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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

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Case Document No. 6

University Women of Europe v. Belgium
Complaint No. 124/2016

**OBSERVATIONS BY THE EUROPEAN TRADE UNION
CONFEDERATION (ETUC)**

Registered at the Secretariat on 3 November 2017

Collective Complaint

University Women of Europe (UWE) v. Belgium

Complaint No. 124/2016

**Observations
by the
European Trade Union Confederation
(ETUC)**

(03/11/2017)

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- 1 In availing itself of the opportunity provided in the Collective Complaints Procedure Protocol (CCPP - Article 7§2) the European Trade Union Confederation (ETUC) would like to submit the following observations. The ETUC welcomes the fact that the respondent State has ratified not only the Revised European Social Charter (RESC)¹ but also the Collective Complaints Procedure Protocol (CCPP). However, the ETUC would invite the Government to take the appropriate steps to accept all provisions of the RESC.

Introduction

- 2 The main content of the complaint is described in the Decision on admissibility of 4 July 2017 and contains mainly two elements:
 - (1) the Gender wage gap,
 - (2) the (under-)representation in decision-making positions within private companies.
- 3 From the very outset, the ETUC would like to highlight that it is strongly committed to achieving equality between women and men. In its Constitution the ETUC clearly states that it
 - will work throughout Europe for [...]
 - the elimination of all forms of discrimination, based on sex, age, colour, race, sexual orientation, nationality, religious or philosophical beliefs or political opinions;
 - the promotion of equal opportunities and equal treatment between men and women; [...]²
- 4 The ETUC priorities are currently outlined in the Paris Action Programme (2015-2019) and the ETUC Action Programme on Gender Equality 2016 – 2019, and include in particular:
 - Mainstreaming gender into all ETUC policies;
 - Achieving equal pay between women and men;
 - Eliminating the gender gap in decision-making bodies.³
- 5 Against this background, these Observations aim at fulfilling these objectives by providing the European Committee of Social Rights (ECSR or Committee) with as much as possible consistent and comprehensive information on the problems at issue. The Observations will be divided into three parts the first of which will be attributed to the general framework (Part I) whereas the second will deal with the country-specific situation including the relevant international case law concerning the respondent State (Part II) before finally arriving at the Conclusions (Part III).
- 6 At an editorial level, it is indicated that all quotations will be governed by the following principles: they focus on the issues at stake (while still showing the relevant context) and will be ordered chronologically (beginning with the newest text). Emphases in **bold** are added by the ETUC;⁴ eventual footnotes are, in principle, omitted. Each time Article 20 of the Charter is mentioned it also includes Article 1§1 of the (First) Additional Protocol which has the same content for those countries which have ratified only the latter provision. Following the Committee's General Introduction to Conclusions 2012, the content of Article 4§3 of the Charter on the right of equal pay is now considered to be included in Article 20 of the Charter.

¹ Unless stated otherwise. Articles without further indication relate to the 1996 RESC.

² Extract of the Preamble of the [ETUC Constitution](#).

³ See for further information: <https://www.etuc.org/issue/gender-equality>.

⁴ Where the original text contains emphases they are highlighted in *italics*.

Therefore, each time these Observations refer to Article 20 of the Charter in relation to equal pay they include also Article 4§3 of the Charter unless otherwise specified.

I. General framework

- 7 As Part I, the description of the 'General framework' is setting the foundation for the country-specific assessment in Part II.

A. *International law and material*

- 8 The importance and legal significance of international standards and their interpretation and application⁵ is widely recognised. Accordingly, the collective complaint refers in several respects to international standards and the respective case law (in particular CEDAW). Nevertheless, the ETUC would like to add pertinent references to international law and material to the description provided in the complaints because all following International Organisations attribute a great importance to the principle of equality between men and women be it in their standard-setting, the respective case law or in other fields like research, projects, studies etc.
- 9 Unless stated otherwise the respondent State has ratified all the following instruments referred to below.⁶

1. United Nations

- 10 The United Nations (UN) provide for a wide-ranging set of standards (see below a) to d)) and further pertinent material (see below e)).

a) *Universal Declaration of Human Rights*

- 11 The main provisions of the Universal Declaration of Human Rights (UDHR) relating to equality between men and women may be quoted as follows:

Article 1

All human beings are born **free and equal in dignity and rights**. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. [...]

Article 23

[...] (2) Everyone, without any discrimination, has the right to **equal pay for equal work**.

b) *International Covenant on Civil and Political Rights*

(1) Text

- 12 The main provisions of the International Covenant on Civil and Political Rights (ICCPR)⁷ relating to equality between men and women might be quoted as follows:

Article 2

⁵ As to legal impact of the 'Interpretation in harmony with other rules of international law' see the ETUC Observations in No. 85/2012 Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden - Case Document no. 4, Observations by the European Trade Union Confederation (ETUC), paras. 32 and 33.

⁶ As legally non-binding instruments, this list does obviously not include the UDHR nor Recommendations nor any 'Further pertinent material'.

⁷ Adopted by General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 23 March 1976.

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, **sex**, language, religion, political or other opinion, national or social origin, property, birth or other status. [...]

Article 3

The States Parties to the present Covenant undertake to ensure the **equal right of men and women** to the enjoyment of all civil and political rights set forth in the present Covenant. [...]

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, **sex**, language, religion, political or other opinion, national or social origin, property, birth or other status. [...]

(2) General interpretation

13 In its General Comment No. 28 on Article 3 ICCPR⁸, the competent organ to interpret the ICCPR, the Human Rights Committee (CCPR), stated i.a.

31. [...] The Committee has also often observed in reviewing States parties' reports that a large proportion of women are employed in areas which are not protected by labour laws and that prevailing customs and traditions discriminate against women, particularly with regard to access to better paid employment and to **equal pay for work of equal value**. States parties should **review their legislation and practices** and take the lead in implementing all measures necessary to eliminate discrimination against women in all fields, for example by **prohibiting discrimination by private actors in areas such as employment**, education, political activities and the provision of accommodation, goods and services. States parties should report on all these measures and provide information on the remedies available to victims of such discrimination.

c) *International Covenant on Economic, Social and Cultural Rights*

14 As complementary to the ICCPR the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁹ provides in particular for the protection against discrimination (see below (1)) and for social rights. Its competent organ, the Committee on Economic, Social and Cultural Rights (CESCR) to interpret this instrument has developed a case law in this respect (see below (2)).

(1) Text

Article 2

[...] 2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, **sex**, language, religion, political or other opinion, national or social origin, property, birth or other status [...]

Article 3

The States Parties to the present Covenant undertake to ensure the **equal right of men and women** to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

⁸ Adopted: 29.03.2000 (replacing general comment No. 4).

⁹ Adopted by resolution 2200A (XXI) of 16.12.1966; entry into force 03.01.1976.

- (i) Fair wages and **equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men**, with equal pay for equal work; [...]
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; [...]

(2) General interpretation

15 Recently, in its General Comment No. 23 concerning Article 7 ICESCR¹⁰ CESCR defined in more detail the content of para. (a)(i) as follows:

11. Not only should workers receive equal remuneration when they perform the same or similar jobs, but their remuneration should also be equal **even when their work is completely different but nonetheless of equal value** when assessed by objective criteria. This requirement goes beyond only wages or pay to include other payments or benefits paid directly or indirectly to workers. [...]

12. The extent to which equality is being achieved requires an **ongoing objective evaluation** of whether the work is of equal value and whether the remuneration received is equal. It should cover a broad selection of functions. Since the focus should be on the “value” of the work, evaluation factors should include **skills, responsibilities and effort required by the worker, as well as working conditions**. It could be based on a comparison of rates of remuneration across organizations, enterprises and **professions**.

13. Objective job evaluation is important to **avoid indirect discrimination** when determining rates of remuneration and comparing the relative value of different jobs. For example, a distinction between full-time and part-time work — such as the payment of bonuses only to full-time employees — might indirectly discriminate against women employees if a higher percentage of women are part-time workers. Similarly, the objective evaluation of the work must be free from gender bias. [...]

d) Convention on the Elimination of All Forms of Discrimination against Women

16 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹¹ can be considered as the universal core convention on equality between men and women. It provides also for specific protection in employment (see below (1)) and for social rights. Its competent organ, the Committee on the Elimination of Discrimination against Women (CEDAW) to interpret this instrument has developed a case law in this respect (see below (2) and (2)(b)).

(1) Text

Article 1

For the purposes of the present Convention, the term "**discrimination against women**" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by **all appropriate means** and without delay a policy of eliminating discrimination against women and, to this end, undertake:

¹⁰ [General Comment No. 23](#) (2016) on the right to just and favourable conditions of work (article 7 ICESCR); see General comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

¹¹ [Convention on the Elimination of All Forms of Discrimination against Women](#), 18.12.1979.

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;**
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the **full development and advancement of women**, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. [...]

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the **field of employment** in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to **equal remuneration**, including benefits, and to equal treatment in respect of work of **equal value**, as well as equality of treatment in the evaluation of the quality of work; [...]

(2) General interpretation

(a) *Concerning the Gender pay gap*

17 As early as 1989 in its General Recommendation No. 13¹² the CEDAW defined in more detail the content of 'Equal remuneration for work of equal value' by recommending to the States Parties i.a. that:

2. They should consider the study, development and adoption of **job evaluation systems** based on gender-neutral criteria that would facilitate the comparison of the value of those jobs of a different nature, in which women presently predominate, with those jobs in which men presently predominate, and they should include the results achieved in their reports to the Committee on the Elimination of Discrimination against Women;

3. They should support, as far as practicable, the creation of **implementation machinery** and encourage the efforts of the parties to collective agreements, where they apply, to ensure the application of the principle of equal remuneration for work of equal value.

¹² [General recommendation No. 13: Equal remuneration for work of equal value](#), CEDAW, Eighth session (1989)), contained in document A/44/38. Further General Recommendations might be relevant, such as

- No. 16 (1991) unpaid women workers in rural and urban family enterprises,
- No. 28 (2010) The Core Obligations of States Parties under Article 2 of the CEDAW,
- No. 33 (2015) on women's access to justice.

(b) *Concerning the (under-)representation of women in decision-making bodies in enterprises*

18 In more recent times the CEDAW has also criticised the (under-)representation of women in decision-making bodies in enterprises. Although it has not (yet) provided a 'General Recommendation' on this issue it appears important to highlight the following extracts of 'Concluding Observations' on certain countries which have not ratified the CCPP, whereas extracts of similar CEDAW conclusions on countries which have ratified the CCPP are quoted in Part II.A. of the respective ETUC Observations.

(i) Estonia (2016)¹³

28. [...] The Committee is also concerned about: [...]

(d) The **significant underrepresentation of women in management positions in private companies**; [...]

29. *The Committee recommends that the State party: [...]*

(d) *Increase the representation of women in **management positions in private companies**, including through temporary special measures; [...]*

(ii) Slovakia (2015)¹⁴

28. The Committee notes the amendment to the Labour Code in 2011 to provide for the equal treatment of women and men in employment and an increase in the representation of women on corporate boards, but is concerned:

(a) That significant horizontal and vertical gender segregation exists in the labour market, including the **persistently low representation of women compared with men in economic decision-making positions**, such as on the supervisory board of companies and in executive positions, and that the size of the gender pay gap remains large, women's high levels of education notwithstanding; [...]

29. *The Committee recommends that the State party: [...]*

(b) *Enhance measures to achieve the **equal and full participation of women in decision-making in the economic sphere, in particular on the management and supervisory boards of public and private companies**; [...]*

(iii) Spain (2015)¹⁵

28. The Committee [...] is particularly concerned about the following issues: [...]

(b) The **low representation of women in managerial and decision-making positions and on boards of directors** (18.2 per cent) and that neither Organic Law No. 3/2007 on effective equality for men and women nor Law No. 31/2014 amending the Corporations Act provides sanctions for the non-enforcement of the required gender balance on the boards of directors of large companies; [...]

29. *The Committee recommends that the State party: [...]*

(d) *Take measures to achieve the equal and full participation of women **in decision-making in the economic sphere, in particular on the boards of directors of large companies, by introducing mandatory quotas***;

(iv) Denmark (2015)¹⁶

29. The Committee welcomes the establishment in 2011 of a tribunal for equal pay, but remains concerned at: [...]

¹³ [Concluding observations on the combined fifth and sixth periodic reports of Estonia](#), CEDAW/C/EST/CO/5-6 – 18.11.2016.

¹⁴ [Concluding observations on the combined fifth and sixth periodic reports of Slovakia](#), CEDAW/C/SVK/CO/5-6 – 25.11.2015.

¹⁵ [Concluding observations on the eighth periodic report of Spain](#), CEDAW/C/ESP/CO/7-8, 29.7.2015.

¹⁶ [Concluding observations on the eighth periodic report of Denmark](#), CEDAW/C/DNK/CO/8, 11.03.2015.

(c) The absence of clearly defined sanctions for companies that fail to meet **targets for equal gender representation**; [...]

30. *The Committee recommends that the State party: [...]*

(c) *Provide for adequate and **clearly defined sanctions for companies that fail to meet targets for equal gender representation and provide specific mechanisms for the prompt enforcement of such sanctions**; [...]*

e) *Further pertinent material*

The importance of the principle of equality between men and women is furthermore underlined by the inclusion in the [UN 2030 agenda](#). In its Sustainable Development Goals (SDG) Goal 5. ('Achieve gender equality and empower all women and girls') contains i.a. the following elements:

5.1 **End all forms of discrimination against all women** and girls everywhere [...]

5.5 **Ensure women's full and effective participation** and equal opportunities for leadership at **all levels of decision- making** in political, **economic** and public life [...]

5.c Adopt and strengthen **sound policies and enforceable legislation** for the promotion of gender equality and the empowerment of all women and girls at all levels [...]

2. International Labour Organisation

19 Out of the eight core Conventions of the International Labour Organisation (ILO), the two anti-discrimination Conventions No. 100 and 111 are of specific relevance for this collective complaint.

a) *Convention No. 100*¹⁷

(1) Text

Article 1

For the purpose of this Convention

(a) the term *remuneration* includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;

(b) the term *equal remuneration for men and women workers for work of equal value* refers to rates of remuneration established without discrimination based on sex.

Article 2

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

2. This principle may be applied by means of

(a) national laws or regulations;

(b) legally established or recognised machinery for wage determination;

(c) collective agreements between employers and workers; or

(d) a combination of these various means.

Article 3

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.

¹⁷ [Equal Remuneration Convention](#), 1951 (No. 100). Adoption: 29.06.1951, entry into force: 23.05.1953 - Status: Up-to-date instrument (Fundamental Convention).

3. Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

Article 4

Each Member shall co-operate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of this Convention.

(2) General interpretation

(a) *General Survey 2012*

20 In its General Survey 2012,¹⁸ the Committee on the Application of Conventions and Recommendations (CEACR) described the requirements which derive from Convention No. 100 in relation to the gender pay gap as follows:

Gender pay gap

668. Pay differentials remain **one of the most persistent forms of inequality between women and men**. Although explicit policies of providing lower pay for women have for the most part been relegated to the past, the gender pay gap remains **one of the most obvious examples of structural gender discrimination**. The gender pay gap varies from country to country, and between different sectors within a country. Globally, women earn approximately 77.1 per cent of what men earn (a pay gap of 22.9 per cent) though in some countries women earn considerably less. If wages of part-time workers are included in the calculation, the gap can increase to much higher levels.

669. Many countries have made progress in reducing the pay gap, though in others it has stagnated for many years, or even increased. Even where gender pay differences are **narrowing**, they are doing so **extremely slowly**: at the current rate it is estimated that another 75 years will be needed to bridge the gap. *The continued persistence of significant gender pay gaps requires that governments, along with employers' and workers' organizations, take more proactive measures to raise awareness, make assessments, and promote and enforce the application of the principle of equal remuneration for men and women for work of equal value. Collecting, analysing and disseminating this information is important in identifying and addressing inequality in remuneration. [...]*

Equal value: The cornerstone of the Convention

[...] 673. *The concept of "work of equal value" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality. Due to historical attitudes and stereotypes regarding women's aspirations, preferences and capabilities, certain jobs are held predominantly or exclusively by women (such as in caring professions) and others by men (such as in construction). **Often "female jobs" are undervalued in comparison with work of equal value performed by men when determining wage rates.** The concept of "work of equal value" is fundamental to tackling occupational sex segregation in the labour market, which exists in almost every country, as it permits a broad scope of comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also **encompasses work that is of an entirely different nature, which is nevertheless of equal value.***

674. "Value" while not defined in the Convention, refers to the worth of a job for the purpose of computing remuneration. "**Value**" in the context of the Convention indicates that **something other than market forces** should be used to ensure the application of the principle, as market forces may be inherently gender-biased. [...]

675. While *Article 1* indicates what cannot be considered in determining rates of remuneration, *Article 3* presupposes the use of appropriate techniques for **objective job evaluation** to determine value, comparing factors such as skill, effort, responsibilities and working conditions.

¹⁸ Report III(1B): [Giving globalization a human face](#), General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, 2012.

Comparing the relative value of jobs in occupations which may involve different types of skills, responsibilities or working conditions, but which are nevertheless of equal value overall, is essential in order to eliminate pay discrimination resulting from the failure to recognize the value of work performed by women and men free from gender bias. The Committee recalls that the principle has been applied to compare the remuneration received by men and women **engaged in different occupations**, such as wardens in sheltered accommodation for the elderly (predominantly women) and security guards in office premises (predominantly men); or school meal supervisors (predominantly women) and garden and park supervisors (predominantly men). [...]

679. *Noting that many countries still retain legal provisions that are narrower than the principle laid down in the Convention, as they do not give expression to the concept of “work of equal value”, and that such provisions hinder progress in eradicating gender-based pay discrimination, the Committee again urges the governments of those countries to take the necessary steps to amend their legislation. Such **legislation should** not only provide for equal remuneration for equal, the same or similar work, but also **address situations where men and women perform different work that is nevertheless of equal value.*** [...]

Comparing jobs, determining value

695. *The concept of “equal value” requires some method of measuring and comparing the relative value of different jobs. There needs to be an examination of the respective tasks involved, undertaken on the basis of entirely objective and non-discriminatory criteria to avoid the assessment being tainted by gender bias. While the Convention does not prescribe any specific method for such an examination, Article 3 presupposes the use of appropriate techniques for objective job evaluation, comparing factors such as skill, effort, responsibilities and working conditions. Article 3 also makes it clear that differential rates between workers are compatible with the principle of the Convention if they correspond, without regard to sex, to differences determined by such evaluation.* [...]

Scope of comparison

697. Application of the Convention's principle is not limited to comparisons between men and women in the same establishment or enterprise. It allows for a much broader comparison to be made between jobs performed by men and women in different places or enterprises, or between different employers. **Ensuring a broad scope of comparison is essential for the application of the principle of equal remuneration** given the continued prevalence of occupational sex segregation. [...]

698. The reach of **comparison** between jobs performed by women and men **should be as wide as possible**, in the context of the level at which wage policies, systems and structures are coordinated. As effective application of the principle of the Convention is needed, where women are more heavily concentrated in certain sectors or occupations, there is a risk that the possibilities for comparison at the enterprise or establishment level will be insufficient. In certain countries the scope of comparison is limited to the same employer in legislation. **The European Committee of Social Rights has also considered under the European Social Charter that “[a]s comparisons need to be made in order to determine whether women and men really do receive equal pay, the Committee has consistently found that „the possibility to look outside an enterprise for an appropriate comparison should exist where necessary” (Conclusions XIII-1, p. 121)**”. Similarly, the Committee of Experts has also asked certain governments to extend the scope of comparison beyond the enterprise. [...]

Objective job evaluation methods

[...] 701. *Whatever **methods** are used for the objective evaluation of jobs, particular care **must be taken to ensure that they are free from gender bias**: it is important to ensure that the selection of factors for comparison, the weighting of such factors and the actual comparison carried out are not discriminatory, either directly or indirectly.* Often skills considered to be “female”, such as manual dexterity and those required in the caring professions, are undervalued or even overlooked, in comparison with traditionally “male” skills, such as heavy lifting. In addition, if job evaluation is to make a positive contribution to resolving wage discrimination and promoting equality, there must be a legal and administrative framework enabling workers to claim equal remuneration on the basis of the assessed value of their

jobs, together with a right to claim redress when job evaluation systems have been found to be discriminatory.

702. A number of analytical job evaluation methods have been developed, for example: in *Sweden*, "Steps to Pay Equity"; in *Switzerland*, the ABAKABA and EVALFRI methods; and in *Spain* the ISOS methods. With respect to the ABAKABA method, the Committee has noted that it takes into consideration characteristics considered to be masculine and feminine, and includes criteria such as repetitiveness and precision of movement, responsibility for the life of others, responsibility for the environment, the number of work interruptions (for example in secretarial and clerical work), empathy and the ability to organize, which are often linked to occupations in which women are predominantly employed. [...]

b) *Convention No. 111*¹⁹

(1) Text

Article 1

1. For the purpose of this Convention the term *discrimination* includes

(a) **any distinction**, exclusion or preference made on the basis of race, colour, **sex**, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; [...]

3. For the purpose of this Convention the terms *employment* and *occupation* include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment. [...]

Article 3

Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice [...]

(b) to enact such legislation [...];

(c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy; [...]

(2) General Interpretation

21 In its General Survey 2012,²⁰ the CEACR described the requirements which derive from Convention No. 100 in relation equality between men and women as follows:

(a) *General Survey 2012*

Chapter 3 - Equality of opportunity and treatment in employment and occupation (Convention No. 111)

Introduction

731. [...] *As a first step, it is essential to acknowledge that no society is free from discrimination and that **continuous action is required** to address it.*

732. [...] *The implementation of the national equality policy presupposes the adoption of a range of specific and concrete measures, including in **most cases the need for a clear and comprehensive legislative framework**, and ensuring that the right to equality and non-discrimination **is effective in practice**. Proactive measures are required to address the underlying causes of discrimination and de facto inequalities resulting from deeply entrenched discrimination.* [...]

¹⁹ [Discrimination \(Employment and Occupation\) Convention](#), 1958 (No. 111), Convention concerning Discrimination in Respect of Employment and Occupation. Adoption: 25.06.1958, entry into force: 15.06.1960 - Status: Up-to-date instrument (Fundamental Convention).

²⁰ See note 18.

Thematic issues

Defining discrimination

743. *Clear and comprehensive definitions of what constitutes discrimination in employment and occupation are instrumental in identifying and addressing the many manifestations in which it may occur. [...] Any discrimination – in law or in practice, direct or indirect – falls within the scope of the Convention.*

Direct and indirect discrimination

744. Direct discrimination occurs when less favourable treatment is explicitly or implicitly based on one or more prohibited grounds. [...]

745. **Indirect discrimination** refers to apparently neutral situations, regulations or practices which in fact result in unequal treatment of persons with certain characteristics. It occurs when the same condition, treatment or criterion is applied to everyone, but results in a disproportionately harsh impact on some persons on the basis of characteristics such as race, colour, sex or religion, and is not closely related to the inherent requirements of the job. In referring to the “effect” of a distinction, exclusion or preference, it is clear that intention to discriminate is not an element of the definition in the Convention, which covers all discrimination **irrespective of the intention of the author** of a discriminatory act. The Convention also covers situations in which inequality is observed in the **absence of a clearly identifiable author**, as in some cases of indirect discrimination or occupational segregation based on sex. Challenges related to structural discrimination therefore need to be addressed under the Convention. [...]

Grounds of discrimination: An evolving area

[...]

Sex discrimination and gender equality

782. Under the Convention, sex discrimination includes distinctions based on the biological characteristics, as well as **unequal treatment arising from socially constructed roles** and responsibilities assigned to a particular sex (gender). Gender roles and responsibilities are affected by age, race, class, ethnicity and religion, and by the geographical, economic and political environment. [...]

783. *The protection against discrimination applies to both men and women, although considerable inequalities, in law and in practice, exist to the detriment of women. Despite the requirement under the Convention to repeal discriminatory legal provisions, laws discriminating directly or indirectly against women have not yet been relegated to the past. Women are also over-represented in informal and atypical jobs, including part-time jobs, face greater barriers in gaining access to posts of responsibility, and continue to bear the unequal burden of family responsibilities. Stereotyped assumptions regarding women’s aspirations and capabilities, their suitability for certain jobs or their interest or availability for full-time jobs, continue to lead to the segregation of men and women in education and training, and consequently in the labour market.*

3. Council of Europe

22 The Council of Europe (CoE) is characterised by two main human rights instruments, the European Convention on Human Rights (ECHR, see below a)) and the European Social Charter (ESC, see below b)) which is at the very core of this complaint. However, there are also other relevant documents (see below c)).

a) *European Convention on Human Rights*

23 In its fundamental Article 14, the ECHR²¹ prohibits discrimination²² in the following terms:

²¹ http://www.echr.coe.int/Documents/Convention_ENG.pdf

²² See as joint publication by the ECtHR and the Fundamental Rights Agency of the EU (FRA) the ‘[Handbook](#) on European non-discrimination law’ developing the related ECHR/EU case-law and

Article 14 - Prohibition of discrimination

The enjoyment of the **rights and freedoms set forth in this Convention** shall be secured **without discrimination** on any ground such as **sex**, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

However, this protection requires that the right referred to falls in the ambit of one of the rights enshrined in the Convention or its Protocols. As far as equal pay is concerned the sole Convention right could possibly be Article 1 of Protocol No. 1 (Protection of Property).

- 24 This lack of protection against discrimination in general has been closed by the adoption of Protocol No. 12,²³ but it still lacks ratification to a large degree.²⁴

Article 1 - General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

- 25 So far, no cases or ECtHR's rulings on equal pay are known.

b) European Social Charter (ESC)²⁵

(1) Text

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake: [...]

3 to recognise the right of men and women workers to equal pay for work of equal value; [...]

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Article 20 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

With a view to **ensuring the effective exercise of the right to equal opportunities and equal treatment** in matters of employment and occupation without discrimination on the grounds of **sex**, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

- a access to employment, protection against dismissal and occupational reintegration;
- b vocational guidance, training, retraining and rehabilitation;
- c **terms of employment and working conditions, including remuneration;**
- d **career development, including promotion.**

Article E – Non-discrimination

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, **sex**, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

covering the context and background to discrimination categories and defences, the scope of the law and the grounds protected ([update](#), July 2010 – December 2011).

²³ Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No.177, 04/11/2000.

²⁴ Up to date 18 CoE Member States have ratified and 20 further Member States have signed Protocol No. 12. Out of the 15 CoE Member States having ratified the CCPP six have either ratified (i.e. Croatia, Cyprus, Finland, Netherlands, Portugal and Slovenia) or signed this Protocol (i.e. Belgium, Czech Republic, Greece, Ireland, Italy and Norway) whereas three Member States (i.e. Bulgaria, France and Sweden) have refrained from opting for one of the two alternatives.

²⁵ [European Social Charter \(Revised\)](#), 03.05.1996, European Treaty Series - No. 163.

(2) Compilation of case law (Digest 2008)

26 The 'Digest of the Case Law of the European Committee of Social Rights' (Digest 2008) compiles the main principles deriving from the ECSR's case law based on Statements of Interpretation, Conclusions or Decisions.

27 Concerning the principle of equal pay for work of equal value as enshrined in Article 4§3 of the Charter, the Digest 2008 states the following:

(a) *Article 4§3*

Article 4§3 guarantees the right to equal pay without discrimination on grounds of sex. This is one aspect of the right to equal opportunities in matters of employment guaranteed by Article 20. As a result, the case-law under Article 20 (see *infra*) applies *mutatis mutandis* to Article 4§3. Only aspects specifically linked to equal pay are dealt with hereinafter.

The situation as regards equal pay in countries which have accepted both Article 20 and Article 4§3 is examined exclusively under Article 20 and these countries are no longer required to submit a report on the application of Article 4§3.

The principle of equal pay

Women and men are entitled to "equal pay for work of equal value". This means that the equal pay principle applies to the same work and to "mixed jobs", that is ones performed by both women and men, but also to work of the same value.

The principle of equality should cover **all the elements of pay**, that is basic or minimum wages or salary plus all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter's employment.

It must also apply between full-time and part-time employees, covering the calculation of **hourly wages**, pay increases and the components of pay.

Guarantees of enforcement

Legislative means

The right of women and men to "equal pay for work of equal value" must be expressly provided for in legislation.

As far as setting wage levels is concerned, states are free to choose their own methods and can treat this as a matter to be decided by collective bargaining. Domestic law must however **ensure that violations of the principle of equal pay will be sanctioned** and lay down the general rules applying to labour and management when they are negotiating wages (for example, differential pay scales and discriminatory clauses must be ruled out). If full equal pay cannot be achieved through collective bargaining, the **state must intervene** using legal wage-fixing methods or any other appropriate means.

Judicial safeguards

Domestic law must provide for appropriate and effective remedies in the event of alleged wage discrimination. Employees who claim that they have suffered discrimination must be able to take their case to court.

Domestic law should provide for an alleviation of the burden of proof in favour of the plaintiff in discrimination cases.

Anyone who suffers wage discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender. In cases of unequal pay, any compensation must, as a minimum, cover the difference in pay.

Methods of classification and comparison and other measures

Appropriate classification methods must be devised enabling to compare the respective values of different jobs and carry out objective job appraisals in the various sectors of the economy, including those with a predominantly female labour force.

Domestic law must make provision for comparisons of pay and jobs to extend outside the company directly concerned where this is necessary for an appropriate comparison. The Committee views this as a crucial means of ensuring that job appraisal systems are effective under certain circumstances, particularly in companies where the workforce is largely, or even exclusively, female.

States must promote positive measures to narrow the pay gap, including:

- measures to improve the quality and coverage of wage statistics;
- steps to ensure that more attention is paid to equal pay for women and men in national action plans for employment.

28 As regards more generally the principle of equality between men and women provided for in Article 20 of the Charter, the Digest 2008 states the following:

(b) *Article 20*

Definitions and scope

Article 20 guarantees the right to equality at **all stages of working life** – access to employment, remuneration and other working conditions, including dismissal and other forms of detriment, vocational training and guidance and promotion. These words give Article 20 the status of *lex specialis* in relation to Article 1§2 of the Charter, which prohibits all discrimination at work on whatever ground.

The **right to equal pay** without discrimination on the grounds of sex is guaranteed by Article 4§3 and the relevant specific case-law is presented under this article (see above): The situation as to equal pay in States party which have accepted Articles 4§3 and 20 is examined under Article 20 only. Consequently, these States are no longer required to submit a report on the application of Article 4§3. [...]

Discrimination in breach of the Charter is constituted by a difference in treatment between **people in comparable situations** which does not pursue a legitimate aim and is not based on objective and reasonable grounds. In determining whether a legitimate aim is being pursued and the measures taken are reasonably proportionate, the Committee applies Article G.

Indirect discrimination occurs where a rule, identical for everyone, disproportionately affects men or women without a legitimate aim. Equal treatment of full-time and part-time employees is considered from this angle in particular in respect of social security issues. [...]

The principle of equality applies to all employees, in both the **private and public sectors**.

Means of enforcement

Legal framework

The right of women and men to equality **must be guaranteed by a law**. The Charter requires “states not only to provide for equal treatment but also to protect women and men from discrimination in employment and training. This means that they are obliged to enact a sufficiently detailed legislation explicitly imposing equal treatment in all aspects.” It is not sufficient merely to state the principle in the Constitution. [...]

It must be possible to set aside, withdraw, repeal or amend any provision in collective agreements, employment contracts or firms' internal regulations that is incompatible with the principle of equal treatment.

Right of appeal

National legislation must provide for appropriate and **effective remedies** in the event of alleged discrimination. Employees who consider that they have suffered discrimination must be able to take their case to an independent body.

The **burden of proof must be shifted**. The shift in the burden of proof consists in ensuring that where a person believes he or she has suffered as the result of non-compliance with the principle of equal treatment and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of equal treatment. The purpose of this rule is to enable courts to deal with discrimination in the light of the effects produced by a rule, act, or practice and hence that the shift in the burden of proof is a key factor in the effective application of rules on protection against discrimination.

By analogy with the case-law in relation to Article 1§2, a number of **other legal steps should be taken** to make the right of appeal fully effective, such as authorising trade unions and other bodies to take action in employment discrimination cases, including action on behalf of individuals or setting up an independent body to promote equal treatment and provide legal assistance to victims.

Adequate compensation

Anyone who suffers discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is **sufficient to make good the damage suffered by the victim and act as a deterrent to the offender**.

Adequate compensation means:

- **reinstatement** or retention of employment and compensation for any pecuniary damage suffered in the event of unlawful or unfair dismissal;
- **compensation** proportionate to the damage suffered, i.e. to cover **pecuniary and non-pecuniary damage**, where the dismissed employee does not wish to be reinstated or continuation of the employment relationship is impossible;
- in all other cases, bringing the discrimination to an end and awarding compensation proportionate to the pecuniary and non-pecuniary damage suffered.

In accordance with these principles, the Committee considers that compensation should **not** be subject to an **upper limit** as this prevents it from being proportionate to the damage suffered and hence adequate.

When assessing the level of compensation, the Committee takes account of **whether it is high enough to prevent employers from re-offending**. For this purpose, it also considers any other administrative, civil or criminal penalties imposed on employers.

Protection against reprisals

Employees who try to enforce their right to equality must be **legally protected against any form of reprisals from their employers**, including not only dismissal, but also downgrading, changes to working conditions and so on. National legislation must provide for the same consequences where an employee is a victim of reprisal measures as those described above in the sections on appeal procedures and compensation. [...]

Particular rights of women

[...]

Equal opportunities and positive measures

Since "the aim and purpose of the Charter, being a human rights protection instrument, is to **protect rights not merely theoretically, but also in fact**" and conformity with the Charter cannot be ensured solely by the operation of legislation, states must take practical steps to promote equal opportunities.

Appropriate measures include:

- adopting and implementing **national equal opportunities action plans**;
- requiring individual undertakings to draw up enterprise or **company plans** to secure greater equality between women and men; [...]

There is no case-law on discrimination by results, such as the systematic granting of priority to women in sectors of activity in which they are under- represented.

(3) Statement of interpretation

29 Following the Digest 2008 the ECSR has adopted a specific Statement of Interpretation on 'equal pay comparisons' in the framework of Conclusions 2012:²⁶

Under Article 20, equal treatment between women and men includes the issue of equal pay for work of equal value. Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful this comparison can only be made across companies/undertakings. Therefore, the Committee requires that it be possible to **make pay comparisons across companies**. It notes that **at the very least**, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which **statutory rules** apply to the working and pay conditions in more than one company;
- cases in which several companies are covered by a **collective works agreement** or regulations governing the terms and conditions of employment;
- cases in which the terms and conditions of employment are laid down **centrally** for more than one company within a **holding** (company) or conglomerate.

(4) Conclusions (2016) on (under-)representation of women in decision-making functions within the private sector

30 In more recent times the Committee has shown an increasing interest in the representation of women in decision-making functions. Indeed, it asked for example [Armenia](#), [Romania](#), [Turkey](#) and [Ukraine](#) as well as [Belgium](#) to provide information i.a. on (increasing) women's participation decision-making positions or posts or noted progress in relation to women's participation in decision making in [Ireland](#).

c) Further pertinent material

31 The Committee of Ministers has adopted several Recommendations²⁷ which are in part relevant for the issues at stake.

- *Recommendation No. R(85)2 on legal protection against sex discrimination* exhorts member states to take or reinforce measures for the promotion of equality between women and men, including through legislation in the field of employment, social security and pensions, taxation, civil law, the acquisition and loss of nationality and political rights. The Appendix to the Recommendation refers to the need to give consideration to the adoption of special temporary measures designed to accelerate the realisation of *de facto* equality between men and women in those areas where inequalities exist. In addition, member states are encouraged to adopt suitable machineries and legislation containing effective remedies and sanctions in order to discourage discrimination.
- [Recommendation No. R \(98\)14 on gender mainstreaming](#) calls on member states to create an enabling environment and facilitate conditions for the implementation of gender mainstreaming in the public sector on the basis of the Council of Europe Report on Gender Mainstreaming. The report sets out the conceptual framework for gender mainstreaming and a methodology for its implementation, accompanied by examples of good practices.
- [Recommendation Rec\(2007\)17 on gender equality standards and mechanisms](#) provides an extensive list of measures to achieve gender equality in practice, taking into account human rights and the integration of a gender perspective in legislation in all sectors. It recommends specific gender equality standards in private and family life, education, science and culture, economic life, social protection, health, including sexual and reproductive matters, violence against women, trafficking in human beings, conflict and post-conflict situations and specific situation of vulnerable groups exposed to multiple discrimination. The Recommendation also puts forward strategies, mechanisms and tools to achieve gender equality, such as the

²⁶ The same applies for Conclusions XX-1 - Statement of interpretation - Article 1 Additional Protocol.

²⁷ For the compilation see <https://rm.coe.int/168058feef>.

implementation of complementary strategies; strong institutional mechanisms/national machinery for gender equality; studies and instruments to measure and evaluate progress on the situation of women and men, and the establishment of co-operation and partnerships.

4. European Union (EU)

32 Equality between women and men is one of the European Union's founding values. It goes back to 1957 when the principle of equal pay for equal work became part of the Treaty of Rome²⁸ as primary law²⁹ and later further developed also in secondary law (see below a)). The Court of Justice of the European Union (CJEU) has developed a very rich jurisprudence so far (see below b)). There is also further pertinent material for the purpose of dealing with this complaint (see below c)).

a) *Legislative framework*

(1) Primary Law

33 With the entry into force of the Treaty of Lisbon in 2009 several sources are relevant:

34 The Charter of Fundamental Rights of the European Union (CFREU), legally binding on all EU Member States by virtue of Article 6(1)(3) of the Treaty on the European Union (TEU), provides i.a.:

Article 21 - Non-discrimination

1. Any discrimination based on any ground such as **sex**, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. [...]

Article 23 - Equality between women and men

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

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

35 Moreover, the principle is enshrined in the founding values of the EU:

Article 2

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, **non-discrimination**, tolerance, justice, solidarity and **equality between women and men** prevail.

36 The Treaty on the Functioning of the European Union (TFEU) lays down the 'gender mainstreaming principle:

Article 8³⁰

In all its activities, the Union shall aim to **eliminate inequalities, and to promote equality, between men and women**.

37 In the Title on 'Social Policy' a specific article is devoted to the principle of equality between men and women, in particular in relation to 'equal pay'.

²⁸ See for further details <http://ec.europa.eu/justice/gender-equality/>.

²⁹ Art. 119 EC-Treaty.

³⁰ (ex Article 3(2) TEC).

*Article 157*³¹

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. [...]

(2) Secondary law

- 38 After several directives starting in 1975 the actual secondary legislative framework is defined by Directive 2006/54. In Chapter 1 ('Equal pay') of Title II Article 4 provides:

Article 4 - Prohibition of discrimination

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**.

Concerning the Horizontal Provisions in Title III, Chapter 1 on 'Remedies and enforcement' is of particular importance.

- 39 At least in one specific sector [the Capital Requirements Directive \(2013/36/EU\)](#)³² secondary legislation addresses directly the female (under-)representation:

[*Recital*] 60. [...] To facilitate independent opinions and critical challenge, **management bodies** of institutions should therefore be sufficiently **diverse** as regards age, **gender**, geographical provenance and educational and professional background to present a variety of views and experiences. **Gender balance is of particular importance** to ensure adequate representation of population. In particular, institutions not meeting a threshold for representation of the underrepresented gender should take appropriate action as a **matter of priority**. [...] Therefore, diversity should be one of the **criteria for the composition of management bodies** [...]

Article 88

[...] 2.(a) [...] Furthermore, the nomination committee shall **decide on a target for the representation of the underrepresented gender in the management body** and prepare a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target. [...]

Article 91 [...]

10. Member States or competent authorities shall require institutions and their respective nomination committees to engage a broad set of qualities and competences when recruiting members to the management body and for that purpose to put in place a policy promoting **diversity** on the management body.

b) *General interpretation*

- 40 One of the longest-standing human rights issues the CJEU is dealing with is the principle of equal pay and later the principle of equality between men and women. It has developed an

³¹ (ex Article 141 TEC ; the first version being Article 119 EEC Treaty).

³² Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

important corpus of jurisprudence in this respect.³³ As very important cases one might refer to the leading case [Defrenne II](#) (1976) and, for example, also to the [Enderby](#) (1993) judgement.

c) Further pertinent material

(1) EU Institutions

41 In aiming at giving social rights a new impetus the *Commission* has adopted a [Recommendation on 'The European Pillar of Social Rights'](#) (April 2017). Its Principle No. 2 refers to:

Gender equality

a. Equality of treatment and opportunities between women and men must be ensured and fostered in all areas, including regarding participation in the labour market, terms and conditions of employment and career progression.

b. Women and men have the right to equal pay for work of equal value.

42 In a more specific [Recommendation on strengthening the principle of equal pay between men and women through transparency](#) (2014)³⁴ the Commission had stated the respective principles.

43 In a [Communication](#) (2013)³⁵ on the application of Directive 2006/54 the Commission concluded:

Although estimates vary as to how much of the total gender pay gap arises from pay discrimination as prohibited by Article 157 TFEU and Article 4 of the Directive, it appears to be consensual that a **considerable part of it can be traced back to discriminatory practices**.

44 The *European Parliament* (EP) has a long-standing tradition to call for effective implementation of the principle of equality between men and women. Specifically, on the issue of equal pay the EP adopted a [Resolution](#) (2012)³⁶ with recommendations to the Commission on application of the principle of equal pay for male and female workers for equal work or work of equal value. Most recently, it has adopted [Resolution](#) (2017)³⁷ on women's economic empowerment in the private and public sectors in the EU.

45 The Commission offers additional information on specific websites on [Gender equality](#) in general and on the [Gender pay gap](#) and the [Gender balance in decision-making positions](#) including its proposed 40% objective for the representation of women on Boards.

(2) Other bodies

46 Without being exhaustive and besides the Fundamental Rights Agency of the EU (FRA) which generally deals with human rights issues, the importance the EU attributes to the question of equality between men and women is shown by the creation of the specific body called

³³ See, for example, a [Compilation of case law on the equality of treatment between women and men and on non-discrimination in the European Union](#) (3rd edition, completed in July 2009), complemented by a further '[Discrimination and Gender equality cases overview](#)' (until April 2011); relevant case law since 2011 might be found in the data-base of the CJEU: [list of cases under Article 157 TFEU](#).

³⁴ C(2014) 1405 final, 07.03.2014.

³⁵ COM(2013) 861 final, 06.12.2013, p. 7.

³⁶ [\(2011/2285\(INI\)\)](#), 24.05.2012.

³⁷ [\(2017/2008\(INI\)\)](#), 03.10.2017.

European Institute of Gender Equality (EIGE). Although created as a network of national equality institutions the Equinet contributes to the promotion of equality at EU level.³⁸

(a) *Gender pay gap*

- 47 Specialised bodies or organisations also deal with these problems and try to contribute to overcome them. Recently, *Equinet* has published a report '[A comparative analysis of gender equality law in Europe 2016](#)' summarizing the situation i.a. as follows:

Unfortunately, despite this legal framework, the difference between the remuneration of male and female employees remains one of the great concerns in the area of gender equality: on average, women in the EU earn 16.3 % less than men, and progress has been slow in closing the gender pay gap. The differences can be partly explained by factors other than discrimination: e.g. traditions in the career choices of men and women; the fact that men, more often than women, are given overtime duties, with corresponding higher rates of pay; the gender imbalance in the sharing of family responsibilities; glass ceilings; part-time work, which is often highly feminised; job segregation etc. However, **another part of the discrepancies cannot be explained except by the fact that there is pay discrimination**, which the principle of equal pay aims to eradicate.

- 48 In the Conclusions of its [2017 Report on equality between women and men in the EU](#) Equinet states:

Over the last years, the gaps in pay, employment and working hours have been plateauing. At this rate of change, it will **take more than a century to close** the overall **gender gap** in earnings.

(b) *(Under-)representation in decision-making bodies within private companies*

- 49 The organisation [European Women on Boards](#) (EWoB) has published a report on [Gender Diversity on European Boards](#) (Realizing Europe's Potential: Progress and Challenges, April 2016)³⁹ containing i.a. statistics as well as legal and other frameworks.

B. Further pertinent material

- 50 As the Committee also refers to other pertinent (e.g. Eurostat) material it appears useful to provide additional information in this respect.

1. *Concerning the Gender pay gap*

- 51 To measure the extent of the Gender pay gap in relation to the countries concerned the main point is reliable statistical evidence. Thus, the most important statistical source (also referred to by the Committee) is Eurostat.⁴⁰ It provides - in a given period of time - the relevant data:

Gender pay gap in unadjusted form⁴¹

GEO/TIME	2010	2011	2012	2013	2014	2015
European Union (28 countries)	16,4	16,9	17,3	16,8	16,7	16,3
Belgium	10,2	9,4	8,3	7,5	6,6	6,5

³⁸ All those bodies offer websites comprising important additional information.

³⁹ Further information might be drawn from <http://european.ewob-network.eu/projects/ewob-studies/>.

⁴⁰ Its specific advantage for the examination of all 15 cases lies in the fact that Norway is also included.

⁴¹ by NACE Rev. 2 activity (Industry, construction and services (except public administration, defense, compulsory social security) - structure of earnings survey methodology [earn_gr_gpgr2] - Extract – in alphabetical order.

GEO/TIME	2010	2011	2012	2013	2014	2015
Bulgaria	13,0	13,2	15,1	14,1	14,2	15,4
Croatia	5,7	3,4	2,9	9,0	10,4	:
Cyprus	16,8	16,1	15,6	14,9	14,2	14,0
Czech Republic	21,6	22,6	22,5	22,3	22,5	22,5
Finland	20,3	19,1	19,2	18,8	18,4	17,3
France	15,6	15,7	15,6	15,5	15,5	15,8
Greece	15,0	:	:	:	:	:
Ireland	13,9	12,7	12,2	12,9	13,9	:
Italy	5,3	5,7	6,5	7,0	6,1	5,5
Netherlands	17,8	18,6	17,6	16,5	16,1	16,1
Norway	16,1	15,7	14,7	15,5	14,5	14,9
Portugal	12,8	12,9	15,0	13,3	14,9	17,8
Romania	8,8	9,6	6,9	4,9	4,5	5,8
Slovenia	0,9	3,3	4,5	6,3	7,0	8,1
Sweden	15,4	15,6	15,5	14,6	13,8	14,0

<http://appsso.eurostat.ec.europa.eu/nui/setupDownloads.do>

52 This statistic shows that for all countries concerned by the complaints for which information is available the minimum Gender pay gap still lies above 5.5 %. That means that for all countries the principle of equal pay for work of equal value is not ensured. 'This is even more true taking into account the lack of clarity in relation to the calculation (e.g. to which extent did they - or at least should they - imply other discriminatory elements like career differences leading to the increase of the pay gap) or in relation to the data basis (e.g. undocumented work or informal economy, both sectors in which the gender pay gap will most probably be even higher).'

2. Concerning the (under-)representation in decision-making positions within private companies

53 In its updated 'Data table' the European Institute for Gender Equality (EIGE) provides the following information:⁴²

Largest listed companies: presidents, board members, (non-)executives and CEOs⁴³

Countries	Men (%)	Women (%)	Gap (points)
EU28	75.4	24.6	50.8
Belgium	70.6	29.4	41.2
Bulgaria	87.2	12.8	74.4
Croatia	77.4	22.6	54.8
Cyprus	89.3	10.7	78.6
Czech Republic	82.9	17.1	65.8
Finland	67.7	32.3	35.4
France	57.9	42.1	15.8
Greece	90.7	9.3	81.4
Ireland	82.7	17.3	65.4
Italy	67.1	32.9	34.2

⁴² Extract – in alphabetical order.

⁴³ [2017-B1; All countries; Men, Women; PC; Members; All sectors](#) [Extract]

Countries	Men (%)	Women (%)	Gap (points)
Netherlands	69.8	30.2	39.6
Norway	56.0	44.0	12
Portugal	84.5	15.5	69
Slovenia	79.0	21.0	58
Sweden	64.5	35.5	29

http://eige.europa.eu/gender-statistics/dgs/indicator/wmid_bus_bus_wmid_comp_compbm

54 This statistic illustrates that only two countries achieve the Commission's proposed objective (40%, see above, para. 45). However, this data only refers to 'largest listed companies' thus leaving out the quantitatively much more important part of the other 'listed companies' as well as non-listed companies. Therefore, it is to be assumed that all countries concerned do not reach this threshold.

C. *Legal Principles*

55 This section is aimed at setting the framework for Part II by analysing the fundamental legal questions which are at the core of this case.

1. *General considerations*

56 The two main elements raised in the complaint differ very much from a legal point of view. Whereas the first (equal pay) is very 'classic' in the sense of a long-standing tradition of States providing for (general) legislation in this respect but not sufficiently enforcing it the second problem is a fairly new element which is only slowly appearing at international and national level as a problem to be seriously dealt with.

57 Against this background being different in character both elements are governed by Article 20 of the Charter, 'The right to **equal opportunities and equal treatment** in matters of employment and occupation without discrimination on the grounds of sex'.⁴⁴ From the outset, it should therefore be noted that this Article belongs to the most relevant provisions as it is a so-called 'hard core' Article (see Article A§1(b) of the Charter). More generally, the Council of Europe attributes great importance to [Gender equality](#).

2. *Gender pay gap*

a) *General considerations*

58 In general terms, the principle of equal pay for work of equal value is of fundamental character. It is directly related to the human dignity of women who fail to be recognised as equal when it comes to their remuneration.⁴⁵ They are prevented from taking part in the normal societal life at the same footing as men.

59 The Gender pay gap is one longest-standing element of equality between men and women in employment. According to the CEACR: 'Pay differentials remain **one of the most persistent**

⁴⁴ Or Article 1 of the 1988 Protocol; see for the most recent commentary on this provision *C. Kollonay Lehoczky*, Article 20, in: N. Bruun, K. Lörcher, I. Schömann, S. Clauwaert (eds.), *The European Social Charter and the Employment Relation*, Hart Publishing Oxford, 2017, 358 - 380.

⁴⁵ See the reference to human dignity in relation to remuneration in Article 23(4) UDHR.

forms of inequality between women and men and can be considered as **'one of the most obvious examples of structural gender discrimination** (see above para. 20 (para. 668)).

60 Legally speaking, it found recognition in international human rights and employment law starting in 1948 by Article 23(2) UDHR (see above A.1.a)) and continued to be transferred to a legally binding international instrument for the first time by ILO Convention No. 100 in 1951 (see above A.2.a). This fundamental rights Convention also formed the basis of Article 4§3 of the Charter.

61 However, despite of all international and national legal and other measures, the principle of equal pay has not at all been (fully) applied. Quite to the contrary, in describing the future developments two documents might be quoted, first the *ILO* assessing the situation at the global level as something like a three generation problem (75 years):

Even where gender pay differences are narrowing, they are doing so extremely slowly: at the current rate it is estimated that another **75 years** will be needed to bridge the gap (see above para. 20 (para. 669))

whereas *Equinet* - mainly concerning the EU level - sees a nearly four generation problem (100 years):

Over the last years, the gaps in pay, employment and working hours have been plateauing. At this rate of change, it will take more than **a century** to close the overall gender gap in earnings. (see above para. 48)

for attaining equal pay if nothing fundamentally different happens earlier.

62 Besides this tremendous challenge as such there is a further duplicating dimension. As old-age pensions are normally based on the contributions paid during the working life and these contributions are calculated in relation to the remuneration received the discriminating gender pay gap has an enormously important negative impact on the amount of the old-age pensions,⁴⁶ in short: the lower wages lead to lower amounts of old-age pensions. Thus, the gender pay gap extends the discrimination of women even over the retiring age. This is dramatic because many women (even having worked for a long time) will run the great risk of poverty as elderly persons.

63 At least from the point of view of the ETUC this situation requires a much stricter approach to assess the situation of (non-)conformity in both substantive and procedural dimensions.

b) Substantive requirements

64 At the substantive level, there is a *quantitative* and a *qualitative* dimension. The former is related to the statistical (evaluation of the) situation. In assessing the (non-)conformity of the situation in respondent States it would appear that the Committee only attributed a decisive importance if there was 'manifestly' high (unadjusted) gender pay gap.⁴⁷ However, from the point of view of the ETUC it would be necessary to change this approach.

⁴⁶ See, for example, the EU Council conclusions ['Equal income opportunities for women and men: Closing the gender gap in pensions'](#) (04.06.2015).

⁴⁷ See, for example, [Conclusions 2014 - Azerbaijan - Article 4§3](#): 'The Committee notes from the report that in 2009 the average wages of women amounted to 58,6% of that of men and 46,2% of that of men in 2012. The Committee notes the downward trend in wage equality and considers that the unadjusted pay gap is manifestly too high and therefore, finds that the situation is not in conformity with the Charter.'

- 65 Starting by the fundamental word 'equal', continuing with the great importance of this right (see above in particular para. 58 but also paras. 13, 15, 17 and 21) and taking into account the necessity that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form.⁴⁸
- 66 According to the point of view of the ETUC, a different approach is required. This would mean that only a 'zero' difference is permitted. However, admitting even that 'equal' might not be interpreted in the strict sense it should nevertheless be evaluated at the threshold close to 'zero'. A reasonable threshold would therefore appear to permit only a difference of 5%.
- 67 According to relevant statistics (see above B.1) all countries concerned by the complaints for which information is available the minimum Gender pay gap still lies above 5.5 %. That means that for all countries concerned the principle of equal pay for work of equal value is not ensured.
- 68 In *qualitative* terms, the Committee has established certain requirements. As it obvious from the statistics referred to above (see above B.1) the timeline shows the persistent nature of the Gender pay gap. Against this background, it is not any more sufficient to say that the respondent States are (totally) free in their means how to ensure equal pay. In drafting a list of measures particular attention is paid to the Conclusions of the Committee. However, sometimes it appears necessary to go further by particular taking into account international case law. Accordingly, it would appear important to require a clear and comprehensive legislation (see above para. 21 (para. 732). In also taking into account also the international case law (see above A.) this legislation should at least ensure that
- the coverage of **all workers** (in a wide definition) is ensured (taking in particular into account that there is no limitation to the 'great majority' like in Article I§2 e.g. for Article 2),
 - the general legal concept includes also **indirect** discrimination (see above para. 21 (in particular para. 745),
 - the term 'pay' contains **all elements of remuneration** as well as supplementary pensions,
 - the **comparison** comprises as a minimum
 - *transparency* (see, for example, above para. 42) or at the very least an effective prohibition of any requirement of confidentiality imposed by employers on potential victims of discrimination or referred to as requirement in any impartial procedure aimed at examining potential discrimination in relation to remuneration,
 - the reach of *comparison* between jobs performed by women and men *being construed as wide as possible* (see above para. 20 (para. 698),
 - the wide definition of 'equal value' also *encompassing work that is of an entirely different nature*, which is nevertheless of equal value (see above para. 20 (para. 673); 'completely different', see above para. 15 (para. 11)),
 - the necessity to evaluate the respective job by a '*job evaluation*' with criteria excluding any kind of (also indirect) discrimination (see, for example, above 15 (paras. 12 and 13), para. 17 (para. 2), para. 20 (para. 701)),

⁴⁸ Decision on the merits, 09.09.1999 - No. 1/1998 - *International Commission of Jurists v. Portugal*, para. 32.

- the respective *assessment* followed by effective *consequences* in case that the result shows a discrimination.

c) *Procedural requirements*

69 Procedural requirements are aimed at additionally serving to ensure the effective exercise of the right to equal pay. Besides the substantive criteria mentioned above it is necessary to ensure them by **legislation**. However, it is not sufficient to enact legislation. In particular, a *review of legislation* is necessary if the threshold is not attained (see, for example para. 13). This would mean that a country which has not attained the threshold required and has not reviewed existing legislation in a given period of time (at least within a period of five years (see above B.1)) should be considered as violating Article 20 of the Charter,

70 Legislation must be **applied effectively**. The following elements are necessary to ensure this application. At a *general* level,

- the labour inspection must have the task of monitoring and possibly intervening coupled by the respective powers and the appropriate equipment in financial and personal terms,
- trade unions as well as human rights institutions or organisations must have the right to file (general) complaints (and be admitted as third parties in any individual complaints (see below).

71 At an *individual* level, the women concerned must have the right to effective access to court complemented by a fair and effective procedure including i.a. the shift of burden of proof to the employer. Moreover, any discrimination (victimisation) in relation of taking any procedural action must be effectively prevented.

72 In any event, it appears important that any possible shift from substantive to procedural requirements should not be continued. Conversely, both elements should be evaluated on their own merits (thus leading possibly to two violations).

d) *Interim conclusions*

73 This catalogue of measures appears necessary in order take a new, fresh an comprehensive step to achieve the elimination of the Gender pay gap at least to considerably shorten the enormous periods of time mentioned above (see para. 61). If they are not implemented the Committee should find a violation of Article 20 of the Charter.

74 This is particularly the case in relation to the substantive requirement of the 5 % threshold mentioned above (see para. 66). As all countries concerned do not attain this threshold the Committee should come to finding a violation already for this reason.

3. (Under-)representation in decision-making bodies within private companies

a) *General considerations*

75 As previously described, the problem of equal representation in decision-making bodies in private companies has only recently appeared at the stage of international and European level (see para. 56). In terms of the Charter and according to the Decision of admissibility, it relates

to Article 20 of the Charter RESC. Until now and in substance, the Committee has only timidly dealt with this question (see above para. 30).

- 76 That is why it appears necessary to interpret Article 20 according to the principles which have been referred to previously. As a starting point it might be helpful to understand that a position as member in a board is of course crucial for your general career in working life.
- 77 The *wording* of Article 20 of the Charter might be considered as not very clear in this respect. Two main questions might have to be addressed: Are the fields referred to in lit. a) – d) of exclusive character? In the affirmative: Does any of the fields enumerated in lit. a) – d) encompass the collective character of decision-making positions in general and decision-making bodies in particular?
- 78 Concerning the first question the wording as such does not exclude a non-exhaustive character because it does not contain any specific wording to this effect (such as 'only' or 'exclusively'). Nevertheless, one could base an exclusive understanding on a comparison with other provisions which contain specific wording as the exemplary character (e.g. 'such as'). In such as case it would be necessary to answer the second question.
- 79 To answer the second question the notion of 'positions' and 'bodies' has to be clarified. First, decision-making 'positions' could be understood as the more general term than the respective 'bodies'. As the former are closely related to an individual situation (such as promotion) this situation would fall under lit. d) ('career development, including promotion'). However, if 'bodies' was something separate, the situation might be more complicated. (If a member of a 'body' is chosen internally, there is no problem to consider this also as a 'promotion' because of their possibly different character.) In any event, it could be also considered as 'terms of employment' understood as being also meant in a collective dimension.
- 80 Examining the *context* as well as the *objective* of Article 20 of the Charter, based in particular on the wide formulation in Part I as well as in particular the introductory part of Article 20 ('effective exercise ...') there should be no doubt that these elements strive for including this issue in the said provision.
- 81 Taking into account also an emerging trend in national legislation complemented by recent *international case law* of CEDAW (see above para. 18) and first elements in EU legislation (see above para. 39) this trend should be considered as confirming such an interpretation. Concerning the developments in international law, mainly elaborated by the CEDAW, tend to go in a more collective dimension. In particular Articles 2 and 3 CEDAW read together with Article 11 CEDAW can be interpreted to cover a general obligation for the Contracting Parties to take effective measures in order to achieve equality regarding the female representation on boards in private companies.
- 82 Concluding this examination, the ETUC is of the view that the Committee should come to the conclusion that the (under-)representation of women in decision-making bodies is covered by Article 20 of the Charter.

b) Substantive requirements

- 83 In substantive terms, it would appear necessary to provide for a threshold which should be attained in order to secure equal representation in decision-making positions. If one would, however, not require an 'equal' representation (and thus oblige States to ensure 50%

representation of both sexes) it would nevertheless appear important to define a threshold close to this percentage (for example 40%).

c) Procedural requirements

84 In principle, and *mutatis mutandis* the same elements as described above (2.c) should apply here also.

d) Interim conclusions

85 Article 20 of the Charter should be understood as covering (under-)representation of women in decision-making bodies within private companies. This would of course apply all the more to State-owned enterprises or respective bodies in public administrations. In examining the question of (non-conformity the Committee should come to the conclusion to require a threshold to be attained which is close to or least not distant from 50%. It should require also respective legislation and all necessary procedural measures which are necessary to achieve this objective.

86 If one would take the basis of 40% and if one would further base the assessment in particular on the relevant statistics (see above B.2) it would appear that the States concerned do not sufficiently ensure the application of Article 20 of the Charter.

II. Specific situation

87 On the foundation of the 'General framework' (described in Part I), this Part II will provide the country-specific international case law (see below A)⁴⁹ as well as any further pertinent material (see below B) and thus form the basis for the legal assessment (see below C).

88 To recall, the main content of the complaint against Belgium is described in the Decision on admissibility of 4 July 2017⁵⁰ as follows:

UWE invokes the following grounds:

a) The first concerns the gender wage gap in Belgium, which still persists and is unfavourable to women. According to UWE, unequal pay is a reality, despite the international obligations entered into and the legislation enacted in this area. In this respect, UWE also alleges that, in practice, the equality monitoring bodies, which are responsible for monitoring effective compliance with employment law in relation to equal pay for men and women, have failed to fulfil their task in fighting discrimination, thus rendering existing legislation ineffective [...];

b) Secondly, UWE alleges that a very small number of women occupy decision-making positions within private companies, in spite of the law of 28 July 2011, which "imposes on the decision-making boards of public listed companies a minimum of one third of members of each sex for 2012 (for public companies), 2017 (for public listed companies) and 2019 (smaller companies)."

⁴⁹As already indicated in paragraph 6 of Part I, the extracts of case law of international bodies highlighted below refer in principle to the latest recommendations/observations/concerns expressed by those bodies on the respondent country unless mentioned or considered relevant otherwise.

⁵⁰ [Decision on admissibility](#), 4 July 2017.

A. *International case-law*

1. United Nations

89 The situation in Belgium has been examined in relation to the obligations deriving from three relevant instruments as follows:

a) *International Covenant on Civil, Political and Cultural Rights*

90 In considering the fifth periodic report of Belgium, the Human Rights Committee (CCPR) adopted the following concluding observations:⁵¹

C. Principal subjects of concern and recommendations

[...] 8. Although the Committee takes note of the information provided by the State party concerning the coordination of different human rights structures and the reasons for the absence of a national human rights institution, it regrets that the State party has **not created a national human rights institution**. The Committee is concerned moreover that the proliferation of bodies focusing on the rights of specific groups may militate against greater effectiveness on the part of the State party in fulfilling its obligations under the Covenant and against greater clarity in its overall policy on human rights (art. 2). *The State party should consider creating a national human rights institution in accordance with the Paris Principles (General Assembly resolution 48/134). [...]*

12. Despite various steps taken by the State party to promote **equality between men and women**, the Committee notes with concern that discrimination against women remains strong and that unequal treatment persists within the socio-economic sphere, society and the labour market and in **access to decision-making and promotion to certain posts** (art. 3). *The State party should implement all the measures that it has adopted in this sphere, including legislative measures, and evaluate them in order to achieve tangible progress in combating stereotypes, in ensuring the balanced participation of men and women in decision-making and equal treatment and access to employment for women.*

b) *International Covenant on Economic, Social and Cultural Rights*

91 Examining the situation, the Committee of Economic, Social and Cultural Rights (CESCR) has come to the following 'Concluding Observations' in relation to the fourth periodic report of Belgium:⁵²

C. Principal subjects of concern and recommendations

[...] 8. The Committee is concerned by the State party's delay in establishing a **national human rights institution** (art. 2). *The Committee recommends that the State party accelerate the process under way to establish a national human rights institution in accordance with the Paris Principles adopted by the United Nations General Assembly in its resolution 48/134 of 20 December 1993.*

11. The Committee is concerned at the persistence of the wage gap between men and women in the State party (art. 3). *The Committee recommends that the State party intensify its efforts to reduce the wage gap between men and women, including by ensuring the effective enforcement of the Act of 22 April 2012, as amended by the Act of 12 July 2013 amending the legislation concerning the gender pay gap. The Committee also recommends that the State party create widespread awareness of this Act among social partners and all who fall under its*

⁵¹ Adopted at its 2766th meeting (CCPR/C/SR.2766) held on 26 October 2010. (http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBEL%2fCO%2f5&Lang=en)

⁵² Adopted at the 68th CESCR meeting on 29 November 2013; http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBEL%2fCO%2f5&Lang=en

jurisdiction and continue to promote and enforce its policies in favour of gender equality in the workplace, particularly the policy of gender-neutral job classification. [...]

c) Convention on the Elimination of All Forms of Discrimination against Women

92 In its 'Concluding Recommendations' on the seventh periodic report of Belgium, the Committee on the Elimination of Discrimination against Women (CEDAW) has expressed the following concerns and recommendations.⁵³

C. Principal areas of concern and recommendations

National machinery for the advancement of women

10. The Committee welcomes the work of the Institute for the Equality of Women and Men. It notes with concern, however, that the **Institute lacks the power to coordinate the implementation of federal policies on gender mainstreaming** provided for by the law of 12 January 2007 on gender mainstreaming. The Committee is also concerned about the absence of an overarching strategy for gender mainstreaming. It is further concerned about the slow and fragmented implementation of the "gender test", which is intended to assess the impact of draft legislation on the situation of women and men.

11. The Committee recommends that the State party, in the light of the complexities of its federal structure:

(a) Consider adopting a national action plan on gender mainstreaming with clear timelines and measurable benchmarks in order to achieve the full and uniform implementation of the law on gender mainstreaming of 2007;

(b) Consider providing the Institute for the Equality of Women and Men with the competence to coordinate the implementation of policies on gender mainstreaming;

(c) Ensure the systematic implementation of the "gender test", which is intended to assess the impact of draft legislation on the situation of women and men.

National human rights institution

12. The Committee is concerned about **the absence of an independent national human rights institution** with a broad mandate to work on all aspects of human rights, including women's rights, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), annexed to General Assembly resolution 48/134.

13. The Committee recommends that the State party establish, within a clear time frame, an independent national human rights institution in compliance with the Paris Principles with a specific mandate to advance women's rights and promote equality between women and men.

Temporary special measures

14. The Committee welcomes the existing temporary special measures to increase the parliamentary **participation of women and on the management boards of companies and autonomous public enterprises**. The Committee remains concerned, however, about the persistent underrepresentation of women, in particular women belonging to minority communities, at decision-making levels in political and public life and in the private sector. [...]

15. The Committee recommends that the State party evaluate the application of existing temporary special measures and develop additional temporary special measures in accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25 on the subject as a necessary strategy to accelerate the achievement of substantive

⁵³ Considered/adopted during its 1257th and 1258th meetings, on 28 October 2014; http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fB%2fEL%2fCO%2f7&Lang=en

equality between women and men, in particular to enhance the rights of minority women, in all areas where women are underrepresented or disadvantaged.

Participation in political and public life

28. [...] The Committee is also concerned that **women continue to be underrepresented** in the diplomatic service and in international organizations. It is further concerned that the measures envisaged for the private sector are limited and that their evaluation is planned to be conducted only in 2023, which would not allow for corrective measures to be taken should they be needed.

29. *The Committee calls upon the State party to take measures, such as statutory quotas, to guarantee the equal representation of men and women, in particular that of women belonging to ethnic and minority groups, in appointed positions in the federal Government and in the governments of the federated entities, as well as in the diplomatic service and in international organizations. The Committee recommends that the State party reinforce the mechanisms that it has established for the private sector in order to better address the underrepresentation of women in all types of enterprises.*

Employment

32. The Committee welcomes the adoption in 2012 of a law aimed at reducing the gender wage gap and in 2011 of a law on women's participation on the management boards of listed companies and autonomous public enterprises. It remains concerned, however, about:

(a) The **persistent gender wage gap** as well as horizontal and vertical segregation in the labour market, in which women are concentrated in lower-paid and part-time work, which adversely affects their career development and pension benefits;

(b) The fact that the evaluation of the implementation of the law on **women's participation on the management boards of listed companies and autonomous public enterprises** is due to be conducted only in 2023, and that no similar temporary special measures are envisaged in other companies to increase the representation of women at decision-making levels; [...]

33. *The Committee recommends that the State party:*

(a) *Continue to take specific and proactive measures to eliminate occupational segregation and to reduce the gender pay gap, including by ensuring the strict application of the law of 2012 aimed at reducing the gender wage gap;*

(c) *Consider undertaking a first evaluation within the next four years and carry out regular evaluations of the impact of the law of 2011 on women's participation on the management boards of listed companies and autonomous public enterprises, and include information on the results of those evaluations in its next periodic report; and consider taking temporary special measures to accelerate women's participation at the decision-making level in companies that are not covered by the law; [...]*

2. International Labour Organisation

93 The CEACR has made the following statements concerning the respondent State in relation to the following Conventions:

a) **Convention No. 100**

Direct Request (2013)⁵⁴

Gender pay gap. The Committee notes that, according to the summary of the annual report for 2012 published by the Institute for the Equality of Women and Men (IEFH), the wage gap based on the gross hourly wages of all workers in all sectors was 9 per cent in 2008, as against 22 per cent when based on gross annual earnings. Moreover, according to the report, the wage gap is considerably larger when "extra-legal benefits" (supplementary pension paid by the employer, allowance for travel between home and work, share in the capital of the enterprise, etc.) are taken

⁵⁴ adopted 2012, published 102nd ILC session.

into account, as women have less opportunity to benefit from such advantages and, when they do, are paid much less. *The Committee asks the Government to take steps to allow men and women to benefit on an equal footing from the advantages beyond the basic wage and which are paid directly or indirectly, in cash or in kind, by the employer by virtue of their employment. Moreover, since the Government's report contains no information on the subject, the Committee once again asks the Government to provide information on the measures taken to address the underlying causes of the wage gap between men and women, especially occupational segregation in both vocational guidance and vocational training and placement services and the classification of functions in economic sectors and enterprises, following the recommendation formulated by the IEFH in its 2012 report on the wage gap. [...]*

Enforcement. The Committee notes that, according to information provided by the Government, the number of complaints of discrimination dealt with by the IEFH is quite small (seven cases in 2010). *The Committee asks the Government to provide information on the number, nature and outcome of the complaints dealt with by the IEFH, the labour inspectorate and the courts, with details of the penalties imposed, the compensation granted and any other steps taken to remedy the inequalities identified. The Government is also requested to provide information on activities carried out among workers, employers and their organizations to promote awareness of the principle of equal remuneration for men and women for work of equal value and to inform them of the available channels for lodging complaints.*

b) *Convention No. 111*

Observation (2013)⁵⁵

Measures to address the gender wage gap. New legislation. The Committee notes with interest the adoption of the Act of 22 April 2012, the aim of which is to tackle the wage gap between men and women. The Act provides for the following: an obligation for enterprises with more than three employees to disaggregate by gender the data to be included in the social balance sheet; an obligation to negotiate measures to tackle the wage gap at inter-occupational and sectoral levels; and the organization of mandatory consultation in enterprises with 50 employees or more with a view to producing a "gender-neutral remuneration policy". This requires a detailed analysis every two years of the structure of remuneration in the enterprise so as to establish, if the staff representatives deem it necessary, an action plan setting out specific objectives indicating the areas they are to cover and the instruments for obtaining them, a deadline for implementation and a system for monitoring it. The Act also provides for the possibility in enterprises with 50 employees or more of appointing a mediator to assist the employer and the workers in applying the measures to tackle the wage gap and to hear workers' grievances concerning wage inequality. *The Committee asks the Government to provide information on the application of the Act of 22 April 2012 in practice, at sectoral and enterprise level, including any implementing texts and provide details on the appointment of mediators and the outcomes achieved, and on any difficulties encountered in giving effect to the Act.*

Articles 2(2) and 3 of the Convention. Collective agreements. Job evaluation. With regard to the implementation of collective agreement No. 25ter of 9 July 2008, which provides that all sectors and enterprises must review and adapt their job classification systems, the Committee notes the information from the Government that certain joint committees have reviewed their job classifications. The Committee notes in this connection that according to the Act of 22 April 2012, the social partners' inter-occupational agreement and sectoral collective agreements must contain measures to tackle the gender wage gap, in particular by making job classification systems gender neutral. Furthermore, the job appraisal classification systems developed in joint committees must be submitted to the General Directorate of Collective Labour Relations of the Federal Public Service Employment, Labour and Social Dialogue for scrutiny of the gender neutrality of the systems. This is particularly so in the light of collective agreement No. 25 of 15 October 1975 on equal remuneration for men and women workers, and the checklist "Gender neutrality in job classification and evaluation", produced by the Institute for the Equality of Women and Men (IEFH). If this scrutiny brings to light any elements that are not gender neutral, the joint committee concerned draws up a plan of action to remove them within two years. *The Committee asks the Government to provide information on the following points:*

⁵⁵ adopted 2012, published 102nd ILC session.

(i) the conclusion of collective agreements and the content of the inter-occupational agreement to tackle the wage gap between men and women;

(ii) details of the monitoring of job classifications by joint committees and the adoption of gender-neutral job classifications, and the number and content of any action plans produced by joint committees;

(iii) the dissemination and the use made in practice of the tools developed for enterprises and the social partners, such as the job classification guide and the checklist "Gender neutrality in job classification and evaluation" produced by the IEFH, and the measures taken to provide training for the persons concerned.

The Committee is raising other points in a request addressed directly to the Government.

Direct Request (2013)⁵⁶

[...] *Articles 2 and 3. Promoting gender equality in employment and occupation.* Occupational segregation. The Committee notes that the figures in the 2012 report on the "**Gender pay gap in Belgium**" published by the IEFH show that considerable gender segregation persists in the labour market, both horizontal (men and women are concentrated in different occupations and sectors of activity) and **vertical (women are under-represented in managerial positions)**. As regards vertical occupational segregation, the Committee notes the information supplied by the Government on the "Top Skills" project regarding the increase in the number of women applying for managerial posts and the steps taken by participants to improve their chances of obtaining managerial posts. It also notes the promulgation on 28 July 2011 of an Act establishing a quota of one third for women on the executive boards of public enterprises (as from the entry into force of the Act) and of companies listed on the stock exchange (within a period of six to eight years). The Committee welcomes the adoption on 2 June 2012 of the Royal Order modifying the Royal Order of 2 October 1937 establishing the status of state employees, which aims at promoting the participation of women to high level posts in the civil service. *The Committee requests the Government to supply information on the specific measures taken or foreseen to improve the participation rate of women in economic sectors and occupations in which they are under-represented, particularly their participation in a wider range of vocational training courses giving them access in particular to jobs that offer possibilities of advancement and promotion. The Government is also requested to continue to supply information, including statistics, on the results achieved in the context of initiatives aimed at improving the rate of participation of women in managerial posts in the federal administration, and to send information on the implementation and impact of the Act of 28 July 2011 stipulating that at least one third of the members of executive boards of public enterprises and of companies listed on the stock exchange must be of the same sex. [...]*

Enforcement of anti-discrimination legislation and complaints. The Committee notes the information provided by the Government on the complaints received by the "labour legislation monitoring inspectorate" and on inspections of private employment agencies made by the Flemish labour inspectorate. The Committee also notes the signing of a cooperation agreement "labour legislation monitoring inspectorate" on 22 October 2010 between the CECLR and the labour inspectorate with a view to improving the handling of complaints concerning discrimination at work, especially through information exchange, inquiries, training of inspectors and awareness raising. *The Committee requests the Government to continue providing information on the number and nature of the complaints of discrimination in employment and occupation received by the CECLR, the IEFH, the "labour legislation monitoring inspectorate", and the labour inspectorates of Flanders, Wallonia and Brussels, with an indication of the follow-up action taken (warnings, penalties, etc.), and also information on reports of infringements of the anti-discrimination legislation. The Committee further requests the Government to provide information on the results of the cooperation between the CECLR and the "labour legislation monitoring inspectorate" and also on any other collaboration planned between the labour inspection departments and the specialized anti-discrimination bodies. The Government is also requested to supply information on any training given to labour inspectors to improve their capacity to detect and address discrimination in employment and occupation.*

⁵⁶ adopted 2012, published 102nd ILC session.

3. Council of Europe

94 In examining the situation in Belgium, the ECSR has come to the following (recent) 'Conclusions':

a) *Article 4§3*

Conclusions 2014

The Committee takes note of the information contained in the report submitted by Belgium.

Legal basis of equal pay

The Committee observed (Conclusions 2012 on Article 20, Belgium) that the main instrument for enforcing the principle of equal pay is Collective Agreement No. 25 on equal pay for male and female employees, adopted on 15 October 1975 and made generally binding by a Royal Decree of 9 December 1975. The provision was modified in 2008 in order to ensure that the equality principle is reflected in all elements and conditions of remuneration, and also in the system for performance evaluations. It requires different sectors and enterprises to take the necessary corrective measures in order to ensure a gender neutral evaluation and classification of jobs and functions.

The Committee further notes from the report that Belgium has been particularly active in recent years in the fight against the pay gap and took several initiatives at different levels. In 2008, a collective labour agreement was reached providing that equal pay must be ensured in all aspects and conditions of remuneration, including job evaluation systems.

On 8 March 2012, Parliament passed a law to tackle the pay gap between women and men. This law requires that control measures against the wage gap be negotiated at three levels: interprofessional, sectoral and company. This multifaceted approach was dictated by the complexity of the wage gap which in itself is a multidimensional phenomenon.

Guarantees of enforcement and judicial safeguards

The Committee recalls that legislation must provide effective protection against any retaliatory measures taken by the employer against a worker demanding the benefit of the right to equal pay (Statement of Interpretation on Article 20, Conclusions XIII-5 (1997)). In particular, the latter requirement includes an obligation to prohibit dismissal in such cases, and to provide for the reinstatement of the worker in cases of unlawful dismissals. In exceptional cases where reinstatement is not possible or is not desired by the worker, financial compensation instead may be acceptable, but only if it is sufficient to deter the employer and to compensate the worker.

The Committee further recalls that when the dismissal is the consequence of a worker's reclamation about equal wages, the employee should be able to file a complaint for unfair dismissal. In this case, the employer must reintegrate the employee in the same or a similar post. If this reinstatement is not possible, he has to pay compensation, which must be sufficient to compensate the worker and to deter the employer. Courts have the competence to determine the amount of this compensation, not the legislator (Conclusions XIX-3, Germany).

The Committee asks what rules apply in this regard.

Methods of comparison and other measures

According to the report, the pay gap in Belgium is one of the lowest in Europe (10% where pay is calculated on an hourly basis), and has been decreasing over the last 5 years. According to the report, this is attributable to the fact that salaries are fixed by collective agreements.

Following the conclusion of a collective labour agreement in 2008, all joint commissions were requested to produce a report on the wage gap. Out of 62 responses, the majority found that the sectoral classifications were gender neutral and 13 indicated that they had reviewed this issue again, or intended to do so.

In 2013, the Institute for the Equality of Women and Men also launched a new website making available official figures which include trends in the wage gap. This website is regularly updated and also provides a tool that allows companies to calculate their own wage gap.

The Committee further notes that the Law of 22 April 2012 on reducing the gender pay gap obliges the social partners to include the equal pay issue in the negotiations which take place every two years at interprofessional level. The enterprises employing more than 50 workers have to put together a report of wage structure in the enterprise, every two years. The objective is to determine whether the enterprise follows a gender neutral remuneration policy.

The Committee notes from Eurostat that in 2012 the unadjusted pay gap stood at 10%.

As regards equal pay comparisons, the Committee notes from the supplementary information provided by the Government that the minimum wages are fixed by sectoral collective agreements. Therefore, pay comparisons are possible between enterprises of the same sector.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 4§3 of the Charter.

b) Article 20

Conclusions 2016

The Committee takes note of the information contained in the report submitted by Belgium.

Equal rights

[...] The report provides up-to-date information on the legislation guaranteeing gender equality at federal level and Flemish government level. The Committee asks that the next report provide up-to-date information on the applicable legislation on gender equality in all regions. It also asks clarification on the relationship between the federal legislation and the legislation applicable at the level of regions.

At federal level, the law on combating **the gender pay gap** was adopted on 22 April 2012 and requires measures to combat the wage gap to be negotiated at inter-occupational, sectoral and company level.

According to the report, the law requires the social partners to address the issue of wage equality in the inter-occupational negotiations which are held every two years. At sectoral level, the law provides for measures such as (i) a requirement to negotiate measures to bridge the wage gap and (ii) reviews of sectoral job profile classifications to ensure that they are gender-neutral.

The law also provides that every two years, companies with more than 50 workers must conduct a survey of their company wage structure with the aim of ensuring that their wage policy is gender-neutral. The report states that on the proposal of the works council or, failing that, the trade union delegation, employers may appoint a mediator from among the staff. This person's role is to support the company in drafting its report and action plan, to hear workers who consider themselves victims of wage inequality and to seek solutions through informal mediation with the consent of the worker concerned.

On the subject of legal remedies, the report states that the Flemish Government has chosen to set up an independent body to promote equal treatment and the elimination of discrimination on the ground of sex (including pregnancy, childbirth and maternity), gender identity and gender expression under the auspices of the Flemish Ombudsperson. As a result, the Flemish Government has not signed a co-operation agreement with the Institute for the Equality of Women and Men, as the other federated entities have.

The Flemish Ombudsperson's Office carries out similar tasks to those of an independent equality body, namely investigating and handling complaints through conciliation, drawing up proposals and recommendations and publishing reports. The office has an independent and impartial status endorsed by parliament. Its statutes, terms of reference and working methods were outlined in a new parliamentary law of 8 July 2015 in keeping with its tasks as a body which monitors gender equality.

The Committee asks for detailed information in the next report on the work of the Flemish Ombudsperson and the Institute for the Equality of Women and Men with regard to complaints concerning discrimination on the ground of sex and on court decisions on this matter in discrimination cases.

The Committee would also point out that in the event of dismissal in retaliation for a complaint about equal wages, employees should be able to file a complaint for unlawful dismissal. In such cases employers must reinstate their employees in their post or a similar one. If reinstatement is impossible, the employer must pay compensation, which must be sufficient to compensate the worker and to deter the employer. Compensation amounts should be determined by the courts, not by legislation (Conclusions XIX-3, Germany). The Committee asks what rules apply in this sphere in Belgium and requests specific information on the amounts of compensation awarded in cases of discrimination based on sex.

In its previous conclusion the Committee asked whether it was possible to seek comparative information from other employers to determine whether equal pay was being awarded for work of equal value (Conclusions 2012). [...]

Equal opportunities

[...] The Committee notes that the 2015 report by the Institute for the Equality of Women and Men, prepared in co-operation with the Ministry of Employment, calculates the wage gap based on hourly rates to be 9%, which is a 1% decrease compared to 2014. This is a considerably smaller gap than the European average, which is 16.2%. The Committee asks for information in the next report on the employment rate for women and the wage gap between the sexes over the reference period.

The report provides information on the measures taken in the regions to promote gender equality.[...]

As to the German-speaking Community, the report states that a Decree on combating certain forms of discrimination was adopted on 19 March 2012. Its aim is to establish a general framework for the fight against discrimination on grounds including “sex and related criteria such as pregnancy, childbirth and maternity, or transsexualism”. The Committee asks for information in the next report on the implementation of this Decree, particularly information on complaints and cases relating to discrimination on the ground of sex in matters of employment brought before the courts.

The Committee asks for updated information in the next report on the position of women in employment and training and, in particular, the **presence of women in management and decision-making posts**. It also asks to be kept informed of any positive measure taken to promote gender equality in employment.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 20 of the Charter.

B. Further pertinent material on the situation in law and practice

1. Concerning the Gender pay gap

- 95 From different sources, including all the conclusions and/or observations of the above-mentioned bodies, the main regulatory instruments in relation to discrimination on the grounds of sex in general and equal pay for work of equal value in particular - and without being exhaustive - are the following:
- 96 The legal basis for the right to equal pay in the private sector and the public sector is to be found in the law of 7 May 1999 on equal treatment for men and women in respect of working conditions, access to self-employment and complementary social security schemes – the law replaces Chapter V of the law of 4 August 1978. The 1999 law prohibits direct and indirect

discrimination in respect of working conditions, including pay and job classification (Sections 12 and 13). Under this legislation, remuneration includes, in addition to salary, "tips and gratuities, fringe benefits that can be evaluated in monetary terms, allowances such as holiday allowances and benefits under non-statutory complementary social security schemes".

97 Moreover, under the legislation, discriminatory provisions are null and void, whether they are to be found in laws, regulations, administrative rules, collective agreements, individual contracts, in-house rules or elsewhere.

98 The following legislation (including decrees) provide for specific aspects of combating the gender pay gap:

- *Act of 22 April 2012* aimed at combating the wage gap between men and women, as amended by the Act of 12 July 2013,
- *Decree of the Flemish Authorities of 10 July 2008* establishing the framework for the Flemish policy of equality of opportunity and treatment covers the following grounds of discrimination: **sex**, age, sexual orientation, civil status, birth, wealth, religious or philosophical beliefs, political views, language, state of health, disability, physical or genetic characteristics, social position, nationality, race, skin colour, national or ethnic origin or extraction,
- *Decree of the French Community of 12 December 2008* to combat certain forms of discrimination, repealing the Decree of 19 May 2004, which prohibits any discrimination on grounds of nationality, supposed race, skin colour, national or ethnic extraction or origin, age, sexual orientation, religious or philosophical beliefs, disability, **sex** and the related criteria of pregnancy, confinement and maternity, as well as sex change, civil status, birth, wealth, political views, language, current or future state of health, a physical or genetic characteristic or social origin,
- *Decree of the German-speaking Community* on combating certain forms of discrimination was of 19 March 2012 the aim of which is to establish a general framework for the fight against discrimination on grounds including **sex** and related criteria such as pregnancy, childbirth and maternity, or transsexualism.

99 The following collective agreements provide for specific aspects of combating the gender pay gap:

- *Collective agreement No. 25ter of 9 July 2008*, which revises collective agreement No. 25 of 15 October 1975 on equal remuneration between male and female workers and was made compulsory by Royal Order of 14 October 2008, explicitly provides that all sectors and enterprises must review and adapt their **job classification systems** (choice of criteria, weighting of these criteria, system of converting their evaluation values into remuneration components), where they are not gender neutral. To note is that the collective agreement only applies to the private sector.

100 However, despite this existing regulatory framework, (recent) statistics show that there still exists a gender wage gap in Belgium:

- According to the European Commission, based on Eurostat figures of 2014, in Belgium, the gender pay gap stands at 6.6 %⁵⁷ (the average gender pay gap in the EU is 16.7 %) and the gender overall earnings gap in Belgium stands at 31.2 % (the average gender overall earnings gap in the EU is 39.8 %).⁵⁸

⁵⁷ According to the Eurostat figures for 2015, this stands now at 6.5%. (See also table in Part I.B.1)

⁵⁸ European Commission gender pay gap factsheet 2016 – Belgium, http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/2016/gpg_country_factsheet_be_2016_en.pdf

2. Concerning the (under-)representation in decision-making positions within private companies

101 From different sources, including all the conclusions and/or observations of the above-mentioned bodies, the main regulatory instruments in relation to representation of women in decision-making positions in private and public enterprises/administrations - and without being exhaustive - are the following:

- The Act of 28 July 2011 aimed at guaranteeing the representation of women on the boards of directors of public enterprises and requires boards of state-owned and listed companies to comprise at least one third of each gender by 2012 (state-owned companies), 2017 (listed companies) or 2019 (listed SMEs). The quota applies to the board as a whole, considering executives and non-executives together. Any appointments after these dates which do not meet the quota requirement will be considered void.⁵⁹
- Royal order of 2 June 2012 promoting the presence of women in high-level posts in the public service.
- The Belgian Corporate Governance Code, which is a comply-or explain recommendations, recommends that the boards composition should be determined on the basis of gender diversity.

102 However, and despite Belgium is one of the few European countries providing a regulatory framework, the following figures show that there is still a considerable under-representation of women existing in practice:

- In April 2016, the average share of women on the boards of the largest publicly listed companies registered in the EU-28 Member States reached 23.3 %. For Belgium, the figure is above the this average and stands at 26.6%, which could be largely accredited to the existence of a regulatory framework.⁶⁰ However, despite a positive evolution, a study on the effects of the quota law by the Belgian Institute for the Equality of Women published in 2016, revealed that representation of women in boards was still below the targeted 33%.⁶¹

C. Application of the legal principles

103 In Part I the relevant 'International law and material' as well as 'Further pertinent material' has been described in detail. On this basis, the (legal) 'Principles' which govern the framework for the assessment of this complaint have been developed. Against this background, the ETUC assesses situation in Belgium as follows.

104 From the outset, it is noted that the ECSR has not found a violation in its Conclusions concerning the relevant Articles but, nevertheless, asked certain questions (as quoted above). However, this situation does not exclude that - after a more detailed examination - the ECSR might come to a different assessment. In the view of the ETUC this would be necessary.

⁵⁹ To note also is that any non-compliance with the quota is sanction by the suspension of benefits (financial or otherwise) for members of the board of directors.

⁶⁰ European Commission, [Factsheet July 2016. Gender balance on corporate boards - Europe is cracking the glass ceiling](http://ec.europa.eu/justice/gender-equality/files/gender_balance_decision_making/1607_factsheet_final_wob_data_en.pdf); http://ec.europa.eu/justice/gender-equality/files/gender_balance_decision_making/1607_factsheet_final_wob_data_en.pdf

⁶¹ [http://igvm-iefh.belgium.be/fr/publications/premier bilan de la loi relative aux quotas de genre dans les conseils d'administration](http://igvm-iefh.belgium.be/fr/publications/premier_bilan_de_la_loi_relative_aux_quotas_de_genre_dans_les_conseils_dadministration) (available in Dutch and French)

1. Concerning the Gender pay gap

105 In general terms, it is clear that the Gender pay gap remains above 0%. This is the case for decades. This situation is not at all compatible with the principle of equal pay for work of equal value, even less so when taking into account the requirement of ‘effectiveness’ enshrined in the introductory words of the relevant articles.

106 More specifically and according to the ECSR’s case law, the Gender pay gap has both, a substantial and procedural dimension. This is confirmed by the international law approaches as developed in particular by the CESCR, CEDAW and CEACR (see quotations in Part I). Not fulfilling one of the requirements in respect of these two dimensions leads to a violation.

a) *Substance*

107 From a substantive perspective, there are at least the following elements which should (at least in combination) lead to a violation of Article 20 ESC:

- Statistical evidence (see above para. 100) shows that there is still a gender pay gap. Even if it might have been reduced during the last time **any** Gender pay **gap** does not fulfil the non-discrimination requirement based on sex.
- The official statistics are still excluding **small (micro) seized enterprises**. It is therefore most probable that the Gender pay gap is even higher in these enterprises.

108 From the point of view of the ETUC this illustrates that there is a violation of Article 20 of the Charter from the substantive perspective.

b) *Procedure*

109 Moreover, from a procedural perspective, it appears evident that there is also a violation as the result of eliminating the gender pay gap is not achieved. In particular, it is obvious that the general framework for the supervision of the satisfactory application of the principle of equal pay is insufficient:

- in principle, the **labour inspectorate** should (be able to) ensure the satisfactory application of this important principle; despite the fact that the respondent State has ratified ILO Convention No. 81 on labour inspection it is obvious that this is not the case (in particular taking into account the nearly total lack of supervision in the SMEs);
- all **other means** to ensure the satisfactory application of the principle of equal value haven proven insufficient.

110 From the point of view of the ETUC this illustrates that there is a violation of Article 20 of the Charter also from the procedural perspective.

2. Concerning the (under-)representation in decision-making positions within private companies

111 Concerning the (under-)representation in decision-making positions within private companies this problem has only been addressed in more recent years. As developed in Part I.B.2. this is covered by Article 20 of the Charter. If there is not sufficiently clear and wide-ranging legislation and/or if the practice shows that this equality principle is not implemented sufficiently this leads from the point of view of the ETUC to finding a violation of Article 20 of the Charter.

a) *Substance*

112 Statistical evidence (see above para. 102 **Error! Reference source not found.**) shows that there is still an under-representation of women in decision-making bodies within private companies. Even if there might be relevant legislation and even if the degree of representation of women would have increased it is not to be disputed that women are not sufficiently represented within these bodies.

113 From the point of view of the ETUC this illustrates that there is a violation of Article 20 of the Charter from the substantive perspective.

b) *Procedure*

114 It would appear that there are no effective legislative measures in order to ensure the sufficient representation of women in decisions-making bodies within private enterprises. In practice, there is even less supervision and enforcement.

115 From the point of view of the ETUC this illustrates that there is a violation of Article 20 of the Charter also from the procedural perspective.

III. Conclusions

A. *Substantive conclusions*

116 This collective complaint - as all the other 14 complaints concerning the same issues - is of great importance for the full realisation of the very fundamental right of women to non-discrimination. In particular, the continuous denial of equal pay for work of equal value is one of the fundamental problems which still remain in European societies.

117 From the ETUC's point of view it is necessary to come to the following conclusions of a violation of Article 20 of the Charter in relation to

- the Gender pay gap in its substantive (see above II.C.1.a)) and procedural dimensions (see above II.C.1.b)) as well as in relation to
- the under-representation of women in decision-making bodies also in its substantive (see above II.C.2.a)) and procedural (see above II.C.2.b)) dimensions.

118 The Committee might thereby also in particular consider to take account of the recommendations/observations/concerns expressed by the international bodies referred to in II.A. addressed to the respondent state.

B. *Procedural request*

119 Given the high complexity of this case, in particular in relation to possible justifications which might be provided during the further procedure by Governments or others, there will most probably be specific issues which are not yet dealt with in these ETUC Observations.

120 Accordingly, and referring to the example in the case of *MATICA v. Croatia*, the ETUC would be very grateful if it were granted the opportunity to submit additional information following in particular the observations by the Government concerned but also any other relevant observations in this respect.

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