



Brussels, 21 May 2021

European Chemical Employers Group's (ECEG) Position Paper on the European Commission's proposal for a Directive "to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms" (COM(2021) 93 final)¹

Overview

ECEG recognises that gender equality is a fundamental value of the European Union and a key principle of the European Pillar of Social Rights. The promotion of equal opportunities has always been a priority for the chemical sector, where collective agreements contribute to gender neutral, transparent, and activity-based remuneration. We support the objective of the European Commission to reduce the gender pay gap at the European level, fight pay discrimination and increase women's participation in the labour market.

¹ The proposal for a Directive is available at: https://ec.europa.eu/info/sites/info/files/aid_development_cooperation_fundamental_rights/com-2021-93_en_0.pdf, 04 March 2021.

However, ECEG finds that the instrument proposed by the Commission does not properly address the root causes of the gender pay gap. On the contrary, it imposes heavy administrative burdens on employers, going far beyond transparency objectives and developing a sanctions-based approach, which interferes with social partners' autonomy, promotes litigation at the company level, and potentially increases court cases. After careful examination of the proposal, ECEG has identified the below points of the most concern for chemical employers.

Administrative Burdens

The prescriptive Directive underestimates the costs deriving from the different requirements while proposing nonproportionate measures, which are even more problematic in view of the economic effects of the Covid-19 pandemic on businesses. The Commission's estimation according to which "(...) *the associated costs are expected to be moderate*" (page 5) is incorrect, since it is based on existing national practices, while the proposed Directive involves different levels of requirements².

ECEG suggests considering alternative ways to reduce costs for employers by looking at existing national approaches. In Germany, for example, companies bound by collective agreements can respond to an employee's request for pay information in a simplified manner by directing the inquirer to the applicable collective bargaining regulations of the chemical industry. Similarly, a simplified reporting process is also foreseen for companies bound by collective agreements (with more than 500 employees)³ which takes place every five years instead of every three (as requested by the national law, EntgTranspG).

² According to Footnote 23 of the proposal for a Directive "*The impact assessment's estimated cost related to the individual right of information was 20 EUR per single request (the total cost per company thus depending on number of requests), while the overall cost for employers' pay reporting would amount to between a minimum of 379-508 EUR and a maximum of 721-890 EUR per employer depending on the size. Depending on actual pay differences requiring a joint pay assessment, the average cost per employer to carry out such assessment was estimated between a minimum of 1,180-1,724 EUR and a maximum of 1,911 and 2,266 EUR. See SWD (2021) 41, p. 74*".

³ See "§ 22 Berichtszeitraum und Veröffentlichung" in "Gesetz zur Förderung der Transparenz von Entgeltstrukturen" available at: <https://bit.ly/3wgMtYw>.

Article 1 – Subject matter

According to ECEG's assessment, the EU already provides a comprehensive legal framework to address the challenges posed by pay discrimination. According to the Commission's report on Directive 2006/54/EC⁴, the principle of equal pay seems to be well applied in most of the Member States, with appropriate national legislation prohibiting pay discrimination, as well as pay transparency measures already implemented in a number of Members States. ECEG does not agree with the Commission's assumption that the introduction of pay transparency measures at the European level would reduce differences in salary between men and women and, more generally, that it would enforce the right of equal pay. The remaining challenges in the effective implementation of the principle of equal pay can in fact be explained by difficulties in assessing and applying the principles of "equal pay for equal work" and "work of equal value" across different countries and sectors, rather than by a void of legislation on this matter. Three important aspects are to be addressed by the Directive. These are:

- gender segregation,
- gender stereotypes,
- low female participation in the labour market.

The focus should therefore be on career choices and the quality and availability of (child)care facilities.

Article 2 – Scope

The Directive covers employers both in the public and private sectors. ECEG believes that a difference between these two is to be made, especially when it comes to wage setting systems. Private companies operate in an open market, where factors such as competitiveness and performance influence the pay level.

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0861&from=EN>.

In addition, we trust that SMEs and companies bound by collective agreements need to be excluded from the scope of the Directive⁵.

Article 4 – Equal work and work of equal value

ECEG appreciates Articles 11 and 27 on Social Dialogue and Collective Bargaining. However, the provisions in Article 4 undermine social partners' autonomy and interfere with collective bargaining negotiations, in particular on criteria for wage setting systems. Article 4 makes Member States responsible to control employers on the existence of pay structures based on the "equal pay for equal work" principle. The introduction of such practice, therefore, will give Member States the power to determine the content of pay structures, which is social partners' prerogative. Moreover, this provision empowers the European Court of Justice (ECJ) to issue court rulings on matters that are usually dealt with by social partners when negotiating and setting wages. In order to avoid the EU's interference with long-established national practices and industrial systems, ECEG suggests to exclude employers bound by collective agreements from the scope of this Directive. ECEG believes that the identification of criteria to assess the workers' value of work should also be left to social partners. We appreciate the Commission's proposed objective criteria to determine the value of work, albeit with missing complex factors, such as performance, sector specific work organization, productivity, "length of service" and special allowances.

In the chemical industry, the base salary for all workers is equal, regardless of their gender. However, special hardship allowances are foreseen for working in difficult conditions, i.e. for dirty work or work that requires the regular wearing of bothersome personal equipment. Moreover, special compensation is also allocated to night shift workers, who are mostly men in the chemical industry because of historical and cultural reasons, i.e. a ban on shift work for female industrial workers that was in place until the 1990s in Germany and France⁶.

⁵ See below paragraph "Article 4 – Equal work and work of equal value".

⁶ Data on women's participation in shift work in the chemical industry:

Finally, ECEG has some reservations on the possibility to compare workers from different companies, whose pay conditions can be attributed to a “single source” (Art. 4(4)). Indeed, it is often difficult to assess what is “equal work” or “work of equal value”, not only across different economic sectors but even across the same company. ECEG has reservations also on the hypothetical comparator and on the possibility to compare workers employed in the company at different times (Art. 4(4)). This completely ignores the economic aspects and company dynamics which impact the pay level, such as inflation, economic performance, and productivity.

Article 5 – Pay Transparency prior to employment

ECEG disagrees with the Commission’s proposal to inform applicants on their initial pay level or its range before the interview. The pay offer is often determined by a number of clarifications which are usually provided during the interview, i.e., candidates’ skills, competences and experience. This provision would deprive employers of the necessary flexibility to negotiate with future employees, as well as to attract and retain suitable candidates. We need to keep in mind that an employment relationship is a contractual relationship, resulting from a negotiation between two parties. It is therefore essential to safeguard the negotiating power of both parties involved.

Article 7 – Right to information

ECEG believes that the application of Article 7 might conflict with privacy protection and GDPR rules. If there is not a certain threshold for comparison groups, it would be possible to draw conclusions about individual’s pay, especially in SMEs and/or in companies where there is a scarcity of comparators of the opposite sex in the same job position. This is a risk especially considering that this obligation concerns all sizes of companies. ECEG is of the opinion that the right to information upon an employee’s request should be foreseen only if there is a minimum

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- In Germany, in 2011, a total of around 31% of employees were in shift work. The proportion of fully continuous shift jobs was 25%. In 2006, the proportion of women in semi-continuous shifts was 11.7% and in fully continuous shifts 1.1%.
 - In France, women represent 40% of the workforce of the chemical industry. 1.2% of them work in night shifts, compared to 16.3% men.

size group of employees and comparators, which must be defined at the national level, or by social partners, according to the different industrial relation systems/traditions. Only aggregated data should be disclosed.

Article 8 – Reporting on pay gap between female and male workers

ECEG welcomes the exception for SMEs and companies with less than 250 employees for the reporting obligation. However, the association believes that this annual obligation is problematic not only for SMEs but also for bigger companies. According to the report of the National Swedish Audit Office (NAO)⁷, in Sweden, the obligation for employers to produce a documented pay survey and analysis on an annual basis imposes a heavy administrative burden on employers⁸. The NAO's audit highlights that the work behind equal pay surveys is quite demanding and creates a lot of problems not only for SMEs, which lack the necessary HR functions to conduct the surveys, but also for bigger enterprises, which often rely on external consultants and, as a result, bear additional costs. In this context, Swedish chemical industry social partners released a manual for companies on how to fill in the annual pay survey and fulfil the very-detailed requirements set by the national law.

The burden on employers is expected to be even bigger, given the high level of details requested by the Commission's proposal, which requires including in the report not only the overall pay gap, but also the median pay gap for each quartile pay band. In France, for example, the costs of pay reports for companies in the chemical industry equals 5 working days per year.

We suggest considering alternative methods for pay reporting which would make it less burdensome for employers. One possible way is to look at already existing different national traditions. In Germany, for example, reporting obligations only apply to companies with more than 500 employees and are to be submitted every 3 or 5 years.

⁷ "The Discrimination Act's equal pay survey requirement – a blunt instrument for reducing the gender pay gap", RIR 2019:16, 2019.

⁸ The Swedish Discrimination Act (2008:567) requires that employers with at least 10 employees have to submit an annual report in order to "discover, remedy and prevent unfair gender differences in pay" (Section 8). A few years ago, the interval for companies to produce a survey and analysis was shortened from three years to every year.

Finally, ECEG disagrees with the request to make reporting information publicly available (Art. 8(3)). Information on pay gaps might be misleading if they are not read in light of the above-mentioned objective criteria. Misinterpretation of these data could damage employers' reputations.

In conclusion: ECEG questions the added value of the proposed Directive and it invites the EU institutions to consider alternative policy measures focused on combatting gender segregation and stereotypes, increasing women's participation in the labour market, and improving quality and availability of (child)care facilities. ECEG has already carried out an EU-funded social partners' project entitled "[Children - Care - Career: Equal Participation of Women in the European Chemical Industry](#)" (2013 - 2014), covering the above-mentioned aspects in the chemical sector. ECEG supports the exchange of good practices, as well as the promotion of educational activities and awareness-raising campaigns aimed at changing culture and mentalities. We express our willingness to cooperate with the EU institutions in order to reach a well-balanced outcome of the proposal.

For more information, please contact:

Eleonora Isopo, Policy Executive

e.isopo@eceg.org

About ECEG

ECEG, the European Chemical Employers Group, founded in 2002, is a recognised European Sectoral Social Partner, representing the chemicals, pharmaceuticals, rubber and plastics industries in Europe. Our sector provides approximately 3.3 million direct jobs in more than 94.000 enterprises.