

## **Gender Pay Transparency**

### **Model Directive - KEY ELEMENTS**

**Esther LYNCH**

ETUC Deputy General Secretary

14/01/2021

## **Article 157(1)** TFEU:

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.

## **Article 4 of Directive 2006/54/EC**

**(Gender Equality Directive):**

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.

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.

## Issues identified

- Lack of clarity over the concept of work of equal value: not defined in Directive 2006/54/EC and often not clarified in national law
- Job evaluation and classification systems are not used, or they overlook or undervalue skills associated with work typically performed by women
- Difficulties in finding an actual comparator in highly gender-segregated labour markets
- Lack of information on pay, broken down by gender and category of worker

## **Which means that...**

- It is difficult to identify pay discrimination/the causes of pay disparities
- Victims face significant obstacles in bringing equal pay claims, especially those in segregated sectors/occupations
- Trade unions do not have the necessary information to support workers, and for the purposes of collective bargaining

= significant impediment to effective implementation  
of the principle of equal pay

# **Outline of most important features**

Model Directive seeks to empower trade unions to bargain collectively and represent workers and to respond to issues identified by:

- Clarifying the concept of work of equal value
- Requiring the establishment of job evaluation and classification schemes free from gender bias
- Ensuring the possibility of a hypothetical comparator
- Requiring various measures to ensure the availability of information on pay
- Enabling trade unions to bargain collectively on closing the gender pay gap

## **Art 3: Concept of work of equal value**

1. The value of work is assessed and compared by reference to **objective** criteria, including but not limited to:
  - (a) **skill**, including education, training, experience, knowledge, interpersonal skills, problem solving, organisational skills;
  - (b) **effort**, including physical, mental and psycho-social effort;
  - (c) **responsibility**, including accountability, responsibility for people, goods and equipment, information or financial resources;
  - (d) **working conditions**, including the nature of the tasks involved, organisational environment, physical, psychological or emotional environment.

Work to which equal value is attributed is work that is determined to be of equal value in accordance with such objective criteria. The assessment of the value of work must be **free from gender bias**, whereby particular care must be taken not to overlook or undervalue characteristics and skills associated with work predominantly carried out by women.

## Art 4: Comparator

In relation to the prohibition of discrimination contrary to Article 4 of Directive 2006/54/EC, Member States shall ensure that it is possible for a woman to compare her treatment to the treatment that a man **would have received had they been engaged** in the same work or work to which equal value is attributed, subject to the assumption that no material difference in circumstances would have existed between such a person and the woman seeking to make such a comparison.

- Introduces the possibility of hypothetical comparison, which is not currently available in many Member States
- Will enable the identification of pay discrimination where there is a high degree of sectoral or occupational segregation – crucial since the degree of feminisation is correlated with lower pay

## **Art 11: Equal pay matters in collective bargaining**

Without prejudice to the autonomy of the social partners, Member States shall take measures to guarantee that trade unions can collectively bargain, at the appropriate level, to close the gender pay gap, including on measures to address pay discrimination and the undervaluation of work predominantly carried out by women. Such measures shall include the development and use of job evaluation and classification systems free from gender bias with the involvement of trade unions.

- Essentially, a *right* for trade unions to be able to bargain collectively in relation to equal pay matters with a view to closing the gender pay gap
- The role of collective bargaining in addressing the gender pay gap is *key* to the implementation of the principle of equal pay



**Thank you !**