



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

31 October 2017

Case Document No. 5

University Women of Europe (UWE) v. Cyprus
Complaint No. 127/2016

SUBMISSIONS BY THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 13 October 2017

RESPONSE OF THE REPUBLIC OF CYPRUS
ON THE MERITS OF THE COLLECTIVE COMPLAINT
MINISTRY OF LABOUR, WELFARE AND SOCIAL INSURANCE

University Women of Europe (UWE) v. Cyprus
Collective Complaint N.127/2016

I. General remarks

This document is the response of the Republic of Cyprus on the Collective Complaint N.127/2016 submitted by University Women of Europe (UWE) against Cyprus, regarding the implementation of Articles 1, 4 (§5), 20 and E of the Social Charter, relating mainly to the equality in pay between men and women, and secondly other closely-related gender equality issues. Before commenting on the merits of the complaint, and without disputing the admissibility of the complaint, the Respondent is compelled to make some general remarks, drawing the attention of the European Committee of Social Rights to the following:

- (a) Cyprus has not ratified Article 4§3 of the Charter, and therefore the Respondent does not consider the complaint applicable to this specific paragraph
- (b) No observations or comments will be presented in this document as regards Article 4§5, since its content is irrelevant to the content of the complaint, which addresses equality issues between men and women. According to the Committee's interpretation of the different provisions of the Revised Social Charter¹, "Article 4§5 guarantees workers the right to their wage being subject to deductions only in circumstances which are well-defined in a legal instrument, (law, regulation, collective agreement or arbitration award) and subject to reasonable limits.". This and more interpretations of this Article make it clear, that no gender issues fall within its scope, and since the collective complaints system focuses not on examining the general implementation of provisions of the Charter, but rather more specific situations, reporting on Article 4 §5 would automatically cancel out the complaint's focus on gender equality.
- (c) Article 4 of the Additional Protocol provides that an applicant organisation must indicate *in what respect* a State has not ensured the satisfactory application of the Charter. Against this provision, instead of identifying the points and extend of the alleged incompliance with the Charter and articulating arguments, the Complainant makes general and unsubstantiated statements all throughout the complaint (i.e "Combating unequal pay for the same work does not appear to be its priority. Nor to make it so, is a political choice."). Having read the States' observations on admissibility and the Complainant's replies to these observations, one cannot help but observe the uniformity

¹ Digest of the Case Law of the European Committee of Social Rights, Council of Europe, 2008

of the Complainant’s allegations of violations, and the lack of specific arguments on each State’s case.

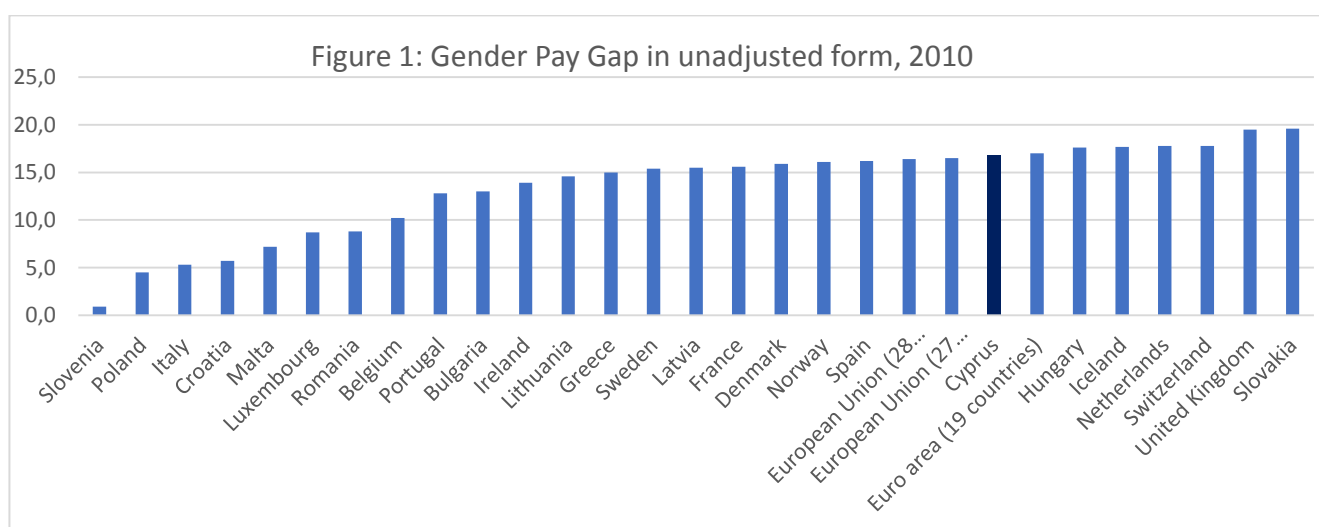
- (d) The Complainant draws extensively on international studies and reports, the majority of which are of a general nature and do not specifically relate or refer to Cyprus. Despite the generality of their results, the Complainant refers to these studies and presents them as clear evidence of Cyprus’ violation of the provisions of the Charter, when one would expect at least one relevant argument to be made before the Complainant alleges violation.
- (e) Data presented and being commented on, is out-dated and no longer reflects the current situation, neither does it take into consideration important developments made, although more recent data is publicly available².
- (f) The style and content of the complaint is quite vague and lacks any kind of structure, that would assist the respondent State to identify all the points needed to be addressed, posing difficulties in the submission of a response.

II. Response on the merits of the complaint

Notwithstanding the fact that no specific points of violation of the Charter are being clearly identified in the complaint, the Republic of Cyprus will attempt to respond to as many of the issues arising or implied in the report.

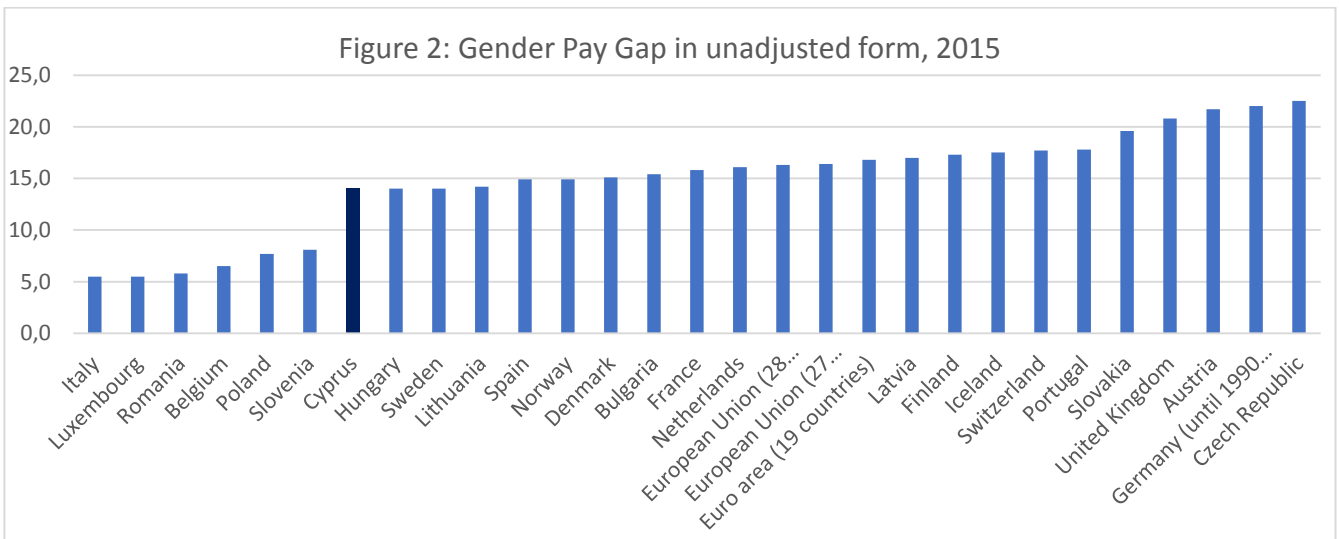
1. Gender Pay Gap

Commencing by analysing the current situation and presenting Cyprus’ performance as regards the gender pay gap per se, it is abundantly clear that significant progress has been made. The gap has decreased significantly since 2007 (22%) and keeps following a downward trend reaching a percentage as low as 14% in 2015. With a percentage higher than the EU average in 2010, Cyprus currently ranks 7th amongst the countries with the lowest rate, and has achieved a rate significantly below the EU average (16.4%) (Figures³ 1 and 2).

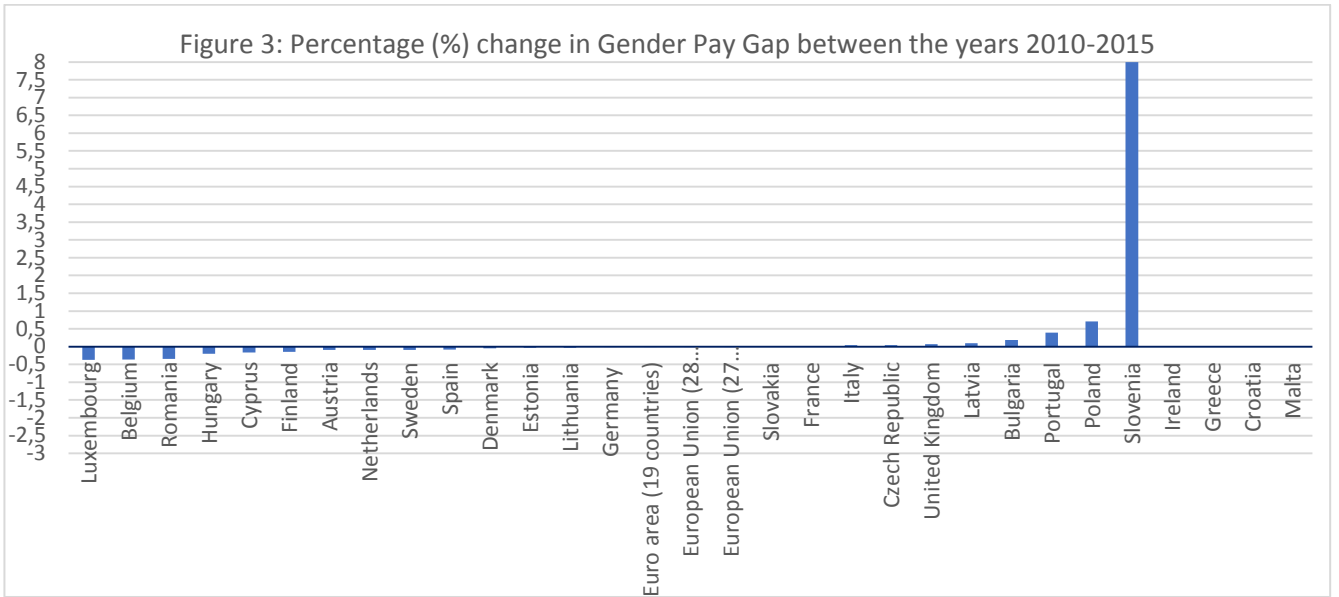


² i.e (a) Statistics of 2010 are mentioned when data for 2015 is available. (b) Conclusions of the European Committee of Social Rights on Cyprus of 2008 are mentioned when conclusions of 2012 are available.

³ Gender pay gap in unadjusted form, Eurostat, September 2017



It should also be noted that Cyprus ranks 5th amongst the States having accomplished the highest percentage decrease in the gender pay gap during the period 2010-2015, despite the economic crisis and having to implement a strict economic adjustment programme during 2013-2016 (Figure 3).



Responding to the Complainant’s comment about consistent violation as regards women’s pay both in the private and in the public sector (although lacking a specific reference of such a conclusion), it should be noted that the gender pay gap for 2014 of publicly controlled enterprises is actually negative and stands at -0.9%⁴, which means that in this sector men’s average gross hourly earnings are less than women’s.

2. Adequacy of Legislation and the Labour Inspectorate

The Complainant comments that although there have been numerous legal reforms over the past decades, Cyprus is still far from achieving equal pay for women and men.

⁴ Covering enterprises with one or more employees and economic activities Nace Rev.2 B to S including Nace O, Source: Structure of Earnings Survey 2014, Statistical Service of Cyprus

The Republic of Cyprus notes that Legislation on Equal Pay between Men and Women for the Same Work or for Work to which Equal Value is Attributed (N.177(1)/2002) and on the Protection of Wages (N.35(1)/2007), have been in place for several years. It is noted that the law has very thorough provisions and there is no limit as regards the level of compensation, that the ones violating its provisions, may be liable for. Hence, the right to work for both men and women with equal terms is guaranteed through the relevant legislation.

Since then, several appropriate amendments were put in force, one for granting the Ombudsman the authority to investigate relevant complaints, others for ensuring harmonization with EU Directive 2006/54/EC and one for expanding the possibility of comparison of jobs outside the company directly concerned, in unequal pay claims. The last one, was the Republic's response to the Committee's own conclusion of Cyprus not being in conformity with Article 20 of the Charter. It has to be noted that the Complainant raises again the issue of non-conformity regarding the comparison of jobs⁵, ignoring the fact that the Committee in its 2012 report already took note of the Republic's corrective actions and found Cyprus in conformity with Article 20 of the Charter⁶.

The UWE further alleges that by political choice, Cyprus has chosen not to make the inspectorate responsible for monitoring breaches of the principle of equal pay (p.18 of the complaint). This conclusion is totally unsubstantiated, since the reports presented as references on this matter by the Complainant, refer solely to the work of the Health and Safety Inspectorate, which handles legislation related only to technical health and safety issues, where as the Labour Relations Inspectorate which is the competent mechanism for monitoring the enforcement of the labour legislation, including equal pay, is not even mentioned. In fact, the Labour Relations Inspectorate is the competent mechanism for inspecting the enforcement of more than 25 legislations involving terms and conditions of employment i.e. protection of wages, information of employees, organisation of working time, part-time and fixed-term work, equal pay, parental leave, collective redundancies, transfer of undertakings, works councils and others.

The Complainant comments that a female employee who suspects being a victim of unequal pay, cannot prove it without the intervention of the Labour Inspectorate as she has no access to contracts and pay slips and arbitrarily concludes that Cyprus is violating the Charter, because these specific duties of the Inspectorate are actually not a priority to it⁷. Without being sure as to whether the Complainant is being critical of the employees' non-access to each other's contracts and pay slips, or the lack of adequate powers granted to inspectors for conducting an investigation, the Republic feels compelled to answer both.

Granting an employee access to a colleague's contract or pay slip, would most likely be in violation of the national Legislation and the relevant EU Directive 95/46/EC on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of such Data. It has to be noted that even the suggested measures in the European Commission Recommendation 2014/124/EU on "strengthening the principle of equal pay between men and women through transparency", are confined to the obligation of providing, upon request, information on pay levels by gender, the obligation of issuing average/median pay level reports, pay auditing etc.

⁵ UWE Reply to the Observations on admissibility

⁶ European Social Charter, Conclusions on Cyprus 2012, European Committee of Social Rights

⁷ UWE Reply to the Observations on admissibility

As far as the powers and duties of Inspectors are concerned, the Legislation on Equal Pay between Men and Women clearly provides that Inspectors appointed by the Minister of Labour, Welfare and Social Insurance, may either carry out an ex officio investigation or examine complaints for infringement of the provisions of the Law. For this purpose, Article 12 of the Equal Pay between Men and Women for the Same Work or for Work to Which Equal Value is Attributed Law 2002-2014, provides that inspectors have the necessary powers in order to enter any premises aiming at inspecting and collecting information, documents and conducting interrogations, including the contribution of any public authority, aiming at effectively carrying out their duties. These duties are carried out during every ex officio investigation and during the examination of every complain, the yearly target for ex officio investigations being around 200.

The Legislation further provides that employers are obliged to promote the equal pay principle in a planned and systematic way in the workplace, and in this direction, are encouraged to provide at least once a year, or at intervals agreed between them and their employees' representatives, with appropriate information on equal pay between men and women. Such information may include an overview of the percentages of men and women at different levels of the organisation; their pay and pay differentials; and possible measures to improve the situation in cooperation with employees' representatives.

The UWE lastly concludes that employees in companies do not have representatives for gender-related matters (p.18 of the complaint). The Republic of Cyprus notes that according to the provisions of the Legislation on equal pay, social partners are obliged to engage in social dialogue with a view to fostering equal pay between men and women, through the monitoring, for example, of practices in the workplace, collective agreements, codes of conduct, by encouraging research or exchange of experience and good practice, and by concluding agreements laying down antidiscrimination rules as regards pay, in line with the provisions of the Legislation. Because of the liberal and voluntary nature of the Cyprus industrial relations system, measures for fulfilling the above-mentioned obligation have not been strictly defined in the Legislation, however, appointing representatives for gender-related matters, could as well be one of them. Despite not being enforced by law, all government departments have appointed Equality Officers/representatives for handling gender equality issues, while in practice companies also appoint Equality Officers by choice.

Furthermore, the Law on Equal Treatment of Men and Women in Employment and Vocational Training (N. 205(I)/2002) provides for the equal treatment for men and women in respect to access to employment and employment practices henceforth, access to vocational education and training as well as professional development and the conditions and preconditions of dismissal. The Law also provides for the protection of employees against sexual harassment and harassment.

3. Judicial and extra-judicial protection, and burden of proof

The Complainant notes that due to the lack of availability of data to the employees, the burden of proof lies with the weakest part (victim), and arbitrarily concludes that in most cases, due to the lack of proof, action by the authorities is insufficient causing the situation of inequality to persist, in violation of the Charter⁸. The Republic of Cyprus deems these allegations unsubstantiated, since inspectors have adequate powers to thoroughly investigate any case,

⁸ UWE Reply to the Observations on admissibility

through searching for and acquiring adequate evidence to prove a violation. In specific, according to Article 12(e) of the Equal Pay between Men and Women Legislation 2002-2014, every Inspector has the powers to require from any person, that he/she has a reasonable cause to believe may be able to provide information or clarifications, in relation to any inspection regarding the application of the provisions of the Law, to answer to relevant questions, and require from such person to sign a statement that his/her answers are true. Moreover, and according to the same Article, the inspector has the powers to require the presentation of any book, record, certificate or any other document or information that he/she may deem necessary to examine, for the purpose of investigating the application of the provisions of the Law, inspect them, examine them and take copies thereof either in whole or partly.

Furthermore, the Legislation itself provides for the reversal of the burden of proof, in both judicial and extra-judicial proceedings. Specifically, the Legislation provides that in any judicial proceedings (except for criminal proceedings) and provided that the plaintiff who alleges to have been prejudiced by the contravention of the provisions of the Legislation, presents real facts which substantiate the contravention, the Court shall oblige his adverse party to prove that there has been no contravention of the Law. As regards the extra-judicial protection, the Legislation provides that when a complaint is submitted to the Ombudsman, and given that the complainant presents real facts which substantiate the contravention, the Ombudsman shall oblige the person against whom the complaint is directed to prove that there has been no contravention of the Law.

The Claimant further alleges that women employees are at considerable risk of being dismissed, if they demand equal pay for equal work. (p.19 of the complaint). The Government invites the claimant to provide further evidence on this point. It should be noted that the Legislation specifically provides that no person shall be dismissed or subjected to less favourable treatment by his/her employer for having submitted a complaint or contributed to the prosecution of an offender. An employer who does not comply with the Law is guilty of an offence and liable to a fine.

The Complainant is also critical about the limitation period that applies in the area of pay disputes, which can be somewhat short when a woman has been discriminated against over a long career, meaning that any back pay will be limited, and further comments that it should not be up to women employees to cover the cost of such proceedings out of their personal finances. It is noted that the Labour Disputes Tribunal has jurisdiction to adjudicate disputes arising from various laws, *inter alia*, the *Termination of Employment Law*, L. 24/1967, the *Equal Pay between Men and Women for the Same Work or for Work to Which Equal Value is Attributed Law*, L. 177(I)/2002 and *Equal Treatment in Employment and Work Law*, N. 58(I)/2004. By virtue of Law 24/1967, the jurisdiction of the Labour Disputes Tribunal to award damages arising from the implementation of this law is restricted to earnings of two years. However, article 30 paragraph 2 of the same law provides that the employee may recourse to the District Court to adjudicate the matter and award compensation, if the damages claimed exceed the amount of damages the Labour Disputes Tribunal is allowed to award by virtue of L. 24/1967.

As for Law 177(I)/2002 and Law 58(I)/2004, both laws do not restrict the Labour Disputes Tribunal to award the damages it considers just, taking into account the circumstances of the case. In this respect, the Government directs the Committee to article 22 paragraph 3 of Law 177(I)/2002 which states that the Labor Disputes Tribunal grants just and reasonable compensation, which covers at least all the positive damage, compensation for any non-

pecuniary damage plus legal interest. Similarly, article 12 paragraph 3 of Law 58(I)/2004 provides that the Labour Disputes Tribunal grants just and reasonable compensation which covers at least all the positive damage, plus legal interest.

In addition to the above statutory remedies, it was established by case law in 2001⁹ that violation of human rights is an actionable right which can be pursued in civil courts against those perpetrating the violation, for recovering from them, *inter-alia*, just and reasonable compensation for pecuniary and non-pecuniary damage suffered as a result. The result is, that a person who, is discriminated against, whether directly or indirectly, in the enjoyment of human rights and freedoms guaranteed by the Cyprus Constitution (in Part II of its provisions largely reproducing those of the European Convention of Human Rights) can sue the state or private persons for damages and or other appropriate civil law remedies, for violating his constitutional right (under Article 28, prohibition of discrimination) to enjoy the above rights and freedoms without such discrimination. The Supreme Court also referred to the need to interpret Article 13 of the European Convention on Human Rights to guarantee an effective remedy before a national authority to everyone who claims his Convention rights have been violated. It stated that - "in Cyprus the provisions of Article 13 form part of the domestic law, which safeguards the right to an effective remedy for violation of the rights safeguarded by the Convention (which to a large extent correspond to the rights safeguarded by Part II of the Constitution). Therefore, in addition to the nature of the rights inherent in the concept of judicial protection, and the provisions of Article 35 of the Constitution which give rise to the obligation of judicial protection, Article 13 of the Convention safeguards the right to a remedy concerning all of the fundamental rights which correspond to those protected by the Convention". As far as the complainant's comment on cost of proceedings is concerned, Article 23(2) of Law 205(I)/2002 on Equal Treatment of Men and Women in Employment and Occupation, stipulates that the Equality Committee provides free of charge independent assistance (legal aid) to the victims of discrimination on the grounds of sex covering the costs for legal proceeding, in order for them to present their case before the court and claim damages. The Committee provided legal aid in 16 cases since it has been active.

As regards extra-judicial protection, the Cyprus Employers and Industrialists Federation (OEB), together with other social partners, has undertaken significant initiatives over the years, aiming to achieve real gender equality. This includes reviewing Collective Agreements and eliminating provisions that were agreed to be discriminatory to one sex, undertaking information campaigns and reaching out to employers to make them aware of their obligations, issuing several publications including but not limited to "A Code on the Prevention of Sexual Harassment in the Workplace", "Guide for the Promotion of Equality and Diversity in the Workplace-For Employers" and a "Guide on Work-Life Balance", and carrying out systematic training programs for business representatives.

4. Practical and effective promotion of gender equality as regards pay

The Complainant alleges that Cyprus failed to put rights into practice and make them effective. It furthermore comments that Cyprus has to combat stereotypes and patriarchal attitudes, and is

⁹ Case of Yiallourou v. Evgenios Nicolaou, Civil Appeal No.9931, Supreme Court (full bench) judgment of 8 May 2001

even critical as to the work of the Committee itself, claiming to be astonished to discover that the Committee considers Cyprus in compliance with Article 20 of the Charter.

In addition to the relevant legislation mentioned in paragraph 2 above (N.177(I)/2002 and N.35(I)/2007), which address the issues of wages both in terms of the fair treatment between the two sexes and the extinguishment of discriminatory practices, as well as in terms of protecting wages against unilateral decisions taken, Cyprus has actually implemented a variety of practical measures towards the improvement of the gender pay gap. It is noted that despite having gone through a severe economic crisis, the gender pay gap in Cyprus was reduced and now stands lower than the EU average, according to the latest data by Eurostat.

As a response to a considerably high, at that moment, gender pay gap, the Ministry of Labour, Welfare and Social Insurance assigned in 2006 a study for identifying the root causes of the gender pay gap, presenting a thorough statistical analysis and concluding to concrete measures for tackling the phenomenon. Upon the completion of the study, and after dissemination of the results to the social partners, the Ministry prepared a proposal of measures for practically dealing with the matter. The proposal was approved for co-funding by the European Social Fund, and resulted in a Project of a €2 million budget, under the title “Actions for Reducing the Gender Pay Gap”, which was implemented during the period 2010-2015. It has to be noted that in several studies/reports used as reference by the Complainant, specific measures of the Project are being mentioned¹⁰.

The Project consisted of a broad mix of measures, aiming at eliminating the causes of the gap, and involved interventions in every relevant field, education and occupational counselling, labour law enforcement mechanisms, incentives for companies, exchange of best practise between Member States, training and guidance of social partners, raising public awareness. At least some of the measures are worth mentioning:

- a. Strengthening and upgrading of the inspection mechanism for the enforcement of equality in employment and equal pay legislation: During 2013, officers and inspectors of the Ministry, along with officers from the Ombudsman’s office, followed a detailed training programme of theoretical and practical content, aimed at enhancing their knowledge and skills when handling complaints or conducting inspections involving inequalities in employment and pay. Their training included job evaluation methods. Around 1.000 inspections on the enforcement of equal pay legislation were conducted, upon completion of the training programme, and an annual target for the inspection mechanism on inspections in this field has been in place since then.
- b. Training programmes for careers advice professionals, teachers and parents: During 2013-2015 specialised training programmes were held for almost all primary and secondary teachers, all educational counsellors providing occupational guidance in schools, and almost 3.500 parents of school-kids, with the aim of eliminating stereotypes in education and family life, which result in stereotypes as regards the choice of occupation and eventually leading to occupational segregation (both horizontal and vertical).

¹⁰ Report on equality between women and men, European Commission 2015.
The Gender Pay Gap from a Legal Perspective, European Commission

- c. Tripartite Conference for the exchange of good practice between the Member States of the EU: In October 2012, a Tripartite Conference was organised under the auspices of the Cyprus Presidency of the Council of the European Union titled “Tackling the gender pay gap: Best practices around four perspectives”. Government officials, trade union and employers’ associations members from all Member States of the EU participated, exchanging their experience on four dimensions, (a) occupational segregation, (b) job classification and pay systems, (c) enforcement and sanctions, (d) social dialogue
- d. Certification for promoting gender equality: A national model for certifying enterprises which adopt policies promoting gender equality in the workplace has been developed, and a National Certification Body was established in April 2014 responsible for granting these certifications, by decision of the Council of Ministers. The National Body is chaired by the Ministry of Labour, while its members are the Gender Equality Commissioner and representatives of the employers’ and employees’ associations. According to the model of certification, companies have the right to apply for two types of certification namely (a) “Best Practice” for individual practices applied, and (b) “Equality Employer” for adopting a comprehensive system of promoting gender equality in their workplace. 40 companies have been awarded a certification so far.
- e. Reviewing of collective agreements: In 2013, the text of all signed collective agreements was reviewed, including the original text and their renewals, with the aim of examining their provisions and identifying any direct or indirect discrimination on pay based on sex.
- f. Training of social partners representatives and members of professional associations: Trade union members, employers associations’ representatives, lawyers, accountants, human resource professionals and members of professional associations, participated in 2014 in training seminars aiming at improving the level of compliance of companies with the Equal Pay Legislation. A guide was also issued and disseminated, involving practical ways of promoting pay equality while engaging in collective bargaining.
- g. Equal Pay Day: An “Equal Pay Day” event was organised twice (March 2013, March 2015) contributing to raising public awareness on the gender pay gap and its detrimental consequences on women’s economic and social life.
- h. Consultation to employers: A guide explaining in detail the provisions of the Equal Pay, and Protection of Wages Laws was issued and disseminated to nearly 1.500 companies and associations. Moreover, counsellors visited 400 companies for a personalised presentation of the guide, aiming at strengthening the companies’ commitment for compliance.

The successful implementation of the above measures, has contributed, amongst others, to the significant decrease of the gender pay gap. Since several of the measures are ongoing or expected to have long-term benefits, and due to the gradual but continuous advancement of women’s position in the labour market, the downward trend of the gender pay gap in Cyprus is expected to continue.

5. Exclusions from the scope of the Law on Equal Treatment of Men and Women in Employment and Vocational Training

As regards observations on Exclusions from the scope of the Law on Equal Treatment of Men and Women in Employment and Vocational Training, the Government notes that exclusions are listed in the Annex of the relevant Law and are objectively justified. Apart from the last point in the

Annex, all other points make no reference to male or female so there is no exclusion of either women or men from any occupation.

As regards the last point in the Annex-Employment of women for underground work in mines, this was included in the Annex in order to conform to ILO Convention No 45 of 1935 on Underground work (women). On 18/5/2017 the Council of Ministers decided on the abolition of the above Convention and a draft Law has been prepared amending Law on Equal Treatment of Men and Women in Employment and Vocational Training by deleting the last point of the Annex.

6. Ombudsman

With reference to claims about the Ombudsman having failed to fulfil their task in fighting discrimination, the Government notes that since 2010, 2 complaints have been submitted to the office of the Ombudsman and both have been dealt with, within the remit of the Ombudsman's mandate. The Ombudsman is not mandated to act of his own accord in investigations relating to the equal pay between women and men for the same work or for work of equal value.

7. Women in employment

According to the Labour Force Survey, the employment rate of women was 64.1% in 2016 and 64.0% in 2015 as opposed to 73.9% and 72.2% for men in 2016 and 2015 respectively. The total unemployment rate was 13.0% in 2016 and the unemployment rate for women was 13.5% compared to 12.6% for men.

8. Women in Decision-Making

In specific to the participation of women in decision-making positions, OEB has carried out specialized surveys, in order to ascertain the reasons why there are fewer women occupying such positions. The results were disseminated through press conferences and were discussed publicly. The conclusions of the surveys have been the basis of many actions undertaken by OEB in the field of gender equality. It must be noted that the majority of companies in Cyprus are small-medium sized and/or are family businesses where gender issues are not so prevalent.

OEB has also amended its own Articles of Association in order to ensure the participation of women on their Board.

In Cyprus although 50.2% of working women hold high academic qualifications, only 27.5% of women are in decision-making positions according to a study by the University of Cyprus Field Research Centre.

The study concluded that this situation has improved at least among administrative staff. It also found that the Cypriot businesses demonstrate their willingness to implement good practices to promote gender equality.

Cyprus Chamber of Commerce and Industry (CCCI) believes that women's participation in company boards can yield significant results in the competitiveness of the company and encourage its member companies to adopt strategies and targeted measures to achieve gender equality on boards based on merit.

CCCI participates actively in the policy-making bodies dealing with gender equality issues and contributes to the promotion of the correct implementation of the existing legislation on equality, as well as the strengthening of the position of women in employment.

Further, CCCI, in close cooperation with the Cyprus Federation of Business and Professional Women (BPW), which operates under the auspices of CCCI will continue its efforts to sensitize the business world, in relation to the professional development of women. BPW represents the CCCI in the European Women's Network (EWN) of Eurochambers and participates in relevant EU programmes, as well as in the area of surveys on female entrepreneurship and organisation of joint events on female entrepreneurship issues.

**MINISTRY OF LABOUR,
WELFARE AND SOCIAL INSURANCE**