



May 2018

EU Action Plan on tackling the gender pay gap

KEY MESSAGES

- 1** BusinessEurope and its member federations are fully committed to the principle of gender neutral pay systems. Men and women carrying out the same work with the same performance shall be paid equally. Employers hence support efforts to tackle the gender pay gap and are ready to contribute to a debate based on facts as well as to concrete and realistic actions addressing the true causes of the gap.
- 2** The Commission's EU Action Plan includes a number of priorities which BusinessEurope regards as part of the solution to provide more equal opportunities for men and women, such as challenging segregation in the labour market and at the workplace, confronting stereotypes or encouraging more women to take leadership roles. The primary explanation of the gender pay gap is that gender roles, individual preferences and stereotypes have a determining effect on the existing division of labour.
- 3** The equal pay principle is adequately embedded in EU and national legislations. Consequently, there is no need to reopen the Recast Directive on gender equality. The focus should be put on the better enforcement and application of existing rules, with the close involvement of social partners. Closing the gap requires a cultural shift, rather than a legislative effort.
- 4** Childcare services have been shown to strongly influence the participation of women in the labour market. Therefore, investments and coordinated national policies must be promoted to improve the availability and functioning of care infrastructures. This will improve women's employment participation and help achieve better gender balance across sectors and occupations, hence reducing the gender pay gap.

WHAT DOES BUSINESSEUROPE AIM FOR?

- *Promote a fact-based debate on the gender pay gap and its true causes.*
- *Support policy responses that are balanced, including the responsibility of all stakeholders to make progress.*
- *Express deep concerns about the suggested reopening of the Recast Directive on gender equality and any further measures at EU level leading to disclose individual pay.*



POSITION PAPER: EU ACTION PLAN ON TACKLING THE GENDER PAY GAP

Introduction

1. On 20 November 2017, the European Commission published the EU Action Plan 2017-2019 on tackling the gender pay gap. It comprises eight specific actions and a number of follow-up measures for each action.
2. The EU Action Plan was published simultaneously with the report on the implementation of the 2014 non-binding Recommendation on “strengthening the principle of equal pay between men and women through transparency”.
3. BusinessEurope published in 2015 a position paper on addressing the gender pay gap¹. This position paper remains valid. However, employers wish to contribute to the achievements of the goals set out in the new EU Action Plan and ensure that the views of business on the various initiatives will be taken into account.

General comments

4. The gender pay gap stands at around 16% on average (gross hourly earnings) in the EU, and it has narrowed over the last decade, down from 17,6% (EU27) in 2007². It gives an overall picture of the differences between men and women in terms of earnings. This percentage reflects, amongst other things, the fact that women are more present in lower paying occupations and sectors (horizontal gender gap) and under-represented in managerial positions (vertical segregation), and that men are over-represented in higher paying occupations and sectors. Furthermore, it also reflects reduced working hours and women's more frequent career breaks as women predominantly bear family responsibility e.g. of raising children at home, and hence work disproportionately on a part-time basis relative to men. This situation was not built overnight and reflects the way in which labour markets have developed over the last decades, especially following the massive entry of women in the labour force and in the services sector (notably health and care), and subsequent consequences on earnings.
5. Even though women's employment rate stood at an all-time high, at 62.8% in the third quarter of 2017 (Eurostat), there is still room for improvement, in particular by increasing women's fulltime workforce participation, by encouraging them to work more and putting a stronger focus on advancing their presence in decision making positions.
6. Equally, men's involvement in gender equality should be improved in many ways. This primarily has to be done through a cultural change (i.e. encouraging men to take more responsibilities on family duties, encouraging the use of existing leave schemes for both parents). Eventually, gender equality in taking on care responsibilities depends on unwritten rules and decisions within the family.

¹ <https://www.business-europe.eu/publications/addressing-gender-pay-gap-business-europe-position-paper>

² In 2002 the gender pay gap was about 25% (data for EU15; the methodology to calculate the unadjusted gender pay gap may have varied over time)



7. A central explanation behind wage differences between men and women is the fact that different sectors have different wage levels and professions are paid differently. Information about this should be available for individuals when they are making their career choices.
8. Cultural and educational biases influence personal choices and the gender pay gap perhaps more than any other factor. Girls and boys tend to have at an early age already an idea – through their parents' education and/or at school – of what kind of roles and responsibilities women and men have in the society and in companies. This is reflected in future vocational choices girls and boys make, as well as all along one's career. Therefore, closing the gap requires a cultural shift, rather than a legislative effort.
9. BusinessEurope believes that tackling the gender pay gap requires that the responsibilities of all stakeholders are clearly marked. Individuals must be informed about their rights if they consider themselves to be discriminated. Employers are also ready to contribute to the debate based on facts on addressing the true causes of the gap.
10. When it comes to family reconciliation, instead of new extensive statutory leave arrangements, a more flexible approach is needed to provide the necessary conditions to better manage private and professional lives. In that respect, flexible forms of work, agreed at company level, are needed for all workers, including working parents, to adapt to changing personal circumstances over the life course. They are also key to companies' competitiveness and capacity to hire staff in line with business cycles. This has to be done while respecting the autonomy of social partners and with the involvement of the social partners and/or the individual employee and companies, since needs differ across sectors.
11. Improved childcare and elderly care infrastructure, is the best way forward to increase women's participation in employment and provide both companies and employees the necessary support to manage personal choices and commitments.

Specific comments

Improving the application of the equal pay principle

12. Employers are strongly against targeted amendments to the Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. This would clearly be a disproportionate and unjustified move from the European Commission to address the gender pay gap.
13. The equal pay principle has existed in EU and national legislations for a long time now. According to a recent experts' report³, the equal pay principle is implemented adequately and "access to judicial bodies is regulated in a satisfactory way in most of the European countries studied". Also, the experts find "very low amounts of case law". This report clearly shows that there is no one size-fits-all approach on improving the equal pay principle and that the lack

³ European network of legal experts in gender equality and non-discrimination, The enforcement of the principle of equal pay for equal work or work of equal value, July 2017



of transparency is not a widespread phenomenon, contrary to what many stakeholders emphasise.

14. Experience at national level shows that binding measures on pay transparency have proven extremely complex to put in place in practice, with no effect in reducing the gender pay gap. And contrary to what the report on the non-binding Recommendation observes, there is no such thing as a culture of pay secrecy. In fact, pay is a form of competing for a qualified workforce. From an individual's point of view, many employees consider their salary a personal matter. Pay is in most Member States a matter of privacy in terms of contractual relationship between an employee and an employer, and remuneration falls within the category of personal data of the employee; the employer must safeguard that information. Some employees may choose, on a personal basis, to disclose their pay levels, but most of them choose not to do so as they consider pay a personal matter. Whether it's a data protection matter or the employees individual choice this should be respected.
15. Wage determination by social partners is a basic principle of the social market economy. Collective agreements guarantee fair wages and salaries. Binding transparency rules put all employment contracts – and thereby companies – under suspicion of discrimination. This is an untenable situation for employers. In addition, BusinessEurope does not agree that employees should be entitled to request information on pay levels other than the existing rules on disclosure of collectively agreed pay structures through collective bargaining mechanisms at company and/or branch level. We support efforts to respect national industrial relations systems. Any discussion and/or decision on making pay levels public should be held and/or taken at a national level only, while respecting the autonomy of the social partners and the diversity of national systems of industrial relations.
16. Reporting requirements of companies in general need to take account of the diverse situations and needs of companies, including the information to be provided and the way in which to do so. It is also important to recall that the EU Directive on disclosure of non-financial information already places obligations on certain companies to disclose information on certain topics. Further mandatory reporting is not necessary. In addition, as individual pay is not generally disclosed in Europe or in other parts of the world, any such obligation could put many European companies at a competitive disadvantage internationally, i.e. when trying to hire talents who do not want their pay disclosed and therefore decide against taking a job in Europe.
17. Policy-makers should acknowledge that the gender pay gap in general terms is not an equal pay issue, and it is highly questionable if “work of equal value” can be defined across economic sectors. Productivity, value added, the availability of certain qualifications and competencies, employer-provided/-funded training granted for an already employed worker for a more demanding position, and/or customers' willingness to pay for specific goods, etc. can differ substantially. In most cases in private companies, performance is an indicator that the equal pay principle will rarely capture. It is also not correct to compare public administration, the way in which wages are formed there, including job classification systems, and private companies operating on the open market and depending on business cycles and maintaining margins.



18. The EU acquis already provides for an obligation to ensure transparency and the shift of the burden of proof⁴. Furthermore, national judicial bodies are well equipped to address cases of discrimination. Sanctions and compensation to victims exist.

Combating segregation in occupations and sectors

19. BusinessEurope believes that the priority to combat segregation will be quite impactful on tackling the gender pay gap. Segregation in occupations and sectors is the result of choices, decisions and orientations taken at an early stage in one's career, which have a great impact on earnings. It is possible to correct imbalances by providing adequate skills and qualifications to women and men, including through lifelong learning training.
20. Better career guidance when entering the labour market as well at an early stage in education is highly welcome. The promotion of STEM disciplines and STEM careers, especially among women, should be a priority in Europe as these sectors and professions are highly paid and in high demand. BusinessEurope also fully supports the promotion of caring professions in healthcare and other female-dominated professions towards men. Greater attention should be paid on the impact of the digital economy and the way in which women and men decide to step in and seize the opportunities of this fast-growing part of the economy.
21. Diversity and inclusion schemes at company level and in sectors play a role in raising awareness and sharing best practices on addressing gender imbalances. Such diversity and inclusion schemes, including Diversity Charters supported by the European Commission, should be driven by the business case of diversity increasing performance in teams and companies.

Breaking the glass ceiling: initiatives to combat vertical segregation

22. Promoting women in decision-making positions will contribute to reducing the overall gender pay gap. This can be best achieved by company initiatives which are more efficient and respect staff and board turnover rates. It is also essential to consider the percentage of females in the total workforce of individual companies or groups when putting in place such initiatives.
23. BusinessEurope is in favour of a voluntary approach to increase board diversity and does not support the proposed Directive on improving gender balance among board members of companies listed on stock exchanges. We do not believe that quotas will solve the situation as this takes a one size fits all approach. The proposal interferes with the freedom of companies to organise the composition of their boards. Where binding quotas are implemented through legislation, progress has mechanically happened at certain levels of companies. However, in most countries with such legislation, the intended spill-over effect on CEO positions and lower managerial positions has not been observed.
24. Disclosure of non-financial and diversity information can be important considering that voluntary actions are the best way forward in order to facilitate change in terms of mindset, corporate culture and ownership.

⁴ Danfoss case C 109/88 pr. 14-16



25. The reconciliation of work and family life should not be confused with reconciliation of career progression and family life. In that respect, there is an individual concession in devoting time to job or career issues and family issues. This trade-off may be relaxed by appropriately addressed policies such as improving the childcare infrastructure.

Tackling the care penalty

26. As indicated further up in this paper, women and men taking time off for raising kids or caring for an elderly will be strongly impacted on their earnings as well as career progression. The longest time away from work the strongest the impact is on chances to return to full time employment. This situation is often the result of family decisions, but in some cases reconciliation discussions between parents and/or siblings do not take place and women feel obliged to take on caring responsibilities themselves. A cultural shift is needed while respecting individuals' final choices.
27. Granting more leaves at EU level is not the solution to retain women on the labour market and reduce the gender pay gap. Neither will paid parental leave be efficient to address the gap. What EU needs is a new system of investments and promotion of (child)care infrastructures and provisions, so as to provide working parents and carers with the necessary support and services to keep an active working life and progress in their career. In this respect, proper attention should be given to the Barcelona targets.

Better valorising women's skills, efforts and responsibilities

28. BusinessEurope welcomes measures aimed at valorising women's skills, efforts and responsibilities. This should be done avoiding stereotyping what women and men are good at and can do. We believe that both women and men are capable of performing the same tasks and take on the same level of responsibilities. However, they are often not equally encouraged to take risks and may not always be able to make a free conscious choice in terms of education and career choices. A creative and open-minded approach to the better recognition of skills and needs in all sectors would be welcome.
29. The impact of disseminating and updating the Commission's Guide on gender neutral job evaluation and classification systems will be limited. The Guide, deriving from the non-binding Recommendation not only depicts a negative image of the workplace and companies but also does not encourage women to valorise their individual efforts. Instead the Guide provides a checklist of items that are mainly the competence of HR managers. A much better and useful approach will be for the European Commission to provide a Guide on the gender dimension of the New Skills Agenda.

Fighting the fog: uncovering inequalities and stereotypes

30. Providing "the relevant data about the persisting gender pay gap and about its consequences for individuals, economies and societies" is important to find clarity in the current debate on the gender pay gap. In fact, BusinessEurope has long raised the alarm on the widespread misinterpretation of the meaning of the gender pay gap, what it tells in statistical and factual terms and what it does not tell us.



31. Better policy-making involves evidence-based policy and BusinessEurope regrets that this crucial step has not yet taken shape. Data on the pay gap exist and, once again, gives a clear picture of the current state of the labour market's participation of women and men. But the indicators cannot justify further legislation at EU level and claims that there is widespread discrimination in the workplace. These views are not only unreasonable and unacceptable, but they also do not serve the cause of gender equality.
32. BusinessEurope encourages the European Commission, the European Parliament, including EMPL and FEMM committees, to use the unadjusted and adjusted gender pay gap indicator with impartiality and without biases. For example, any contribution of the driving factors of the gender pay gap should result from a decomposition analysis of the unadjusted pay gap showing which share of the gap can be attributed to gender differences (i.e. in work experience, etc.).
33. As mentioned above, it is important to consider girls' and women's participation in STEM disciplines and the digital or platform economy and ensure that women seize the opportunities available in the related sectors and professions⁵. But, BusinessEurope already warns against the potential biases that could derive from the Commission's assessment and the misinterpretation on the reasons behind women's under-representation in these fields.

Alerting and informing about the gender pay gap

34. The European Equal Pay Day is often wrongly used by policy makers and the press to stress that women are being discriminated on the labour market and at the workplace. Again, the gender pay gap is not measure of discrimination. The issue of individual choice is also completely neglected in the public debate. We encourage the European Commission and all stakeholders not to spread false information but instead promote best practices, role models, positive actions and measures driving women to, i.e., aim for leadership positions or choose different career paths, and encouraging men to take more family responsibilities or work in the (health and care) services sector.
35. Supportive funding aimed at developing gender equality projects are much welcome. For example, the equal pacE software was developed as a tool to better explain the gender pay gap. Exchange of best practices (seminars, mutual learning, etc.) should always be encouraged, including the importance of collective bargaining and the role of social partners.

Enhancing partnerships to tackle the gender pay gap

36. Mutual learning seminars as well as capacity building among social partners are important parts of the puzzle to tackle the gender pay gap. In our view, it is crucial that governments, equality bodies and associations understand better the gender pay gap meaning, how it is formed and what the best way forward is. It is also crucial that they understand the role and responsibilities of each actor.

⁵ Girls account for only 17% of all ICT students in the European Union (Eurostat 2017). In the United Kingdom, an estimated 69% of gig workers are male (OECD/RSA, 2017)