

TO: Permanent Representatives to the European Union  
CC: Social Attachés

Dear Ambassador,

I am contacting you in relation to the discussion on the Gender Pay Transparency Directive taking place at the upcoming EPSCO meeting on 6 December 2021.

The ETUC calls on you to support the following amendments so that this Directive becomes a game-changer for women workers.

- **Include trade unions in the definition of “workers’ representatives”**

To ensure that collective bargaining for equal pay and for measures to close the gender pay gap is the prerogative of trade unions, a comprehensive definition of “workers’ representatives” in Article 3 of the Directive is needed.

It remains a concern that the text of the Directive does not exclude the possibility that employers may choose workers’ representatives (Recital 29) and does not guarantee that the choice to be represented by a trade union is firmly in the hands of the workers concerned.

We are calling for you to include a definition as follows:

*Article 3 (i), new*

*(i) ‘workers’ representatives’ means:*

*(a) trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions in accordance with national legislation and practice;*

*(b) elected representatives, namely, representatives who are freely elected by the workers of the organisation, not under the domination or control of the employer in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are the exclusive prerogative of trade unions,*

*(c) where there exist (according to national law and practice) in the same organisation both trade union representatives and elected representatives, appropriate measures shall be taken to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives and to ensure that the exclusive prerogatives of trade unions shall be preserved, in particular their right to collective bargaining and to conclude a collective agreement and to have (digital) access to the workers.*

*(d) workers right to choose to organise in a trade union and to collective bargaining will be respected.*

- **Clarify the rights of trade unions and strengthen collective bargaining**

Collective bargaining is one of the most important means to fight pay discrimination, to fight the undervaluation of work typically performed by women, and, more broadly, to close the gender pay gap. Yet, the Council proposal does not guarantee collective bargaining.

In the view of the ETUC, Member States should take active steps to ensure that collective bargaining is available as a means to promote equal pay, particularly in Member States where collective bargaining is weak and the coverage of collective agreements is low.

While we recognise the Council is attempting to secure some improvements, namely the proposal for a new Article 27 (2),

**2.(new) In accordance with national law and practice, Member States may allow for the social partners to maintain, negotiate, conclude and enforce collective agreements which establish arrangements on pay transparency provided that the results sought by this Directive are ensured at all times.**

this particular amendment will be insufficient because it suggests that Member States may not allow for social partners to maintain, negotiate, conclude and enforce collective agreements. Therefore, we are calling for an amendment to remove the words “*may allow for*” and replace these with “*shall guarantee*”.

**2.(new) ETUC proposal**  
**In accordance with national law and practice, Member States ~~may allow for~~ shall guarantee the social partners can maintain, negotiate, conclude and enforce collective agreements which establish arrangements on pay transparency provided that the results sought by this Directive are ensured at all times.**

We are also calling on you to support a new Article 10 to guarantee respect for the right to collective bargaining and social dialogue, providing as follows:

Article 10 (new)

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

And

*Without prejudice to the autonomy of social partners and in accordance with national law and practice, Member States shall ensure that the rights and obligations under this Directive are discussed with social partners.*

In addition, it is vital to reference trade unions on provisions that regard requesting information on pay on behalf of workers and ensuring that trade unions may act on behalf of a class of workers (Article 13).

- **Lower the threshold of pay reporting obligations from 250 workers to 10 workers**

We understand the Council's proposed amendments will continue to limit the requirement on employers to report on pay gaps, carry out pay assessments and take measures to close pay gaps to organisations with over 250 workers (Article 8). This would mean that roughly 67% of all employees in the EU will be excluded. The European trade union movement proposes to lower the threshold to 10 workers, with different frequencies of pay reporting (for example, every two years for organisations or undertakings with over 50 workers and every three years for organisation or undertakings with 10-50 workers).

- **Improve job evaluation and classification schemes**

The legacy of COVID-19 cannot be allowed to be less equal pay, particularly as the majority of essential and front-line workers are women. The essential role played by these workers during the COVID-19 pandemic calls for a systematic re-evaluation of their pay, so that their true contribution is properly valued and paid. To deliver pay justice for women workers who have brought us through the pandemic, the Directive must be amended.

As called for by the ETUC, the criteria used to determine the value of work, for the purposes of enforcing the principle of equal pay and for the development of job evaluation and classification schemes (Article 4) must be based on gender-neutral, objective criteria such as skills, effort, responsibilities, or conditions of work. The approach must be more than just "support and guidance", but rather it must be a genuine requirement. Only when all aspects of work predominantly done by women are highlighted and a meaningful measurement is required will it have a guaranteed impact. We call for you to reject any watering down of the requirement on employers into soft support and guidance.

- **Guarantee that workers can discuss their pay and that pay secrecy clauses are banned**

In the interest of ensuring equal pay and correctly identifying pay discrimination in the first place, it is essential that workers are able to speak to their colleagues and their trade union about their pay freely. This means that pay secrecy clauses should be prohibited.

Article 7(5) only prohibits the enforcement of pay secrecy clauses in certain circumstances, i.e. where workers are discussing their pay 'for the purposes of enforcing the principle of equal pay.' This would mean that pay secrecy clauses are still enforceable in a wide range of circumstances and remain an obstacle to identifying pay discrimination. Article 7(5) needs to be amended to ensure that workers can speak freely about their pay.

Article 7(6) allows employers to prevent workers from disclosing to others information that may enable these others to identify pay discrimination.

This provision needs to be removed as it could be relied upon by employers to silence workers who have information that points to pay discrimination.

- **Problematic references to undefined “control body”**

ETUC is concerned about references to a control body that we understand may be under consideration by the Council. It is essential that negotiating equal pay and to close the gender pay gap remains in the hands of workers and their unions. This should not be subject to “controls”. We recommend this provision is removed or better defined to ensure that the control body supports workers and their unions to bargain for equal pay and to close the gender pay gap.

- **Limitation periods are inappropriate**

This Directive should aim to provide the tools so that workers can get sufficient information and enforce their rights to equal pay. Introducing limitation periods that will limit the redress available or the ability to take a case is inappropriate and we call on you not to support or propose any limitations on the workers’ right to secure their equal pay entitlements.

**The Gender Pay Transparency Directive is a unique chance to finally draw the right lessons from the COVID pandemic and to empower women workers and their unions. The fight for equal pay remains an uphill battle and it is certainly one that cannot be won alone.**

**You have the power to remove some remaining hurdles in women workers’ way towards equal pay, instead of building higher ones.**

Yours sincerely



Esther Lynch  
Deputy General Secretary