) and the obligation to rectify unwarranted pay differentials.</p>

	<p>The inspection was a success and led to 5 800 employees getting their salaries adjusted by a total of SEK 72 million a year (more than 8 million EUR).</p> <p>In 2013, the decision was made to investigate whether the employers' efforts to close the pay gap had continued since the audit. This time, the EO focused on the continuity, rather than the method of the pay surveys, by inspecting the action plans for equal pay only (section 11, Discrimination Act). The audit finished in January 2014.</p>
IMPLEMENTATION	<p>The follow up of the project of compliance, monitoring equal pay of a million Swedish employees, started in 2012-2013. Based on the first step of the project's final reports and the achievements of 2006-2008, the EO sent out a request to employers to send through their action plan for equal pay. Upon receipt the EO will determine if the employer has lived up to the expectation of the law or if adjustments are needed. Compliance with recommended adjustments closes the case – failing to do so means the case is put to further legal instances.</p>
RESOURCES	<p>Budget: based on the working hours below, the total cost is evaluated to 610 000 SEK (68 250 EUR).</p> <p>Staff involved: the number of staff involved varied during different steps of the project. At the most intense working period 7 of the EO's fulltime employees were evaluating the provided material.</p> <p>Time taken: planning and evaluating process in total - approximately 1070 working hours.</p>
RESULTS	<p>Although not yet completed it is safe to conclude that the employers' efforts to close the pay gap are still overall ongoing: approximately 54% of the employers have planned pay adjustments, totalling 78 million SEK and affecting about 5 500 employees (about 85 % of which are women).</p> <p>The processing has shown that a large number of employers continue to map out action plans for equal pay since the first step of the project. This conclusion can be drawn from the fact that a large part of employers have been able to send through the requested information in a short timeframe.</p> <p>The EO can conclude that compliance monitoring does lead to positive effects, short as well as long term. A final rapport will be written once the project has come to an end.</p>
SUCCESS FACTORS	<p>A specific form was developed which simplified the process for the objects of investigation, both when it came to show how they had been working with active measures and how that work would be later evaluated by the EO. The form also assisted the Ombudsman's work when evaluating the material provided.</p>

MONITORING

A survey has been sent out and will be processed further in 2014 on how the parties investigated experienced the EO's work from the point of view of clarity, transparency and ease of understanding.

CONTACT PERSON

Peter Tai Christenson (peter.christensen@do.se)

Did you know?

The Finnish Act on Equality between Women and Men obliges workplaces with a minimum of 30 permanent employees to draft an annual personnel policy equality plan. The equality plan must be prepared in cooperation with employees and shall include an account of the equality situation in the work place including details of the employment of women and men in different jobs.

A compulsory section of the equality plan is a survey of the grade of jobs performed by women and men, the pay for those jobs and the differences in pay. The plan must also indicate the measures that have been decided on to promote pay equality and other types of equality at the workplace, and an estimate of how successful those measures have been. An important part of the pay survey is the analysis of pay differences. The Ombudsman has also reminded workplaces that the entire personnel, including people employed on a fixed term or part-time basis must be covered in the plan.

The Finnish Equality Ombudsman supports this process. A comparison of job specific or average pay does not provide a truthful picture of differences in pay. If pay surveys examine pay by looking at the individual elements that make up the whole salary, then remuneration becomes more transparent and assessment of the grounds for pay differences becomes easier.

Another way to promote equality planning has been to visit different workplaces. During these visits the Finnish Equality Ombudsman has had a good opportunity to meet people whose responsibility it is to prepare a plan.

Want to know more? Contact Pirkko Mäkinen (pirkko.makinen@stm.fi)

4.7 SURVEYS ON JOB ADVERTISEMENTS

4.7.1 OMBUD FOR EQUAL TREATMENT (AUSTRIA)

NAME OF INITIATIVE	Equal treatment through enhanced transparency of job advertisements
LEGAL FRAMEWORK	<p>Since 2011 the Austrian Equal Treatment Act states that job announcements have to provide information on the entry-level salary to ensure equal treatment via enhanced transparency. In case of violations there is a fine up to 360€ and the respective administrative penal procedures can be initiated by the Ombud.</p> <p>The Austrian Ombud for Equal Treatment is, among its other tasks, entitled to conduct independent investigations into matters of discrimination.</p>
PURPOSE	The survey should show how far job announcements are compliant with this legal provision and should make this new provision more public through a press release about the results of the survey.
IMPLEMENTATION	<ol style="list-style-type: none"> 1. The Ombud examined the job ads sections of weekend editions of selected newspapers twice in February 2012, totalling 4376 job announcements. 2. In October 2012, an evaluation was conducted in order to show the focus of the survey, reactions by employers on letters of information (that the Ombud sent to them if they had failed to announce jobs in a correct way), as well as first results of decisions by the administrative authorities, if there had been an administrative penal procedure in certain cases. 3. A press release was launched regarding the results of the project and a report was published on the Ombud's website.
RESOURCES	<p>Budget: costs related to the work of one additional intern</p> <p>Staff involved: one intern, about 2 other staff members full time equivalent</p> <p>Time taken: around 2 months</p>
RESULTS	<ul style="list-style-type: none"> • Press release • Report on the Ombud's website • Feedback from other institutions who got inspired to further investigate this issue (e.g. the Austrian Chamber of Labour)
CONTACT PERSON	Lisa Korninger (lisa.korninger@bka.gv.at)

4.8 COOPERATION WITH LABOUR INSPECTORS

4.8.1 COMMISSION FOR EQUALITY IN LABOUR AND EMPLOYMENT (CITE, PORTUGAL)

NAME OF INITIATIVE	Project tools and methodologies to support inspection activities on gender equality at the workplace
PURPOSE	<p>This project was developed by CITE, in partnership with ACT – the Portuguese Labour Inspection Authority, recognizing the advantages of providing training in gender equality to labour inspectors. The project aimed to create tools that enable the objective identification of workplace discriminatory practices based on sex and promote the acquisition of knowledge appropriate for intervening in this matter.</p> <p>This project was intended to strengthen the capacity of inspectors in dealing with gender equality. This would enable them to better identify cases of discrimination based on sex, thus contributing to the three basic tasks of the labour inspection: ensuring the enforcement of labour law, advising employers and workers on the most effective means to achieve these objectives and drawing authorities' attention to the abuses of non-compliance with the law or deficiencies in it.</p> <p>This project had as objectives to:</p> <ul style="list-style-type: none"> • Enhance the gender dimension in the labour inspectors' actions; • Improve the skills of labour inspectors on gender equality; • Train and sensitise labour inspectors to acquire specific skills in the identification and characterisation of discriminatory situations based on gender in the workplace; • Develop tools to support labour inspection activities which allow the identification of discriminatory situations and non-compliance of labour legislation on gender equality.
STAKEHOLDERS	The key stakeholder of this project is ACT. As a body of the public administration ACT is required to respect the provisions of the Constitution of the Portuguese Republic which enshrines gender equality as a fundamental principle. ACT also has to promote and implement the principle and culture of legality. ACT has, among others, the specific obligation of ensuring compliance with legislation regarding equality and non-discrimination between women and men in workplaces.
IMPLEMENTATION	<ol style="list-style-type: none"> 1. Training course on gender equality for labour inspectors and a tool to support labour inspections in the identification and characterisation of situations of discrimination based on gender in the workplace;

	<ol style="list-style-type: none"> 2. Six workshops for labour inspectors for the analysis of the difficulties in identifying situations of discrimination based on gender; 3. One workshop for the presentation of the results collected in the six reflection workshops held with the labour inspectors, with the participation of some of these inspectors, ACT's regional branches leaders and social partners (i.e. members of CITE); 4. One pilot training course for the use of the tool built to support labour inspection in the identification and characterisation of situations of discrimination based on gender on workplace; 5. Validation of the tools; 6. Final conference to disseminate the project results.
<p>RESOURCES</p>	<p>Staff involved: a team of 5 people (4 from CITE and 1 from ACT) was responsible for the development of the project. 99 labour inspectors were involved in the training and the validation of the tools developed by the project.</p> <p>Time taken: The project started in April 2011 and ended in October 2012.</p> <p>For the building up of the tool to support labour inspection in the identification and characterisation of situations of discrimination based on gender on workplace weekly meetings of the project team were held. The 6 workshops for labour inspectors lasted 7 hours each. The workshop for the presentation of the results collected in the six reflection workshops held with the labour inspectors had a 4 hours duration. The final conference lasted 1 day and a half.</p>
<p>RESULTS</p>	<ul style="list-style-type: none"> • Strengthening the attitude of labour inspectors concerning the principle of gender equality and the way this subject is incorporated in labour inspection activities; • Improving the effectiveness of the labour inspection activity in the control of labour practices which are discrimination based on sex and in compliance with labour legislation on gender equality; • Setting up a training program on gender equality for the labour inspectors; • Providing a tool to support inspection activity in the workplace in order to identify situations of discrimination and breach of labour legislation on gender equality; • Promotion of social dialogue and cooperation between labour inspection and social partners regarding gender equality
<p>BARRIERS</p>	<ul style="list-style-type: none"> • The most important challenge was to get labour inspectors incorporate the dimension of gender equality in their inspection

	practices in a systematic way. This challenge was overcome by discussing their difficulties in identifying situations of discrimination based on gender at the workshops and by involving them in the conception, analysis, testing and validation of the practical guide to support labour inspectors in the identification of discriminatory situations and non-compliance of labour legislation on gender equality.
CONTACT PERSON	Sandra Ribeiro (Sandra.ribeiro@cite.gov.pt)

4.8.2 THE PUBLIC DEFENDER OF RIGHTS (CZECH REPUBLIC)

NAME OF INITIATIVE	Cooperation with the Labour Inspection in the area of equal treatment including equal pay
LEGAL FRAMEWORK	<p>The area of equal treatment and discrimination in the field of pay is covered not only by the Anti-discrimination Law n. 198/2009, which defines individual features of the term (particularly discrimination grounds and areas), but it is also covered by special norms of labour law that contain a specific ban on unequal treatment in labour relations and direct sanctions against perpetrators. The respect of the norms is controlled by the Labour Inspection that is authorized to impose a fine on the violator in the case a violation is detected. This special legislation is designed to sanction the violators of the equal treatment principles more effectively.</p> <p>The Public Defender of Rights, while conducting inquiries on complaints, is entitled to inspect official or court documents, to request authorities to provide explanations, and to conduct local inquiries without prior notification, and so on. Thanks to these powers, it is able to analyse a problem in a thorough way, uncover its causes and propose solutions. Although it is not entitled to issue decisions, cancel or change erroneous decisions of authorities, in most cases the inquiries lead to a successful conclusion and authorities usually remedy errors themselves. That is the reason why some of the authorities have shown their own interest to consult their procedures with the Public Defender of Rights in some special cases or special areas of their competence.</p>
PURPOSE	The aim of the cooperation is encouraging mutual exchange of information and consultation on individual legal issues with the purpose of detecting unequal treatment and to deal with it effectively.
STAKEHOLDERS	Labour inspectors
IMPLEMENTATION	The cooperation between the Public Defender of Rights and supervisory and inspection authorities is a long-term initiative in the Czech Republic. There is a special effort to deal with the issues of equal treatment and discrimination more effectively in different areas. For that purpose the Public Defender of Rights had initiated and later signed a Memorandum of

	<p>cooperation with various supervisory and inspection authorities and with the Labour Inspection in 2010.</p>
<p>RESULTS</p>	<p>In recent cases the regional subdivisions of the Labour Inspection carried out their controls and the Public Defender of Rights realized its impartial inquiry which supervised also the Labour Inspection outcome. The Public Defender of Rights found the investigation process of the regional subdivision of the Labour Inspection unsatisfactory. Consequently the Public Defender of Rights informed the Central Inspectorate of the Labour Inspection about the situation. The Central Inspectorate accepted the view of the Czech Ombudsman and shared its opinion and conclusion on the inadequate approach of the regional subdivisions that stemmed from a general lack of knowledge and practice in the field of discrimination (as it was a relatively new area of authority of the Labour Inspection). In connection with this fact, the central inspectorate of the Labour Inspection committed to train its employees and asked for the Public Defender's assistance. The training is expected to take place in 2014.</p> <p>The Public Defender of Rights has been also successful with the initiative of a roundtable with supervisory and inspection authorities organized in February 2013, preliminary to a big Conference on the topic "Equality and Prohibition of Discrimination in the activities of The Public Defender of Rights". This Conference started with a panel discussion on the topic of discrimination and it was finished with four highly specialized workshops. Participants at this Conference were experts from different institutions including lawyers from the academic and private sectors, lawyers from the Czech Parliament, judges, representatives of NGO's and supervisory authorities.</p> <p>A further achievement is that the Labour Inspections quarterly inform the Defender about their statistical data. After consultation with the lawyers from the equality body during the above mentioned "Round table" the Central Inspectorate officers also decided that during the administrative proceedings Labour Inspections can also admit audio recordings as evidence in investigations.</p>
<p>BARRIERS</p>	<p>The area of discrimination including the field of equal pay is well covered in the terms of the Czech legislation. However, the exercise of equal treatment and anti-discrimination principles is still quite problematic in practice. The legislation is relatively new, and the supervisory and inspection authorities have not mastered the procedures connected to unequal treatment and discrimination assessment in concrete cases yet, so there is room for improvement. Training of the employees of Labour Inspection as mentioned above could be a step for advancement.</p>
<p>MONITORING</p>	<p>The general memorandum on cooperation between the Public Defender of Rights and the Labour Inspection encourages mutual exchange of</p>

	information and ensures consultation of individual legal issues. Common trainings in 2014 will be aimed at ensuring the best possible dealing with the issues related to the discriminatory practices in the mentioned area.
CONTACT PERSONS	Polák Petr (polak@ochrance.cz) Ondrůjová Zuzana (zuzana.ondrujova@ochrance.cz)

4.8.3 COMMISSIONER FOR ADMINISTRATION (CYPRUS)

NAME OF INITIATIVE	“Actions for reducing the gender pay gap”
LEGAL FRAMEWORK	<p>As a result of Cyprus’ accession to the EU and the respective commitment to conform to EU legislation, the Commissioner for Administration (Ombudsman) was appointed, on the basis of the Combating of Racial and Other Discriminations (Ombudsman) Law, as the competent body to investigate complaints regarding discriminatory behaviours that are in violation of the provisions of the Equal Pay between Men and Women for Equal Work or for Work of Equal Value Law.</p> <p>That drew criticism from trade unions as well as the employers’ organizations who argued that any intervention of the Commissioner in relation to the content of collective labour agreements could potentially violate the principle of establishment of labour conditions (including wages) through free collective negotiations.</p> <p>In order to answer these concerns, the Commissioner established closer cooperation especially with trade unions. They are systematically asked to state their position when specialized issues arise through a labour complaint. They are also invited for consultations when the issue under examination concerns conditions of a collective labour agreement, and prior to the Commissioner making any final recommendations on such issues.</p>
PURPOSE	Improvement of inspection mechanisms for equal pay legislation.
STAKEHOLDERS	This action includes theoretical as well as on-the-job training of Officers and Inspectors of the Department of Labour Relations (DLR) and the Department of Labour, of the Ministry of Labour and Social Insurance, as well as Officers of the Commissioner’s Office.
RESOURCES	<p>Budget: around 300.000 EUR for the action on improvement of inspection mechanisms. The overall budget of the project was 3 million EUR.</p> <p>Staff involved: officers and inspectors of the Department of Labour Relations (DLR) and the Department of Labour, of the Ministry of Labour and Social Insurance, as well as Officers of the Commissioner’s Office</p> <p>Time taken: December 2011 to December 2013</p>
RESULTS	<ul style="list-style-type: none"> Improvement of the inspection procedures

BARRIERS	<ul style="list-style-type: none"> • Increasing the number of inspections for law enforcement • The small number of inspectors • The wide range of the inspectors' responsibilities and duties apart from the implementation of legislation on equal pay
MONITORING	By the end of 2015 the Department of Labour Relations will conduct 1000 inspections.
CONTACT PERSON	Despina Mertakka (dmertakka@ombudsman.gov.cy)

4.9 PAY TRANSPARENCY TOOLS

4.9.1 COMMISSION FOR EQUALITY IN LABOUR AND EMPLOYMENT (CITE, PORTUGAL)

NAME OF INITIATIVE	The Personnel Records
LEGAL FRAMEWORK	<p>Adopted in 1976 with the Decree-Law nr. 479/76 of 16 June, the Personnel Records legal regime underwent occasional adjustments arising from the social and labour development of the country. The Personnel Records is currently inscribed in the updated Labour Code, Law nr.7/2009, 12 February, and is duly regulated by Law nr.105/2009 (article 32), of 14 January. The Decree nr.55/2010, of 21 January, defines the Personnel Records report template.</p> <p>The Personnel Records legal regime was submitted to the social partners, which is required for approval of any legal instrument that addresses labour law in Portugal.</p> <p>The National Data Protection Commission authorized to process and display the personal data on the Personnel Records.</p>
PURPOSE	<p>The Personnel Records is an instrument for ensuring transparency and equal treatment of workers, not just related to pay, but as to all other labour rights. It becomes in practice a tool to tackle the pay gap between men and women, but the objective is broader.</p> <p>The employers are obliged to annually submit information on the Personnel Records of the enterprise to the Labour Inspectorate (ACT) regarding: Remunerations; Working time; Extra/Additional work; Fixed-term contracts; Training; Health and Safety; other Personnel Records. Some of this information is disclosed individually by worker.</p> <p>Personnel Records contain employer-employee micro data that, before being sent to the ACT, must be submitted to the labour unions or workers committees (upon request in due time) which may ask for the correction of irregularities within 15 days. It is also sent to the employer representatives present in the Standing Committee for Social Concertation - CPCS (upon</p>

	<p>request in due time), and to the employees, in order to allow the detection of inaccuracies, within 15 days.</p> <p>The Personnel Records for the last 5 years must be kept by the employer.</p> <p>The central, regional and local administrations, public institutes and other collective public entities, as well as self-employed and domestic workers are excluded from the legal obligation to submit information on this data.</p> <p>Trade Unions/employee representatives and employers' associations may submit a request for disclosure of information 10 days prior to the submission of the Personnel Records to the Labour Inspectorate.</p>
STAKEHOLDERS	<ul style="list-style-type: none"> • Public administration bodies • Trade unions • Companies • National Data Protection Commission
BARRIERS	<p>The main challenges to implementing the measure were at technical and political level. At technical level it implied the definition of the relevant available information and its systematization in a proper form. At political level it involved transparency of procedures and detection of discrimination within companies, also allowing further monitoring. The greatest resistance came from the National Data Protection Commission, for fear that personal information could be violated. But the National Data Protection Commission finally authorized to process and display the personal data on the Personnel Records.</p> <p>The fact that the measure was approved by a legislative act, and therefore mandatory, was crucial for its success.</p>
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5. LESSONS LEARNT

Some lessons learnt for moving forward in the pursuit of equal pay for equal work and work of equal value can be identified on the basis of the work of equality bodies on the ground.

Possible ways forward for equality bodies:

- Raise awareness and sensitize public opinion and labour market stakeholders, including men and women workers, employers, trade unions, work consultants, labour inspectors, trade associations, job centre operators, training bodies and companies. The range of tools that could be used to this effect include campaigns, public discussions, media, training, provision of information material and of diagnostic tools. Equality bodies can usefully collaborate for instance with municipalities, media outlets and other public sector bodies, ensuring a stronger voice and a multiplier effect. Given the complexity of legislation, concepts and case law in the field, specific attention will need to be given to training offered to legal professionals.
- Equality bodies could develop and use job evaluation methods free from gender biases. This would involve deconstructing existing classifications/job evaluation systems in order to make visible the gender biases and then developing new systems in cooperation with a wide range of stakeholders such as trade unions, employers' representatives, public bodies working in the area of gender equality in labour market, experts from different disciplines, researchers and lawyers.
- Companies could be encouraged to develop a strategic approach to tackling the gender pay gap. Equality bodies need to ensure direct contacts with and support to companies and identify incentives for the participation of employers to pay monitoring activities. Equality bodies can:
 - Highlight the issue of equal pay in a context of social responsibility – involving enterprises in self-regulation agreements;
 - Provide Certificates or Labels to companies ensuring a monitoring of equal pay or participating in projects for the promotion of equal pay.
 - Highlight to employers that promoting equal pay in workplaces will indeed lead to the recruitment of the best and the most talented staff;
- Play a role in combating gender stereotypes:
 - Suggesting measures to further encourage more men to avail themselves of family friendly measures and flexible working arrangements, and to further empower women to remain in employment
 - Encouraging students to challenge gender stereotypes when choosing subjects at school that will eventually impinge on their careers
 - Empowering more women to break the glass ceiling and advance to decision-making positions
 - Empowering women to acknowledge their skills to be better able to bargain better conditions when entering employment

- Cooperate with labour inspectors and participate to the improvement of labour inspection capacity and mechanisms:
 - Developing tools to support labour inspectors' activities; to direct inspectors towards the objective identification of discriminatory practices based on gender at workplaces
 - Training labour inspectors; providing highly specialised workshops with trainers/ experts on gender equality and equal pay with theoretical as well as on-the-job approaches
 - Involving labour inspectors in the discussions in relation to difficulties in identifying situations of discrimination based on gender and in the conception, analysis, testing and validation of any practical guide
- Cooperate with social partners, including by way of national equal pay tripartite roundtables for discussing equal pay issues (at sectorial level); creation of partnership, cooperation and joint projects (with social partners). In particular equality bodies could
 - Provide advice and recommendations, including a well-structured methodology in order to ensure the effectiveness of promoting the principle of equal pay for work of equal value in collective agreements
 - Provide trainings and training material
 - Offer legal assistance
 - Develop checklists and models for pay audits and equality impact assessments (for social partners, for collective bargaining; for less discriminatory job evaluation)
 - Develop marking system for equal value jobs
- Cooperate with women's organisations, gender equality organisations and trans organisations and all the actors of civil society promoting equal pay to identify areas for further work, tools for fighting underreporting and areas for improvement.

Possible ways forward for national level policy-makers:

- Scan the regulations for pay schemes and collective agreements to identify discriminatory provisions with the support of equality bodies
- Support the access to information for equality bodies in order to tackle the practical difficulties of taking legal cases on equal pay
- Introduce positive duties on employers to integrate equal pay practices. Good practice examples in Sweden and Finland for such positive duties are mentioned in this report
- Introduce legislation aiming at the transparency of pay
- Aim at leading by example with equal pay amongst civil servants; this may be done through measures such as ensuring gender mainstreaming throughout all the departments and monitoring the effects of such measures with the support of Equality bodies
- Support the work of equality bodies by promoting and protecting their independence and effectiveness.

Possible ways forward for European level policy makers:

European level policy-makers have already put in place a number of advanced legislative and policy instruments in order to ensure that equal pay for equal work and work of equal value becomes a reality. The experience of equality bodies shows the positive effect of these instruments and it also reveals areas for further development where policy-makers could usefully:

- Ensure the implementation of the comprehensive legislative framework at national level by transposing correctly and implementing in practice the EU Recast directive and the CJEU case-law
- Support equality bodies in their work of provision of information and awareness raising both with the general public and potential victims and with other targeted key actors
- Support equality bodies in the creation of diagnostic tools for the identification of situations of gender inequalities
- Support equality bodies in their work on the creation of methodologies for gender neutral job evaluation and classification systems
- Support the understanding by labour market actors of the need for gender neutral job evaluation and classification systems
- Support access for equality bodies to relevant information necessary to pursue equal pay both for individual claims and general pay audits
- Promote pay transparency and support equality bodies in the creation of pay transparency tools
- Support relevant research activities and trainings for societal target groups by equality bodies
- Assess the possibility to introduce in EU legislation positive obligations to employers concerning equal pay and transparency measures
- Support the work of equality bodies by promoting and protecting their independence and effectiveness

LIST OF WORKING GROUP MEMBERS

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Vitor Almeida	Portugal	Commission for Citizenship and Gender Equality
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Kosana Beker	Serbia	Commissioner for Protection of Equality
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Liz Law	UK Northern Ireland	Equality Commission Northern Ireland
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EQUINET MEMBER EQUALITY BODIES

AUSTRIA

Ombud for Equal Treatment
www.gleichbehandlungsanwaltschaft.at

BELGIUM

Centre for Equal Opportunities & Opposition to Racism
www.diversite.be and www.diversiteit.be

BELGIUM

Institute for the Equality of Women and Men
<http://igvm-iefh.belgium.be>

BULGARIA

Commission for Protection against Discrimination
www.kzd-nondiscrimination.com

CROATIA

Office of the Ombudsman
www.ombudsman.hr

CROATIA

Gender Equality Ombudsperson
www.prs.hr

CYPRUS

Office of the Commissioner for Administration (Ombudsman)
www.ombudsman.gov.cy

CZECH REPUBLIC

Office of the Public Defender of Rights
www.ochrance.cz

DENMARK

Board of Equal Treatment
www.ast.dk

DENMARK

Danish Institute for Human Rights
www.humanrights.dk

ESTONIA

Gender Equality and Equal Treatment Commissioner
www.svv.ee

FINLAND

Ombudsman for Equality
www.tasa-arvo.fi

FINLAND

Ombudsman for Minorities
www.ofm.fi

FRANCE

Defender of Rights
www.defenseurdesdroits.fr

GERMANY

Federal Anti-Discrimination Agency
www.antidiskriminierungsstelle.de

GREECE

Greek Ombudsman
www.synigoros.gr

HUNGARY

Equal Treatment Authority
www.egyenlobanasmod.hu

HUNGARY

Office of the Commissioner for Fundamental Rights
www.ajbh.hu

IRELAND

Equality Authority
www.equality.ie

ITALY

National Office against Racial Discrimination - UNAR
www.unar.it

ITALY

National Equality Councilor
www.lavoro.gov.it/ConsiglieraNazionale/

LATVIA

Office of the Ombudsman
www.tiesibsargs.lv

LITHUANIA

Office of the Equal Opportunities Ombudsperson
www.lygybe.lt

LUXEMBURG

Centre for Equal Treatment
www.cet.lu

(FYRO) MACEDONIA

Commission for the Protection against Discrimination
www.kzd.mk/mk/

MALTA

National Commission for the Promotion of Equality
www.equality.gov.mt

MALTA

National Commission for Persons with Disability
www.knpd.org

NETHERLANDS

Netherlands Institute for Human Rights
www.mensenrechten.nl

NORWAY

Equality and Anti-Discrimination Ombud
www.ldo.no

POLAND

Human Rights Defender
www.rpo.gov.pl

PORTUGAL

Commission for Citizenship and Gender Equality
www.cig.gov.pt

PORTUGAL

Commission for Equality in Labour and Employment
www.cite.gov.pt

PORTUGAL

High Commission for Immigration and Intercultural Dialogue
www.acidi.gov.pt

ROMANIA

National Council for Combating Discrimination
www.cncd.org.ro

SERBIA

Commission for the Protection of Equality
www.ravnopravnost.gov.rs

SLOVAKIA

National Centre for Human Rights
www.snslp.sk

SLOVENIA

Advocate of the Principle of Equality
www.zagovornik.net

SPAIN

Spanish Race and Ethnic Equality Council
www.igualdadynodiscriminacion.org

SWEDEN

Equality Ombudsman
www.do.se

UNITED KINGDOM - GREAT BRITAIN

Equality and Human Rights Commission
www.equalityhumanrights.com

UNITED KINGDOM - NORTHERN IRELAND

Equality Commission for Northern Ireland
www.equalityni.org



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