



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

DECISION ON THE MERITS

Adoption: 6 December 2019

Notification: 28 February 2020

Publicity: 29 June 2020

University Women of Europe (UWE) v. Belgium

Complaint No. 124/2016

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 310th session in the following composition:

Giuseppe PALMISANO, President
Karin LUKAS, Vice-President
François VANDAMME, Vice-President
Eliane CHEMLA, General Rapporteur
Petros STANGOS
József HAJDU
Krassimira SREDKOVA
Raul CANOSA USERA
Barbara KRESAL
Kristine DUPATE
Aoife NOLAN
Karin Møhl LARSEN
Yusuf BALCI
Ekaterina TORKUNOVA
Tatiana PUIU

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 17 October 2018, 19 March 2019, 12 September 2019, 16 and 17 October 2019, 2,3 and 6 December 2019,

On the basis of the report presented by Petros STANGOS,

Delivers the following decision, adopted on the latter date:

PROCEDURE

1. The complaint lodged by University Women of Europe (UWE) was registered on 24 August 2016.
2. UWE alleges that the situation in Belgium is in violation of Articles 1, 4§3, 20 and E of the Revised European Social Charter ("the Charter") having regard to the pay gap between men and women and the under-representation of women in decision-making positions within private companies in Belgium.
3. On 4 July 2017, referring to Article 6 of the 1995 Protocol providing for a system of collective complaints ("the Protocol") the Committee declared the complaint admissible.
4. In its decision on admissibility, the Committee invited the Government to make written submissions on the merits of the complaint by 13 October 2017.
5. In application of Article 7§1 of the Protocol, the Committee invited the States Parties to the Protocol and the States that had made a declaration in accordance with Article D§2 of the Charter, to submit any observations they wished to make on the merits of the complaint by 13 October 2017.
6. In application of Article 7§2 of the Protocol, the Committee invited the international organisations of employers or workers mentioned in Article 27§2 of the 1961 Charter to make observations by 13 October 2017.
7. On 14 September 2017, the European Confederation of Trade Unions (ETUC) asked for an extension of the deadline for presenting its observations on the complaint. The President of the Committee extended this deadline until 3 November 2017. The ETUC's observations were registered on 3 November 2017.
8. On 13 October 2017, the Government asked for an extension of the deadline for presenting its submissions on the merits. The President of the Committee extended this deadline until 3 November 2017. The Government's submissions on the merits were registered on 31 October 2017.
9. The deadline set for UWE's response to the Government's submissions on the merits was 5 January 2018. UWE's response was registered on 5 January 2018.
10. Pursuant to Rule 31§3 of the Committee's Rules ("the Rules"), the Government was invited to submit a further response by 9 March 2018. The Government's further response was registered on 12 March 2018.

11. Pursuant to Rule 32A of the Rules, the President invited EQUINET to submit observations by 30 March 2018. EQUINET's observations were registered on 30 March 2018.

12. Pursuant to Rule 32A of the Rules, the President invited the European Union to submit observations by 15 April 2018. On 20 April 2018, the European Union asked for a new deadline for presenting its observations on the complaint. The President of the Committee set 25 May 2018 as a new deadline. The European Union's observations were registered on 28 May 2018.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

13. UWE asks the Committee to hold that the situation in Belgium constitutes a violation of Articles 1, 4§3, 20 and E of the Charter on the following grounds:

- Firstly, a pay gap between men and women still persists and is unfavourable to women. UWE maintains that Belgium has not achieved equal pay for equal, similar or comparable work because of the failure to ensure that the relevant legislation is enforced in practice.
- Secondly, UWE alleges that only a very small number of women occupy decision-making positions within private companies, in spite of domestic legislation enacted since 2011.

14. Finally, UWE asks for the payment of €10,000 for costs incurred during the proceedings.

B – The respondent Government

15. The Government asks the Committee to reject UWE's allegations in their entirety and to declare the complaint ill-founded, on the basis that the situation in Belgium is in conformity with Articles 1, 4§3, 20 and E of the Charter.

OBSERVATIONS BY WORKERS' ORGANISATIONS

The European Trade Union Confederation (ETUC)

16. The ETUC, making reference to various instruments of International Law and Eurostat statistics, concludes that the minimum pay gap between men and women lies above 5.5% in all the countries concerned. The ETUC therefore observes that, as the statistics highlight, the principle of equal pay for work of equal value is not guaranteed in practice. It also indicates that this is even more true when the lack of clarity in relation to the calculation is taken into account (for example, to what extent do they reflect other discriminatory elements, such as career differences which can lead to an increase in the pay gap or issues related to the source of data (for instance, undocumented work

or the informal economy, both of which are sectors in which the gender pay gap is probably even higher).

17. The ETUC further refers to data of the European Institute for Gender Equality (EIGE), with regard to the representation of women in decision-making positions in private companies, and concludes that only two countries achieved the European Commission's proposed 40% objective for the representation of women on Boards, namely France and Norway. The ETUC points out in its conclusion, however, that the data in question only refers to the 'largest listed companies', and not to other listed companies and non-listed companies which represent, quantitatively, a much higher share. The ETUC therefore considers that none of the countries concerned reach the threshold of 40%.

18. The ETUC indicates that the two main elements raised in the complaint differ from a legal point of view. Equal pay is a classic fundamental principle, and despite States traditionally providing for it in legislation, they do not enforce it sufficiently. The second ground, which concerns the under-representation of women in decision-making boards in private companies, is a fairly new element appearing at international and national level as a problem to be seriously dealt with. Nevertheless, both elements are covered by Article 20 of the Charter which guarantees "the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex".

19. With respect to the pay gap between men and women, the ETUC raises the point that, in order to assess the conformity or non-conformity of the situation in each country with regard to the Charter, it is necessary to examine both substantive and procedural dimensions.

20. At the substantive level, there is a quantitative and a qualitative dimension to be considered. According to the ETUC, only a 'zero' pay gap should be permitted. However, on the basis that the interpretation of 'equal' does not apply in the strict sense of the word, a reasonable threshold could be a maximum of 5%. With respect to the qualitative dimension, as the statistics show, the pay gap between men and women continues to exist. The ETUC considers that it is no longer sufficient that States are free to choose the means by which they ensure equal pay, and point to the need to go further by taking into account the evolution of international case law. Accordingly, it would appear important to require a clear and comprehensive legislation, which should at least ensure that:

- the coverage of all workers is guaranteed;
- the general legal concept also includes indirect discrimination;
- the term 'pay' contains all elements of remuneration as well as supplementary pension;
- the comparison comprises as a minimum:

- transparency;
- the reach of comparison between jobs performed by women and men being construed as wide as possible;
- a wide definition of 'equal value', also encompassing work that is of an entirely different nature, which is nevertheless of equal value;
- the necessity to evaluate the respective jobs with criteria excluding any kind of discrimination, even indirect;
- the assessment concerned is followed by effective consequences in cases where the results show that there is discrimination.

21. With respect to the under-representation of women in decision-making positions in companies, as a consequence of the decision of admissibility of the Committee, it follows that this aspect falls within the scope of Article 20.

22. At the substantive level, the ETUC considers that it is necessary to provide for a minimum threshold for representation of both sexes in decision-making positions. Although perfect equality, that is to say 50% of representation of both sexes, would not be a requirement, the ETUC considers that a percentage close to this, for example 40%, would be appropriate, as proposed by the European Commission.

23. The same procedural elements as those listed for equal pay between men and women are applicable.

24. ETUC takes note of the conclusions of the Committee as well as the reports, recommendations and observations of other international bodies concerning gender equality in Finland (CCPR, CESC, CEDAW and CEACR) and states that the situation in Belgium is as follows.

25. The legal basis of the right to equal wage in private and public sectors is the Law of 7 May 1999 on equal treatment between men and women at work, and on access to independent work and complementary regimes of social security. This law prohibits direct and indirect discrimination including on pay gap and on classification of jobs and establishes that all discriminatory provisions in any other legal text, including decrees, by-laws and collective agreements are null. Other laws, decrees and collective agreements complete the legislative framework.

26. Despite this existing regulatory framework, ETUC notes, using (recent) statistics based on Eurostat, in Belgium, the gender pay gap stands at 6.6% (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%). Concerning women's representation in decision-making positions, in spite of the existing legal framework, the percentage of women in Belgium is 26.6%, which is over the European average, but under the 33% requirement established by the Belgian domestic law.

27. ETUC maintains that from a substantive perspective, there is a violation of Article 20 of the Charter because, on the one hand, there is statistical evidence shows that there is still a gender pay gap and, on the other hand, official statistics are still excluding small (micro) sized enterprises. It is most probable that the gender pay gap is even higher in these enterprises.

28. From a procedural perspective, ETUC concludes that there is a violation of Article 20 of the Charter because the gender pay gap has not been eliminated and, in particular, the Labour Inspectorate does not properly ensure the satisfactory application of the principle of equal pay and any other means has been insufficient.

29. As regards the representation of women in decision-making positions within private companies, according to ETUC, as regards substance, there is a violation of Article 20, as statistical evidence shows that there is still an underrepresentation 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, women are not sufficiently represented within these bodies.

30. From a procedural point of view, Article 20 is also violated, as 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.

OTHER OBSERVATIONS

A – The European Union

31. In its observations regarding Complaints No 124-138/2016, University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, the European Union, through the European Commission, highlights the European Union's legal framework and policy Action of relevance to the matters raised in the complaints.

32. As regards the legal framework, the European Commission recalls that the principle of equal pay between women and men has been enshrined in the Treaties since 1957. The principle of equal pay for men and women for equal work and work of equal value was laid down in the original European Economic Community Treaty of 1957, more precisely in its Article 119, which later became Article 141 of the European Community Treaty. Since the entry into force of the Treaty of Lisbon (2009)³, the principle is embodied in Article 157 of the Treaty on the Functioning of the European Union (TFEU).

33. As regards non-legislative policy initiatives, according to the European Commission, closing the gender pay gap remains a major objective in achieving gender equality and it is a political priority. The gender pay gap in the EU still averages around 16%. This is socially unfair as well economically inefficient, equal pay being an obvious

prerequisite for equal participation in the labour market. Across the EU, women have better educational outcomes than men (44% of women aged 30-34 in the EU attained tertiary education, compared with 34% of men). This factor does not prevent, however, women in the EU from being overrepresented in industries with low pay levels. Sectoral segregation continues to be one of the most important contributing factors to the gender pay gap in the EU.

34. In November 2017, the Commission adopted the *EU Action Plan 2017-2019, tackling the gender pay gap*. The Action Plan presents ongoing and upcoming measures taken by the Commission to combat the gender pay gap in 2018-2019. It identifies eight areas for Action:

- Improving the application of the equal pay principle;
- Combating segregation in occupations and sectors;
- Breaking the ceiling: initiatives to combat vertical segregation;
- Tackling the care penalty;
- Better valorising women's skills, efforts and responsibilities;
- Fighting the fog: unveiling inequalities and stereotypes;
- Alerting and informing about the gender pay gap;
- Enhancing partnerships to tackle the gender pay gap.

35. Moreover, several of the Commissions' other Actions directly relate to some of the elements of the complaints, such as to combating segregation in occupation and sectors, by supporting transnational projects to tackle stereotypes and segregation in education, and patriarchal attitudes. Besides, the European Commission monitors the national legislation and policies of Member States regarding the gender pay gap and raises awareness about it. The Commission reports regularly about the evolution of the gender pay gap, earnings and pensions gap in Europe. The Commission aims at combating vertical segregation, by working towards the adoption of a proposal for a Directive in this field.

36. The Commission considers that one way of determining work of equal value is by using gender-neutral job evaluation and classification systems. However, Directive 2006/54/EC does not oblige Member States to put such systems in place and their availability at national level varies significantly. To attain its purpose, Directive 2006/54/EC requires that Member States ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished.

37. The European Commission concludes by indicating that the complexity of the issues in question and the numerous elements that, in the end, lead to the gender pay

gap can be seen from many different angles, from the sociological to economic and legal. Therefore, according to the European Commission, it is necessary to take all of these into account.

B – European Network of Equality Bodies (EQUINET)

38. The Institute for the Equality of Women and Men submitted to EQUINET the following observations concerning the situation in Belgium.

39. Compared to the gender pay gap (GPG) in other States of the European Union, the rate in Belgium is relatively low. Data from Eurostat from 2014 and 2015 show that the average GPG in the EU is 16.3% and the average gender overall earnings gap in the EU is 39.6%. The GPG in Belgium, based on hourly wages, stands at 6.5%, and the gender overall earnings gap, based on annual earnings, at 31.1%.

40. However, looking at the evolution of the GPG in Belgium over the years, the gap is rather tenacious. In 2007, the GPG based on hourly wages was 13.6% and on annual wages 25.3%. In 2016, it amounted to 7.6% and 20.9%, respectively. The Belgian GPG is decreasing, therefore, but this is happening at a very low pace.

41. The Gender Pay Gap (Law No. 2012204357 of 22 April 2012 on measures to combat the gender pay gap, amended by the Law of 12 July 2013 and the Law of 27 April 2015) have enabled progress to be made but there are still challenges. Before this law was passed, national case-law did not address wage transparency. The current GPG Law creates a legal framework and gives a positive message in favour of equal pay. The Gender Pay Gap Law involves all labor market Actors (including politicians, employers' federations, trade unions, employers, etc.). The law leads to a large scale evaluation of function classifications regarding their gender neutrality.

42. However, the Institute points out that the law only helps to advance pay transparency in a limited manner, as it does not apply to companies employing less than 50 employees; the obligations of enterprises to draw an analysis report is not truly monitored and there are no sanctions imposed if the collection of data by the employer is insufficient. Moreover, employers are not obliged to appoint a mediator and it is unclear how the mediator fulfills his/her role in practice.

43. The Institute also points out that the job classification methods are not gender neutral and, among those evaluated, only 5-6% were considered to be. There is neither a legal obligation to change function classifications if they do not pass the test of gender neutrality, nor is there a real sanction if the classifications are not changed.

44. There is neither an explicit prohibition of pay discrimination, nor a definition of remuneration of work of equal value included in the law.

45. The Institute also observes several obstacles in access to justice for pay discrimination victims:

- With regard to pay discrimination, the Institute received 7 notifications in 2014, 7 in 2015, and 4 in 2016. This is only a very small amount of the total number of notifications received in those respective years (2014: 366, 2015: 463, 2016: 549);
- In cases where the notification is still working for the employer, there is an unwillingness to allow the Institute to intervene in the case beyond providing advice and information on the legal framework. Often no further measures are taken as victims are afraid of the consequences that a complaint will have on their function and employment condition;
- There is a limited role of trade unions in treating pay discrimination cases. The Institute does not have data on the number of cases of pay discrimination the trade unions receive or on how trade unions handle or follow up pay discrimination claims;
- Lack of awareness of victims of their rights with regard to equal pay;
- Lack of awareness of employees of their pay in comparison to that of their co-workers. The lack of pay transparency in individual companies makes it difficult for female employees to know whether they are being paid less than their male counterparts.

46. There are also other obstacles in the judicial system. One is the lack of legal provision on the definition of work of equal value, or any legal stipulation on who can function as a comparator, hypothetical or otherwise. The case law was brought to develop such a definition, interpreting work of equal value so strictly that it (almost) coincides with the term equal work. In this regard the Belgian case law lags behind the case-law on the European level and that of other Member States. An illustration of such a limited interpretation can be found in the judgment of the employment tribunal of Gent of 10 August 2017, rendered in a case in which the Institute intervened. The judge in this case declared the argument of work of equal value unfounded, because the three female employees who were paid less than their male counterparts did not execute the exact same tasks, requiring the same competences, as their male colleagues.

47. There is also little national case law on equal pay. On a yearly basis, the Institute publishes an overview of legislation and jurisprudence regarding the equality between women and men on the labour market. This overview includes a separate subsection for national case law on equal pay. In 2018, this section contained 28 cases. Furthermore, there is a lack of knowledge of European and national case law concerning equal pay by magistrates. In the case cited before, the magistrate judged, on the one hand, that the function and wage classification of the employer was insufficiently transparent, but on the other hand, that the burden of proof was not shifted. There was no application of the *Danfoss* judgment, where the Court of Justice found that a non-transparent wage system shifts the burden of proof.

48. This is also linked to the insufficient wage transparency and the limited competences of the Labour Inspectorate in finding and sanctioning pay discrimination.

49. Among the structural obstacles existing in Belgium, the Institute refers to the vertical segregation of the labour market. In 2016, the share of women in management committees was 16.1% and that in the board of directors of listed private companies, 21.61%. In 2008 these shares amounted to 7.4 % and 8.2%. In this regard, it should be emphasised that the Quota Law (law of 28 July 2011), which applies to autonomous public companies, listed companies, and the National Lottery, has had a clear impact on the number of women in their management committees and board of directors. Although progress has been made, vertical segregation is still strong. Concerning horizontal segregation, some sectors are predominantly or almost exclusively composed either of women or men. Overall, occupations predominantly carried out by women are undervalued and offer lower wages than occupations predominantly carried out by men.

50. Women take charge of important unpaid tasks, such as household work and caring for children or relatives, on a far larger scale than men do. The Institute's research on gender and time use of 2016 shows that, in an average weekday, women spend 1h22 on household work and 1h15min on care for children, while men spend this time on paid work. Women also work part-time more than men and take periods off more often.

51. The Institute for the Equality of Women and Men was created in December 2002 as the autonomous federal public institution responsible for guaranteeing and promoting gender equality and for combatting any form of gender-based discrimination and inequality. The Institute can support victims of discrimination based on gender, including pay discrimination, by advising them on their rights, by mediation and, if necessary, by taking legal Action. In the latter case, the Institute will bear the legal costs if the victim does not have the financial means to pay for their own counsel.

52. As mentioned above, the Institute received 7 notifications in 2015 and 4 in 2016 with regard to pay discrimination specifically. In four cases the Institute took legal Action, others concerned information requests on the legal framework with regard to equal pay. The four cases are still pending, either because there has not been a judgment yet, or because the Institute lodged an appeal.

53. Regarding equal pay, the Institute formulates policy recommendations in its annual GPG Report. It also gives financial support to different projects and campaigns organised by *Zij-Kant* (a women's (rights) organisation), and ABVV (a trade union), within the framework of the Equal Pay Day in Belgium. To support the

implementation of the GPG Law, the Institute for the equality of women and men took the initiative to set up a task force with the different services of the FPS Employment involved in the monitoring and implementation of the GPG Law. The mission of the task force is: to provide complete and harmonised information on the GPG Law; to sensitize the social partners on the issue of the GPG; to evaluate the implementation of the GPG legislation; and to coordinate the updating of the pages relating to the pay gap on the websites of the FPS Employment and the Institute.

54. In 2014, the Institute signed a cooperation agreement with the Belgian Labour Inspectorate ("*Toezicht op de Sociale Wetten*"), which enables the two organisations to work together regarding gender based discrimination complaints. Within this framework, the Institute can ask the Labour Inspectorate to investigate certain facts, whereupon the Labour Inspectorate draws up a research report and hands this over to the Institute. This report can be used in court.

55. Over time, the number of notifications that the Institute receives has increased significantly and the mission has broadened. However, the resources awarded have not increased, making it more difficult to fulfill the mission of ensuring gender equality.

RELEVANT DOMESTIC LAW

56. The parties refer to the following provisions of domestic law:

A – The Constitution

57. The Belgian Constitution, as revised by the amending legislation of 21 February 2002, establishes the principle of equality between women and men:

Article 10

"Equality between women and men is guaranteed".

Article 23

"Everyone has the right to lead a life in keeping with human dignity.

...

These rights include among others:

1. the right to employment and to the free choice of an occupation within the context of a general employment policy aimed, among others, at ensuring a level of employment that is as stable and high as possible, the right to fair terms of employment and to fair remuneration, as well as the right to information, consultation and collective negotiation"

B – The Law of 10 May 2007 to combat discrimination between women and men

58. The Law of 10 May 2007 to combat discrimination between women and men and its application:

Article 4

“In the case of the same work or work deemed to be of equal value, there shall be no direct or indirect discrimination on grounds of sex with regard to any aspects and conditions of remuneration.

In particular, when an occupational classification system is used to determine remuneration, such a system must be based on the same criteria for male and female employees and be designed to exclude discrimination based on sex.”

Article 5

“§2. For the purposes of employment relationships, this legislation shall apply, *inter alia* but not exclusively, to:

...

2. provisions and practices concerning conditions of employment and remuneration, including, *inter alia* but not exclusively:

- the arrangements laid down in employment contracts, agreements relating to self-employed workers, statutory schemes under administrative law, training and apprenticeship contracts, collective employment agreements, collective schemes for self-employed workers, employment regulations and unilateral decisions of employers or ones imposed on self-employed workers;
- the payment and setting of salaries and wages, fees or other forms of remuneration;
- the payment and setting of all current or future benefits in cash or in kind, if these are paid, even if indirectly, by the employee’s employer or the self-employed person’s principal for work carried out, and whether such payments are made under a collective agreement or legal provisions, or voluntarily;

...

- efforts to improve employees’ working conditions and remuneration;
- the classification of occupations and duties;

...”

C – The Law of 22 April 2012

59. The Law of 22 April 2012 targets the gender pay gap, in particular the underpayment of female employees resulting from the process of determining salaries and wages. The legislation establishes a requirement to negotiate with the social partners at three levels: cross-sectoral, sectoral and individual undertakings. In particular, employers must carry out investigations every two years to identify any imbalances in women’s and men’s salary and wage structures. When such imbalances do exist, they must draw up a plan to deal with the situation, although it does not appear that there are any penalties for failure to comply.

CHAPTER 1

“General provisions”

Article 1

“This Law shall govern a matter referred to in Article 78 of the Constitution.”

CHAPTER 2

“Obligation to agree measures to combat the pay gap at cross-sectoral level”

Article 2

“In Article 4, § 1, sub-paragraph 1, of the Law of 26 July 1996 on the promotion of employment and the safeguarding of competitiveness, the words ‘and to changes in the wage and salary gap

between men and women' shall be inserted between the words "and the development of undertakings" and the words '. Where appropriate,'."

Article 3

"The following sentence shall be added to Article 6, § 1 of the Law:

'This agreement shall also establish measures to reduce the wage and salary gap between men and women, in particular by making job classification systems gender neutral.'"

CHAPTER 3

"Breakdown of wage and salary data by employees' gender in the social balance sheet"

Article 4

"The following sub-paragraph shall be added to Article 91.B "Social balance sheet", I, sub-paragraph 2, 1, of the Royal Decree of 30 January 2001 implementing the Companies Code:

'The data specified under the above headings shall be broken down according to employees' gender. This breakdown requirement shall not apply when the number of employees concerned is equal to or fewer than three.'"

CHAPTER 4

"Obligation to agree measures to combat the pay gap at sectoral level"

Section 1

"Sectoral agreements to combat the gender pay gap"

Article 5

"The following § 3 is added to Article 8 of the Law of 26 July 1996 on the promotion of employment and the safeguarding of competitiveness, as amended by the Law of 26 June 1997:

'§ 3. Collective agreements shall also be entered into for the purposes of reducing the pay gap between men and women, in particular by making job classification systems gender neutral.'"

Section 2

"Assessing the gender neutrality of the evaluation and classification scales of established posts"

Article 6

"For the purposes of this Article, the following definitions shall apply:

1. the Committee: the joint committee or sub-committee as specified in the Law of 5 December 1968 on collective employment agreements and joint committees;
2. the agreement: the collective employment agreement;
3. the classification: the job classification;

4. the Directorate: the directorate responsible for analysing and assessing collective employment agreements in the general directorate for collective labour relations of the Federal Public Service Employment, Labour and Social Dialogue;

5. registration: registration by the registry of the general directorate for collective labour relations of the Federal Public Service Employment, Labour and Social Dialogue, pursuant to the Royal Decree of 7 November 1969 establishing the procedure for lodging collective employment agreements;

6. the Institute: the institute for equality between women and men established by the Law of 16 December 2002;

7. the Minister: the minister responsible for employment-related matters.”

Article 6/1

“[Committees that have entered into classification agreements shall submit a co-ordinated version of the currently applicable classification to the Directorate within six months of the entry into force of the Law of 12 July 2013 amending the legislation on combating the pay gap between men and women.

Agreements modifying existing classifications or introducing new ones shall also be submitted to the Directorate, within six months of the date of registration of the agreement concerned.

Before submitting classification agreements to the Directorate, the relevant committee shall carry out a prior assessment of the neutral nature of the gender plan concerned.”

Article 6/2

“[§ 1. The Directorate shall assess the neutral nature of gender classification plans submitted to it.

Over a period of eighteen months starting on the date of entry into force of the Law of 12 July 2013 amending the legislation on combating the pay gap between men and women, this assessment shall be carried out in collaboration with public and private institutions with expert knowledge of the neutral nature of gender classification plans, excluding representative organisations of employees and of employers.

§ 2. In the case of agreements already in existence on the date of entry into force of the Law of 12 July 2013, the Directorate shall issue an opinion within [twenty-two months] of the entry into force of the Law concerned.

§ 3. The Directorate shall issue opinions within the period specified in the previous paragraph on agreements that are registered and submitted to it within seventeen months of the entry into force of the Law of 12 July 2013.

§ 4. In the case of agreements submitted after expiry of the seventeen month period specified in the previous paragraph, the Directorate shall issue an opinion within six months of receipt of the agreement concerned.]”

Article 6/3

“[If, according to the opinion specified in Article 6/2, a classification is not gender neutral, the Committee shall make the necessary modifications within twenty-four months of notification of the opinion.

During the aforementioned period, the Committee may consult the Directorate. In such circumstances, the Directorate may seek the views of the Institute.

If the necessary modifications are not made within the twenty-four month period, the Directorate shall inform the Minister and the Institute of this fact. The Committee shall receive a copy of the information.

The Committee shall have three months to provide the Minister and the Institute with justification for the fact that the impugned classification is still not gender neutral.]”

Article 6/4

“[The Crown shall specify the arrangements for implementing this section.]”

CHAPTER 5

“Organisation of compulsory consultation within undertakings to secure a gender neutral remuneration policy”

Article 7

“The following Article 13.1, § 1 is inserted into part II, chapter II, section IV of the Law of 10 May 2007 to combat discrimination between women and men: ‘Article 13/1. § 1. Employers of undertakings normally employing an average of at least fifty staff shall carry out, every two years, in consultation with the staff representative body, a detailed analysis of their undertaking’s remuneration scheme to establish whether it is operating a gender neutral remuneration policy and, if this is not the case, how this can be achieved.

The analysis shall be the subject of an investigation and consultations within the organisation, in accordance with the provisions of this legislation.

The method used to establish whether an undertaking employs an average of at least fifty staff shall be as laid down in Articles 49 to 51b of the Law of 4 August 1996 on employees’ well-being in the workplace.

§ 2. A report shall be made on the analysis specified in § 1 in accordance with Article 15, m, 1, of the Law of 20 September 1948 on the organisation of the business economy or Article 65.12 of the Law of 4 August 1996 on employees’ well-being in the workplace, as amended by the Law of 22 April 2012 to combat the pay gap between men and women.

The report shall be drawn up and discussed within three months of the end of the financial year.

It shall be submitted to the members of the works council or of the Committee at least fifteen days before the meeting convened to consider it.”

Article 8

An additional paragraph m) of Article 15 of the Law of 20 September 1948 on the organisation of the business economy, as most recently amended by the Law of 6 May 2009, reads as follows:

“m) 1. to receive from the employer every two years an analytical report on the employees’ pay structure, pursuant to Article 13/1 of the Law of 10 May 2007 to combat discrimination between women and men.

This report shall be supplied as a supplement to the information specified in Article 15 of the Royal Decree of 27 November 1973 on the economic and financial information to be provided to works councils and shall be considered within the period specified in Article 16 of the decree. The report shall be transmitted solely to the members of the works council, who shall respect the confidentiality of the information supplied.

The analytical report shall contain the following information, unless the number of employees concerned is three or fewer:

- a) direct remuneration and social benefits. For part-time employees, these shall be expressed as full-time equivalents.
- b) the employer's contributions for extra-legal insurance;
- c) the total of other extra-legal benefits granted in addition to wages to workers or part of workers.

The relevant information shall be broken down by employees' gender, and by the following categories:

- a) status (manual, non-manual, managerial staff);
- b) post level, based on the types of post specified in the post classification system applicable to undertakings;
- c) length of service;
- d) qualification or training level (divided into primary, secondary or higher education according to the Eurostat definition and based on employees' basic qualification).

Employers shall transmit this information in accordance with instructions laid down by the Crown and with the aid of a form drawn up by the Minister with employment responsibilities.

The Crown may modify the information and categories specified in sub-paragraphs 1 and 2. Employers shall also state whether they used the "non-sexism checklist for assessing and classifying posts" prepared by the institute for equality between women and men when drawing up their remuneration structure.

If an Action plan as specified in section 2 of this sub-paragraph is in force in the undertaking, the report shall include a progress report on the implementation of the plan;

2. to determine, on the basis of the information provided in the analytical report specified in sub-paragraph 1, whether it would be appropriate to draw up an Action plan to secure the application of a gender neutral remuneration structure in the undertaking.

Such an Action plan would include:

- a) practical objectives;
- b) areas for Action and how to achieve the desired results;
- c) a timetable for completion;
- d) an implementation monitoring system."

Article 9

An additional sub-paragraph 6 of Article 32, paragraph 1 of the Law, as amended by the Law of 26 July 2000, reads as follows:

"6. Employers who fail to comply with the obligations specified in Article 15, m) and its implementing instruments."

Article 10

An additional Article 65.12 inserted in the Law of 4 August 1996 on employees' well-being in the workplace reads as follows:

"Article 65.12, § 1. In the absence of a works council, employers shall supply the Committee every two years with the analytical report specified in Article 15, m) of the Law of 20 September 1948 on the organisation of the business economy. The report shall be transmitted solely to the members of the Committee, who shall respect the confidentiality of the information supplied.

If an Action plan as specified in § 2 of this Article is in force in the undertaking, the report shall also include a progress report on implementation of the plan.

§ 2. On the basis of the information provided in the analytical report specified in sub-paragraph 1, the Committee shall determine whether it would be appropriate to formulate an Action plan to secure the application of a gender neutral remuneration structure in the undertaking.

Such an Action plan would include:

- a) practical objectives;
- b) areas for Action and how to achieve the desired results;
- c) a timetable for completion;
- d) an implementation monitoring system.”

CHAPTER 6

“Appointment of mediators in undertakings”

Article 11

“The following Article 13.2 is inserted into part II, chapter II, section IV of the Law of 10 May 2007 to combat discrimination between women and men:

‘Article 13/2. § 1. Following a proposal of the works council or, in its absence, the Committee, employers of undertakings normally employing an average of at least fifty staff, as specified in Article 13, § 1 of this Law, may appoint a mediator from among their employees.

He or she may be removed from this position with the prior agreement of the works council or, in its absence, the Committee representing employees.

In the absence of such agreement, employers shall request, subject to the conditions and procedure laid down by the Crown, the opinion of the standing employment committee of the committee on equal opportunities for men and women specified in Article 13, § 1 of this Law. Employers who do not follow the advice of this committee shall inform the works council or, in its absence, the Committee of their reasons for so doing.

Mediators shall assist employers, line managers and employees to apply the measures specified in the Law of 22 April 2012 to combat the pay gap between men and women. In particular, they shall contribute to the formulation of the Action plans and progress reports specified in Articles 8 and 10.

Mediators shall hear complaints from employees who consider that they have suffered discrimination in pay on grounds of sex and inform them of the possibility of securing an informal solution by means of a direct approach to the head of the undertaking or a line manager. Mediators shall Law only with the agreement of employees who have requested their intervention.

Mediators shall not in any circumstances disclose the identity of staff members who have requested their intervention. They shall ensure the confidentiality of information received in carrying out their mediation responsibilities. They shall also respect this confidentiality after ceasing their mediation duties. The processing of such information is subject to the conditions laid down in the Law of 8 December 1992 on the protection of privacy with regard to the processing of personal data.

Mediators shall carry out their responsibilities with complete freedom and may not suffer any detriment arising from these duties.

Employers shall ensure that mediators are always able to perform their duties fully and effectively. They shall also enable mediators to undergo training to acquire or improve the necessary competences and skills to perform these duties, particularly with regard to the administration of wages and salaries.

Mediators shall take the necessary steps to maintain the confidentiality of personal social and employment-related data acquired in the performance of their duties and ensure that these data are used solely for carrying out their mediation responsibilities.

The information or data dealt with may only be retained in a form that enables identification of the persons concerned for a period necessary to achieve the purpose for which it has been obtained, subject to a maximum of two years.

§ 2. The Crown shall lay down, subject to the approval of the protection of privacy commission, the powers and responsibilities of mediators and the attributes required to exercise them. It shall also specify the rules of conduct by which mediators shall be bound.”

Article 12

“The following Article 13.3 is inserted into part II, chapter II, section IV of the Law:

‘Art. 13/3. Pursuant to Article 15, 2 of the Labour Inspection Law of 16 November 1972 it shall be an offence for anyone to prevent mediators from having access to information or data needed to carry out their duties. Employers shall be civilly liable for the payment of fines imposed on their officials or agents.’”

D – The Law of 28 July 2011 amending the Law of 21 March 1991 to reform certain publicly-owned companies

60. The Law of 28 July 2011 amending the Law of 21 March 1991 to reform certain publicly-owned companies stipulates that each sex should have at least one-third representation on the boards of companies quoted on the stock exchange and of certain autonomous publicly-owned companies. It establishes two types of sanction: suspension of the financial benefits associated with directors’ legal status and nullification of the next directorial appointment if the minimum has not been reached and the person in question belongs to the over-represented sex.

“3. – Amendments to the Companies Code

...

Article 4.

The following Article 518b is inserted in the Code:

Art. 518b.§1. At least one-third of the board members of companies whose shares can be freely bought and sold on a regulated market specified in Article 4 shall be of a different sex to that of the other members. For the purposes of this provision, the minimum required number of persons of the different sex shall be rounded to the nearest whole number.

§ 2. If the number of directors of a different sex falls below the minimum specified in § 1, the next general meeting shall establish a board of directors that complies with the provisions of this paragraph. Failure to comply with this provision shall entail the suspension of all the emoluments, financial and other, linked to the exercise of their duties, of all the directors.

These emoluments will be re-established when the composition of the board complies with §1.

§ 3. Companies whose shares are quoted for the first time on a regulated market specified in Article 4, must comply with the obligation laid down in § 1 from the first day of the sixth accounting year following their admission to the financial market concerned.

§ 4. If the minimum required number of directors of a different sex to that of the other directors, as specified in § 1, is not attained, the next director appointed shall be of the sex in question, failing which his or her appointment will be nullified. The same shall apply if the effect of an appointment is to bring the number of directors of the different sex below the minimum number required.”

E – Decree of the Flemish Authorities of 10 July 2008

61. According to this decree, 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.

F – Decree of the French-speaking Community of 12 December 2008

62. It repeals the Decree of 19 May 2004, and 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.

G – Decree of the German-speaking Community of 19 March 2012

63. The 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.

H – Collective agreement No. 25ter of 9 July 2008

64. It 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. It explicitly provides that all sectors and enterprises must review and adapt their job classification systems (choice of criteria, weighting of these criteria, and 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.

RELEVANT INTERNATIONAL MATERIALS

A – Council of Europe

1. Committee of Ministers

65. The Committee of Ministers adopted several recommendations, such as Recommendation Rec(1985)2 on legal protection against sex discrimination, in which it 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. In its Recommendation Rec(1996)51 on reconciling work and family life the Committee of Ministers further calls on member states to take Action to enable women and men to better reconcile their working and family lives. In its Recommendation Rec(1998)14 on gender mainstreaming, the Committee sets out the conceptual framework for gender mainstreaming and a methodology for its implementation, accompanied by examples of good practices.

66. More recently, in its Recommendation Rec(2017)9 on gender equality in the audiovisual sector the Committee of Ministers invites the Member States to collect, monitor and publish data on gender equality. In particular, it asks the member States to adopt monitoring methods and performance indicators, highlight causal relationships using qualitative analysis of the data.

2. Parliamentary Assembly of the Council of Europe (PACE)

67. In its Resolution 1715(2010), the PACE observed that discrimination against women in the labour market has a long history. Several factors are put forward to explain the pay gap between women and men: horizontal and vertical segregation in the labour market (commonly referred to as “glass walls” and “glass ceilings”), women’s supposedly lower qualifications and lesser experience, and their atypical working hours and career structures due to childbirth and care responsibilities.

68. The PACE recommends that member states:

- ensure that the right to equal pay for work of equal value is enshrined in their domestic legislation, if this is not already the case; that employers are obliged to respect this right (and incur penalties if they do not) and that employees can have recourse to the judicial process to pursue their claims with regard to this right, without incurring risks to their employment;
- collect reliable and standardised statistics on women’s and men’s wages, not only on the basis of gross hourly earnings, but also over the lifecycle;
- promote fair job classification and remuneration systems, including in the private sector,
- aim to increase women’s labour market participation rate and work against the pitfall of part-time work by encouraging all measures seeking to improve the care of children and the elderly outside the home, and a more equal sharing of care and household responsibilities between women and men;

- follow the Norwegian and Icelandic models, and a recent French initiative, which require that a minimum of 40% of members of certain companies' boards be female, as an enabling factor.

69. The PACE calls on the social partners, employers' associations and trade unions, to respect and defend the right to equal pay for work of equal value, *inter alia* by promoting and adopting fair and transparent job classification systems and wage scales.

70. In its Resolution 1921 (2013) Gender equality, reconciliation of private and working life and co-responsibility the PACE observed that although progress has been made along the path towards gender equality, a traditional division of roles between women and men remains widespread in Europe.

3. European Court of Human Rights (ECtHR)

71. Article 14 (prohibition of discrimination) of the European Convention on Human Rights of 4 November 1950 provides:

Article 14

"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."

72. In *Konstantin Markin v. Russia* - Application No. 30078/06, Grand Chamber, judgment of 22 March 2012, the Court has pointed out that:

"127 [T]he advancement of gender equality is today a major goal in the member States of the Council of Europe and very weighty reasons would have to be put forward before such a difference of treatment could be regarded as compatible with the Convention ... In particular, references to traditions, general assumptions or prevailing social attitudes in a particular country are insufficient justification for a difference in treatment on grounds of sex."

4. Commissioner for Human Rights

73. In his end-of-the-year statement (December 2017) the Commissioner for Human Rights, Nils Muižnieks, noted that:

"Gender equality in employment is still a distant promise in Europe." (...)

Women in Europe effectively worked without pay during the last two months in comparison to men. In addition, they continued to face underrepresentation in decision-making bodies and positions. This is a gross injustice and a human rights violation. European states must tackle it much more forcefully than has been the case so far.

Although the situation varies from country to country, it is clear that women suffer everywhere on our continent from unequal treatment and opportunities in the workplace. It would be wrong to believe that this situation is the result of employment dynamics only. In reality, discrimination against women, be it direct or indirect, in this sphere of life results from deep-rooted societal attitudes that keep women in a subordinate role. Tackling this problem therefore requires a comprehensive approach from Council of Europe member states, from laws to be changed to political, cultural and economic measures to be implemented."

74. In his position on women's rights (2011), the Commissioner underlined that there are widespread and serious violations of the rights of women across Europe. With respect to women's equality in the employment sector, there is a strong need to take steps to ensure that women have equal opportunities in the labour market at all levels, including senior and managerial-level positions, and that the principle of "equal pay for equal work" becomes a reality.

75. Wages in the private sector are often governed by collective agreements between social partners, without much room for state intervention. However, governments should step in and define the frameworks within which negotiations are possible. In order to ensure gender neutral job evaluation and grading systems, they can, for instance, specify the rules for applying the principle of equal pay for equal work between different sectors of employment. Authorities could also make use of awareness raising measures in the private sector, such as providing information to employers, employees and the public about their rights and duties.

B – United Nations

1. UN Convention on the Elimination of all forms of Discrimination (CEDAW) and its Committee

Gender pay gap

76. In its General Recommendation No. 13/12 1989, the CEDAW defined in more detail the content of 'Equal remuneration for work of equal value' by recommending to the States Parties 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."

Women on decision-making boards in enterprises

77. 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 has assessed the issue in these 'Concluding Observations': Estonia (2016)²⁹; Slovakia (2015); Spain (2015); Denmark (2015)¹⁶.

2. International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Committee on Economic, Social and Cultural Rights

78. In its General Comment No. 23 concerning Article 7, ICESCR 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

13. Objective job evaluation is important to avoid indirect discrimination when determining rates of remuneration and comparing the relative value of different jobs

3. Principles relating to the Status of National Institutions (The Paris principles)

79. Adopted by the General Assembly resolution 48/134 of 20 December 1983, the Paris principles set out six main criteria that National Human Rights Institutions require to meet: a) Mandate and competence: a broad mandate, based on universal human rights norms and standards; b) Autonomy from Government; c) Independence guaranteed by statute or Constitution; d) Pluralism; e) Adequate resources; and f) Adequate powers of investigation.

C – International Labour Organisation

ILO Equal Remuneration Convention 100:

80. In its General Survey 2012, the ILO 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:

Pay differentials

“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

669. 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

“673. 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.

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.”

D – European Union

1. Primary Law

81. After the entry into force of the Treaty of Lisbon in 2009 several sources are relevant:

82. The Treaty on European Union itself:

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.”

83. The Treaty on the Functioning of the European Union (TFEU):

Article 8

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

Article 157

“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. [...]

84. The Charter of Fundamental Rights of the European Union (CFREU), legally binding on all EU Member States when they apply EU law, by virtue of Article 6(1)(3) of the Treaty on the European Union (TEU), provides:

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.”

2. Secondary law

85. Directive 2006/54/EC (the Equal Pay directive) of 5 July 2006, 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.”

86. Also, the Directive requires that the Member States shall ensure that all employment-related arrangements, including provisions in individual or collective agreements and contracts, internal company rules, rules governing independent professions and rules governing employees’ and employers’ organisations contradicting the principle of equal pay shall be or may be declared null and void or may be amended (Article 23).

87. Directive 2008/104/EC on temporary agency work requires that the basic working and employment conditions, including pay, of temporary agency workers shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job. In addition, the rules on equal treatment between men and women in force at a user undertaking must be applicable to temporary agency workers.

88. The Capital Requirements Directive (2013/36/EU) 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."

3. European Pillar of Social Rights

89. The European Pillar of Social Rights was proclaimed and signed in November 2017 by the Council of the European Union, the European Parliament and the European Commission during the Göteborg Social Summit for fair jobs and growth.

90. Principle No. 2 of the Pillar 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."

91. The gender pay gap is one of the three indicators for gender equality included in the social scoreboard that the Commission uses to monitor the implementation of the Pillar.

4. Other institutions**a) European Commission**

92. See the Recommendation of the European Commission on strengthening the principle of equal pay between men and women through transparency (2014/124/EU). Also, in its report to the European Parliament and the Council (COM/2013/0861) on the application of Directive 2006/54/EC 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.

Proposed 40% objective for the representation of women on Boards – under Gender balance in decision-making positions."

b) Court of Justice of the European Union

93. The issue of equal pay raises complex legal questions, as demonstrated by the case law before the CJEU. The main findings of the CJEU in this regard are set out below.

94. Article 157(1) of the TFEU and Article 4 of Directive 2006/54/EC provide for the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration for the same work or for work to which equal value is attributed (see cases C-96/80, EU:C:1981:80, Jenkins, paragraph 22); C-237/85, EU:C:1986:277, Rummler, paragraph 11; C-17/05, EU:C:2006:633, Cadman, paragraphs 27-29).

95. The scope of Article 157(1) TFEU and Directive 2006/54/EC covers not only direct but also indirect discrimination (see to that effect, cases Jenkins, *op. cit.* paragraphs 14 and 15; C-285/02, EU:C:2004:320, Elsner-Lakeberg, paragraph 12; Cadman, *op. cit.*, paragraph 30).

96. The fundamental principle laid down in Article 157(1) of the Treaty and elaborated by the Directive precludes unequal pay between men and women for the same job or work of equal value, whatever the mechanism which produces such inequality (see, for example, C-381/99, EU:C:2001:358, Brunnhofer, paragraph 30). The source of discriminatory pay may be: a contract of employment, the legislative provisions, collective agreement (C-400/93, EU:C:1995:155, Royal Copenhagen paragraph 45) or pay provided on a voluntary basis (4557/93, EU:C:1996:33, Lewark paragraph 21.). The source of unequal pay must be unique or single, because if the differences identified in the pay conditions of workers performing the same work or work of equal value cannot be attributed to a single source, there is nobody which is responsible for the inequality and which could restore equal treatment. Such a situation does not come within the scope of Article 157(1) TFEU (Lawrence, C-320/00, EU:C:2002:498, paragraph 18 ; Allonby, C-256/01, EU:C:2004:18, paragraph 46).

97. The concept of equal pay includes any consideration paid immediately or in the future (see, for example, Barber, C-262/88, EU:C:1990:209, point 12 ; Bilka-Kaufhaus, 170/84, EU:C:1986:204, paragraph 15 ; Seymour-Smith, C-167/97, EU:C:1999:60, paragraph 23 ; Garland, 12/81, EU:C:1982:44, paragraph 5 ; Brunnhofer, *op. cit.*, paragraph 34). The concept of pay also includes payments which a worker receives from an employer even not performing any work provided in their contracts of employment (Gillespie, C-324/93, EU:C:1996:46, paragraph 13 ; Bötzel, C-360/90, EU:C:1992:246, paragraph 15 ; Rinner-Kühn, 171/88, EU:C:1989:328, paragraph 7). The concept of pay does not include statutory social security benefits (Defrenne, 80/70, EU:C:1971:55, paragraph 7).

98. The terms 'the same work', 'the same job' and 'work of equal value' are entirely qualitative in character in that they are exclusively concerned with the nature of the work actually performed (see Macarthys, 129/79, EU:C:1980:103, paragraph 11 ; Rummler, *op. cit.* , paragraphs 13 et 23 ; Brunnhofer, *op. cit.*, paragraph 42). In order to determine whether the work being done by different persons is the same, it is necessary to ascertain whether, taking account of a number of factors such as the

nature of the work, the training requirements and the working conditions, those persons can be considered to be in a comparable situation (see to that effect C-400/93 Royal Copenhagen, *op.cit.*, paragraphs 32 and 33).

99. As regards the method to be used for comparing the pay of the workers concerned in order to determine whether the principle of equal pay is being complied with genuine transparency permitting an effective review is assured only if that principle applies to each aspect of remuneration granted to men and women, excluding any general overall assessment of all the consideration paid to workers (C-285/02 Elsner-Lakenberg, *op. cit.*, paragraph 13).

100. Pay systems must be based on criteria which are of importance for the performance of specific tasks entrusted to the employee' (C-109/88 Danfoss, paragraph 22).

101. The EU Member States are obliged to take the necessary measures to enable all persons who consider themselves wronged by discrimination, to pursue their claims by judicial process. Such an obligation implies that the measures in question should be sufficiently effective to achieve the objective pursued by the directive and should be capable of being effectively relied upon by the persons concerned before national courts (see judgments in C-271/91 Marshall, C-271/91, UE:C:1993:335, paragraph 22 et Paquay, C-460/06, EU:C:2007:601, paragraph 43). EU law does not prescribe a specific measure to be taken by Member States, however, the measures appropriate to restore genuine equality of opportunity must guarantee real and effective judicial protection and have a genuine deterrent effect on the employer (see judgments in, von Colson et Kamann, 14/83, UE:C:1984:153, paragraphs 23 et 24 ; Draehmpaehl, C-180/95, EU:C:1997:208, paragraph 25 ; Paquay, C-460/06, EU:C:2007:601, paragraph 45).

102. Whenever there is evidence *prima facie* of discrimination, it is for the employer to prove that the practice at issue is justified by objective factors unrelated to any discrimination based on sex (C-17/05 Cadman, paragraph 31). However, it is clear from the case law of the CJEU that the burden of proof must shift when this is necessary to avoid depriving workers who appear to be the victims of discrimination of any effective means of enforcing the principle of equal pay (C-381/99 Brunnhofer, *op. cit.*, paragraph 53).

103. According to CJEU case law, where financial compensation is the measure adopted in order to achieve the objective of restoring genuine equality of opportunity, it must be adequate in that it must enable the loss and damage actually sustained as a result of the discriminatory dismissal to be made good in full in accordance with the applicable national rules (see judgments in C-271/91 Marshall, *op. cit.*, paragraph 26 ; Paquay, *op. cit.*, paragraph 46 ; Camacho, C-407/14, EU:C:2015:831, paragraph 33).

104. National law may not limit the time-period for a claim on arrears of pay, if an employee did not have access to the information the level of pay for a colleague of an opposite sex performing the same work (Levez, C-326/96, EU:C:1998:577, paragraph 34). An employer who has not provided the information on the level of pay for work performed by a colleague of opposite sex cannot reasonably rely on the principle of legal certainty (C-326/97 Levez, *op. cit.*, paragraphs 31-33).

THE LAW

PRELIMINARY CONSIDERATIONS

105. The right of workers to a fair remuneration is at the heart of the Charter's guarantee of conditions of work that are reasonable and ensure a fair reward for labour performed. Inadequate pay creates poverty traps, which may affect not just individuals and their families, but whole communities. Inadequate pay is also an obstacle to full participation in society and thus a marker for social exclusion. More broadly, pay which lags significantly behind average earnings in the labour market are incompatible with social justice.

106. One of the constituent elements of fair remuneration is the right of women and men to equal pay for equal work or work of equal value. The right of women and men workers to equal pay has a long history in the Charter. Already in the 1961 Charter, under Article 4§3, the States Parties undertook to recognise the right to equal pay, thus going beyond mere promotion of the principle and conferring an absolute character on this provision (Conclusions II (1971)).

107. Article 20 of the Charter (and Article 1 of the 1988 Additional Protocol) guarantees the right to equal opportunities and equal treatment in matters of employment and occupation, without discrimination on the grounds of gender. It embodies the same guarantee of equal pay as Article 4§3, and further encompasses other aspects of the right to equal opportunities and equal treatment in matters of employment, such as access to employment, vocational guidance and career development.

108. All the States Parties to the Charter having accepted Articles 4§3 and/or 20 are aware that this right has to be practical and effective, and not merely theoretical or illusory (International Commission of Jurists (ICJ) against Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32).

109. The Committee notes that UWE also invokes Article 1 of the Charter concerning the right to work. However, it considers that in accordance with its well-established case law the assessment in substance more appropriately belongs under Articles 4§3 and 20 of the Charter. As regards Article E, which is also invoked by UWE, it is clear from the very wording of Articles 4§3 and 20 of the Charter that their scope includes the prohibition of discrimination. The Committee therefore considers that it is not necessary to examine whether there has been a violation of Article E in conjunction with Articles 4§3 and 20 of the Charter.

110. Despite the obligations deriving from the Charter and other international and European instruments to recognise and ensure the right to equal opportunities and equal pay for women and men for equal work or work of equal value, the gender pay gap still persists today. The available statistics reveal both downward and upward trends in gender pay gap indicators in European States as well as insufficient results of States' efforts to ensure a balanced representation of women in decision-making positions.

111. In this respect, the Committee draws attention to the main statistical indicators which it will take into account in the examination of the instant complaint. Firstly, the unadjusted gender pay gap, which is defined as the difference between the average gross hourly earnings of men and women expressed as a percentage of the average gross hourly earnings of men (indicator published by Eurostat). Secondly the gender overall earnings gap measures the impact of three combined factors - the average hourly earnings, the monthly average of the number of hours paid before adjustment for part-time work and the employment rate - on the average earnings of all women of working age, whether employed or not, compared to men (also published by Eurostat). Finally, with respect to the representation of women in decision-making positions, the Committee will rely mainly on statistics on the share of women on the supervisory boards of the largest publicly listed companies in a country (indicator published by the European Institute for Gender Equality (EIGE)).

112. The Committee wishes to emphasise that gender pay gap indicators do not measure discrimination as such, rather they reflect a combination of differences in the average pay of women and men. The unadjusted gender pay gap, for example, covers both possible discrimination between men and women (one component of the "unexplained" pay gap) and the differences in the average characteristics of male and female workers (the "explained" pay gap). Differences in the average characteristics result from many factors, such as the concentration of one sex in certain economic activities (sectoral gender segregation) or the concentration of one sex in certain occupations (occupational gender segregation), including the fact that too few women occupy the better paid decision-making positions (vertical segregation).

113. The situation concerning the gender pay gap as well as the diversity of the solutions that the States have proposed to promote women's right to equal pay, together with a varying degree of success in achieving the ultimate goal – guaranteeing gender equality in practice - have prompted the Committee to take a fresh look at the provisions of the Charter with a view to analysing and clarifying the obligations arising from in Articles 4§3 and 20 in the light of the current state of international and European law and practice in the area.

114. In this respect, the Committee wishes to recall its approach to the interpretation of the Charter. Thus, in interpreting the provisions of the Charter, it has to take into account not only current conditions and relevant international instruments, but also emerging new issues and situations. In other words, the Charter is a living instrument and therefore the Committee interprets the rights of the Charter in a dynamic manner having regard to present day requirements.

115. In the light of the above considerations and taking into account the allegations presented and the information submitted by the parties as well as the information received from other sources, the Committee will consider the issues at stake in the following order:

(a) First, the Committee will assess UWE's allegations concerning the respect for the right of equal pay for equal work or work of equal value from two angles:

- The obligations of the State as regards the recognition and the enforcement of the right to equal pay under Articles 4§3 and 20.c of the Charter. These obligations include the following:
 - recognition in legislation of the right to equal pay for equal work or work of equal value;
 - ensuring access to effective remedies when the right to equal pay for equal work or work of equal value has not been guaranteed;
 - ensuring pay transparency and enabling job comparisons;
 - maintaining effective equality bodies and other relevant institutions;
- The obligations of the State to adopt measures to promote the right to equal pay for equal work or work of equal value, under Article 20.c of the Charter. These obligations include the following:
 - collection of reliable and standardised data with a view to measuring the gender pay gap;
 - adoption of measures to promote equal opportunities through gender mainstreaming.

(b) Secondly, the Committee will assess the issues arising in relation to the representation of women in decision-making positions within private companies under Article 20.d of the Charter, according to which States Parties have undertaken to ensure and promote the right to equal opportunities and equal treatment in the field of career development, including promotion.

I. ALLEGED VIOLATION OF ARTICLES 4§3 AND 20.C OF THE CHARTER AS REGARDS THE RECOGNITION AND THE ENFORCEMENT OF THE RIGHT TO EQUAL PAY

116. Articles 4§3 and 20.c of the Charter read as follows:

Article 4 – Right to a fair remuneration

Part I: “All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.”

Part II: “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 – Right to equal opportunities and equal treatment in employment and occupation without sex discrimination

Part I: “All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.”

Part II: “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: (...)

...

c terms of employment and working conditions, including remuneration;

A – Arguments of the parties

1. The complainant organisation

Recognition of the right to equal pay in legislation

117. Concerning equal pay of equal or comparable value, UWE states that the relevant laws are out-dated and have no effect. In its 1994 Constitution, Belgium defines the competencies of the regions, but ensuring equality is a federal competence. Article 10 of the Constitution was amended in 2002 to establish the principle of equality between women and men. Article 23 guarantees only fair remuneration. Other laws provide the legal basis for the fight against discrimination (mainly Law of 10 May 2007 on measures to combat certain forms of discrimination; Law of 22 April 2012 on measures to combat the gender pay gap, amended by the Law of 12 July 2013, and the Law of 27 April 2015) and various implementing decrees have been adopted, as well as collective agreements. The legislative situation is not, according to UWE, satisfactory.

Effective remedies

118. UWE states that there are obstacles in accessing judicial remedies, because there is a lack of information of data coming from the employer and a fear of losing the job. The *Defrenne* case in the 70s is an example, as it took 10 years in front of the national authorities and yet the complainant had to go further, to the European bodies, to win the case.

Pay transparency and job comparisons

119. UWE states that it is very difficult for possible victims to obtain comparative figures and statistics in order to present successfully their claims. Confidentiality cannot be an obstacle in fighting discrimination. The structural differences and the fact that women are more present in certain sectors, such as education, health and social sectors, is not a valid argument to justify the gender pay gap.

120. There is no obligation to establish classification systems in Belgium, only to negotiate them under the supervision of the federal authority in employment. There are many possible inequalities, for example, male employees of a municipality (commune) working in green public spaces receive a prime, while female workers of the same municipality employed in kindergarten do not. The classification methods are not transparent and well-known and they do not seem coherent.

121. It should be noted that most obligations concerning the production of statistical documents apply to companies with committees or works councils and between 50 and 100 employees. None of the companies under 50 employees are covered by the laws and regulations on equal pay for equal, similar or comparable work. The Law of 22 April 2012 requires a comparative review of men's and women's pay to be made every two years and an Action plan to be drawn up if it identifies wage disparities. Then a national report on pay gaps will be produced by the Belgian government, giving statistics based on official European indicators. However, in most companies in Belgium, employees do not know how much other employees earn or what benefits they receive. It should be an obligation for employers to publish these figures as is the case with their accounts. Not finding a way of monitoring small companies approach to the equal pay for equal work issue is a political choice against the Charter.

Equality bodies and other institutions

122. The Institute for the Equality of Women and Men, which was set up in 2002 at the federal level, has the task of guaranteeing and promoting equality of women and men and combating any form of discrimination or inequality on the ground of sex. It provides information and assistance regarding complaints lodged by victims of this type of discrimination, directs victims to existing services and organises mediation. If necessary, the Institute may take legal Action in consultation with the victim. According to UWE, in practice, between 2008 and 2011, the number of complaints per year rose from 125 to 191, which is very low, and it is not possible to know how many of these related to equal pay for equal work.

123. The ombudsperson's role, according to UWE, is limited to major companies. If a female employee considers herself to have been the victim of an offence and asks the ombudsman to intervene, the ombudsperson seems to have some powers of influence but no investigative powers. Employees in small or medium-sized businesses do not have the benefit of being able to consult reports to staff representative bodies or employers on the detailed nature of their work. In practice, staff representative bodies rarely take up the issue. Statistical documents may exist, but they can rarely be used by employees.

124. Finally, UWE states that the Labour Inspectorate cannot report offences and file complaints, even though labour inspectors have the right to demand any relevant documents and the power to require employers to provide comparators. Belgium should have reinforced the role of the Labour Inspectorate in fighting discrimination cases.

125. UWE considers that all this shows the limited role of these bodies, and this, together with the cost of such anti-discrimination proceedings for the victims and the fact that there is a limitation period of 5 years that applies in the area of pay disputes, results in an uncertain and costly process. Case law is therefore very rare and very few cases arrive to the courts.

126. UWE also refers to the fact that there is no specific available information about the powers, the competences and the funding of the different administrative authorities with possible responsibilities in combatting gender pay gaps and that the employment policy is not coherent. Moreover, the Government has not yet adopted the royal decree needed to put in practice positive measures within enterprises, allowing employers to benefit from them and compensate possible disadvantages resulting from the cost of implementing anti-discrimination measures.

2. The respondent Government

Recognition of the right to equal pay in legislation

127. The Law of 10 May 2007 to combat discrimination between women and men transposes the so-called "recast" Directive 2006/54/EC of 5 July 2006. In accordance with the directive, the legislation prohibits direct and indirect discrimination, including discrimination in pay; provides for compensation for persons suffering the effects of sex-based discrimination (Sections 5 and 19); shifts the burden of proof, so that the defending party must establish that there has been no breach of relevant rules; authorises the setting aside of provisions of contracts or collective agreements that conflict with the equality principle (section 20); offers protection against reprisals in the form of dismissal or any other form of unfavourable treatment by employers in response to complaints (Section 22); establishes a system of effective, proportionate and dissuasive penalties (Sections 23, 24 and 28-29 – in particular, perpetrators of discrimination may be ordered to pay a fine); and establishes a body to promote, assess, monitor and support equal treatment, in the form of an institute for equality between women and men, which is empowered to take part in legal proceedings in disputes that might have legal implications (Section 34).

128. The Law of 22 April 2012 on measures to combat the gender pay gap between women and men, as amended in 2013, introduced the following measures at both the economy-wide and sectoral levels: inclusion of data on the pay gap in the report of the central economic council to increase their impact on the collective bargaining process; obligation to include measures to reduce the pay gap in relevant negotiations; measures to ensure the gender-neutrality of sectorial occupational classifications, and so on.

129. Finally, while the ban on pay discrimination comes within the scope of federal legislation, the federated entities have a responsibility for its implementation, which is the subject of several decrees and orders.

Effective remedies

130. There are adequate remedies for the victims of wage discrimination, under the Law of 10 May 2007 to combat discrimination between women and men. Victims may themselves file complaints with their employer or contact the institute or a trade union, or even the social and labour legislation directorate of the Federal Public Service Employment. The burden of proof is shifted.

131. Despite UWE's claims, victims of discrimination in firms with fewer than 50 workers can seek the protection of the law. UWE has not presented any arguments to support its contention that Actions brought by victims are unlikely to be successful.

132. Moreover, Joint Circular 13/2013 of the Ministries of Justice and the interior and of the board of the College of Public Prosecutors on the investigation and prosecution of discrimination and hate crimes relating to gender-based discrimination, adopted in June 2013, is intended to standardise practice with regard to policy in this area. The Circular provides for the appointment of judges responsible for providing advice and training on the subject. In each prosecution service and court office, at least one judge must undergo the training on combating discrimination organised by the judicial training institute.

133. Victims can claim compensation, which can take the form, depending on their choice, either of damages corresponding to the detriment actually suffered, or of a lump sum payment. There are also arrangements for protecting them against reprisals, since victims who lodge complaints with employers are protected against such potentially harmful measures as dismissal or changed working conditions. These arrangements are also applicable when complaints are lodged on behalf of victims by the institute or a trade union with the social and labour legislation directorate of the Federal Public Service Employment.

Pay transparency and job comparisons

134. As indicated above, the Law of 22 April 2012 requires transparency in all negotiations. Transparency implies gender neutral job classifications. In order to ensure that sectorial job classifications are indeed gender neutral, monitoring is done by the SPF Employment Service. In 2015, 165 of the old job classifications and the 90 of the new ones had been controlled. It is nevertheless still early to well appreciate the impact of this measure.

135. UWE states that the law is not applicable to small enterprises, with less than 50 workers, and that this represents a 99% of the Belgian employers. It further states that there is no obligation of publicity and transparency for these enterprises. The Government points out that the figures are correct, but that 80% of these medium and small enterprises have no staff at all. 80% of workers are occupied in enterprises having 50 or more workers. The reason not to impose this obligation on small and medium enterprises is the administrative burden it implied. However, there are still some transparency obligations, such as the requirement to present their annual accounts.

Equality bodies and other institutions

136. The Institute for Equality between Women and Men, established by the Law of 16 December 2002, monitors compliance with the principle of equality between women and men and combats all forms of gender-based inequality or discrimination. It can assist anyone seeking advice on their rights and on what steps to take to enforce them. It can also Law as a conciliator and when victims so wish, initiate judicial proceedings. Its services are provided completely free of charge, contrary to what UWE maintains.

137. There are several Belgian inspection services in the employment field. The general directorate of the Federal Public Service Employment responsible for monitoring social and labour legislation is charged with ensuring compliance with employment policies, including the 2007 anti-discrimination legislation. Failure to comply with obligations arising from collective agreements is a criminal offence under Article 189 of the Criminal Code. The Service may issue warnings when an offence is established and, depending on the severity, this may lead to a fine or criminal proceedings. Victims of discrimination are entitled to lodge complaints with the general directorate and when complaints are submitted to the Institute for Equality, the latter may seek the directorate's assistance in carrying out inquiries and establishing whether a pay differential does in fact exist, since the Institute itself has no powers of investigation.

138. Of 30 reported cases in 2015 and 37 in 2016, 6 and 5 respectively concerned equal pay, and two complaints were eventually lodged on this subject. An analysis of all the cases concerned over the last twenty years (2006-2016) shows that 80% of the complainants were successful.

B – Assessment of the Committee

Recognition of the right to equal pay in legislation

139. The Committee recalls that under Articles 4§3 and 20.c of the Charter (and Article 1.c of the 1988 Additional Protocol), the right of women and men to equal pay for work of equal value must be expressly provided for in legislation. The equal pay principle applies both to equal work and work of equal or comparable value. The concept of remuneration must cover all elements of pay, that is basic pay and all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter's employment.

140. The States Parties are obliged to enact legislation explicitly imposing equal pay. It is not sufficient to merely state the principle in the Constitution. States must ensure that there is no direct or indirect discrimination between men and women with regard to remuneration.

141. The principle of equal pay precludes unequal pay irrespective of the mechanism that produces such inequality. The source of discriminatory pay may be the law, collective agreements, individual employment contracts, internal Laws of an employer.

142. The Committee notes that Belgium has adopted several laws, such as the Law of 10 May 2007 on measures to combat certain forms of discrimination, as well as the Law of 22 April 2012 on measures to combat the gender pay gap. The latter Law was modified in 2013 to set measures at the inter-professional, sectorial and enterprise level. Several implementation decrees complete the obligation to respect the principle of equal pay (the Royal Decree of 17 August 2013 implementing Chapter 4, Section 2, of the Law of 22 April 2012, on joint committee procedures; the Royal Decree of 25 April 2014 on the analytical report on wage structures; the Royal Decree of 25 April 2014 on the role of the ombudsman in the fight against the gender pay gap; and the Ministerial Order of 25 April 2014 establishing the models for the forms to be used as the basis for the analytical report on wage structures). Collective agreements have also been adopted, such as Collective Agreement No. 25 of 15 October 1975 on equal remuneration between workers, which has subsequently been modified several times.

143. The Committee further notes that the Law of 10 May 2007 applies to all persons in both the public and the private sectors. It also includes, in particular, the provisions and practices relating to working conditions and pay, specifically prohibiting both direct and indirect discrimination (Section 19) whether intentional or not and providing that such discrimination renders the measure concerned null and void (Section 20).

144. The Committee considers therefore that the obligation to recognise the right to equal pay for work of equal value has been satisfied.

Effective remedies

145. The Committee recalls that domestic law must provide for appropriate and effective remedies in the event of alleged pay discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court. Effective access to courts must be guaranteed for victims of pay discrimination. Therefore, proceedings should be affordable and timely.

146. Anyone who suffers pay 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 to Law as a deterrent. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and from being sufficiently dissuasive is contrary to the Charter.

147. The burden of proof must be shifted. The shift in the burden of proof consists in ensuring that where a person believes she or he has suffered discrimination on grounds of sex 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 non-discrimination (Conclusions XIII-5, Statement of interpretation on Article 1 of the 1988 Additional Protocol).

148. Retaliatory dismissal in cases of pay discrimination must be forbidden. Where a worker is dismissed on grounds of having made a claim for equal pay, the worker should be able to file a complaint for dismissal without valid reason. In this case, the employer must reinstate her/him in the same or a similar post. If reinstatement is not possible, the employer must pay compensation, which must be sufficient to compensate the worker (i.e. cover pecuniary and non-pecuniary damage) and to deter the employer.

149. The Committee observes that according to UWE there is limited domestic case law on equal pay in Belgium. Women who try to bring cases to court encounter significant obstacles, such as fear of reprisals and excessive costs. The Committee further notes that the number of judicial proceedings on gender pay discrimination is low in Belgium. Concerning the decisions taken by supervisory bodies such as the Institute for the Equality of Women and Men, the Institute points out that it received 133 notifications in 2015 and 164 notifications in 2016 concerning employment in general. In the category 'terms of employment and remuneration', the Institute received 30 and 37 notifications in 2015 and 2016, respectively. The Institute received 6 notifications in 2015 and 5 in 2016 with regard to pay discrimination specifically. In four cases, the Institute took legal Action. The Institute every year publishes an overview of legislation and case law regarding the equality between women and men in the labour market, which includes a separate subsection for domestic case law on equal pay. In 2018, this section comprised a total of 28 cases.

150. The Committee also notes, as posited by the Institute regarding the reasons for the low number of cases, the problem of pay transparency. The Committee observes

that access to courts is possible for pay discrimination victims, although taking forward discrimination cases either before the Institute or the courts remains difficult because of the existing concerns regarding pay transparency.

151. The Committee further observes that, according to the European Network of Legal Experts in Gender equality and Non-Discrimination, Country Report on gender equality: Belgium 2018, the cost of proceedings and the conditions of entitlement to legal aid result in a deterrent effect for workers, mainly if they cannot rely on a trade union's assistance to file a complaint.

152. As for the shift in the burden of proof in pay discrimination cases, it is provided for by national law at both federal and regional levels. Victims of discrimination are protected against reprisals and there is no predetermined upper limit on compensation for workers who are dismissed as a result of gender discrimination claims. According to the European Network of Legal Experts in Gender equality and Non-Discrimination, Country Report on Non-Discrimination: Belgium 2018, the victim is entitled to choose the lump sums laid down by law, rather than asking for damages before courts, which are calculated on the basis of the 'actual' loss. The report states that there is a lack of existing information available as to the average amount of compensation allocated to victims of discrimination.

153. In light of all of the above elements and despite remaining obstacles to render remedies fully effective in the field of gender pay discrimination, the Committee considers that the obligation to ensure access to effective remedies is satisfied.

Pay transparency and job comparisons

154. The Committee considers that pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value. Transparency contributes to identifying gender bias and discrimination and it facilitates the taking of corrective Action by workers and employers and their organisations as well as by the relevant authorities.

155. States should take measures in accordance with national conditions and traditions with a view to ensuring adequate pay transparency in practice, including measures such as those highlighted in the European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, notably an obligation for employers to regularly report on wages and produce disaggregated data by gender. The Committee regards such measures as indicators of compliance with the Charter in this respect.

156. In order to establish whether work performed is equal or of equal value, factors such as the nature of tasks, skills, educational and training requirements must be taken

into account. The Committee further observes that the notion of equal work or work of equal value has a qualitative dimension and may not always be satisfactorily defined, thus undermining legal certainty. States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law. In this respect, job classification and evaluation systems should be promoted and where they are used, they must rely on criteria that are gender-neutral and do not result in indirect discrimination. Moreover, such systems must consider the features of the posts in question rather than the personal characteristics of the workers (Conclusions XV-2, Article 4§3, Poland).

157. The Committee considers that the possibility of making job comparisons is essential to ensuring equal pay. Lack of information on comparable jobs and pay levels could render it extremely difficult for a potential victim of pay discrimination to bring a case to court. Workers should be entitled to request and receive information on pay levels broken down by gender, including on complementary and/or variable components of the pay package. However, general statistical data on pay levels may not be sufficient to prove discrimination. Therefore, in the context of judicial proceedings it should be possible to request and obtain information on the pay of a fellow worker while duly respecting applicable rules on personal data protection and commercial and industrial secrecy.

158. Moreover, national law should not unduly restrict the scope of job comparisons, e.g. by limiting them strictly to the same company. Domestic law must make provision for comparisons of jobs and pay to extend outside the company concerned where necessary for an appropriate comparison. The Committee views this as an important means of ensuring that the equal pay principle is effective under certain circumstances, particularly in larger companies or specific sectors where the workforce is predominantly, or even exclusively, of one sex (see Statement of interpretation on Article 20, Conclusions 2012). The Committee considers notably that job comparisons should be possible across companies, where they form part of a group of companies owned by the same person or controlled by a holding or a conglomerate.

159. The Committee takes note of the Law adopted in Belgium on 22 April 2012 on equal pay, which has as its main goal to tackle the gender pay gap and makes each social actor responsible for adopting effective measures to achieve equality. This legislation has increased the visibility of the gender pay gap and been useful in reducing it.

160. As regards pay transparency, the Committee notes that, according to the above-mentioned Country Report on gender equality, it is not enshrined in the legislation and Belgium has not yet taken the necessary measures to ensure application of Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency.

161. The Committee further observes that, according to the above-mentioned Country Report, there is no specific legal rule that lays down parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions. A comparator, hypothetical or otherwise, is not established by law. Domestic case law on this is very scarce. Moreover, the term “work of equal value” has been interpreted so strictly in case law that it virtually coincides with the term “equal work”. The Institute for the Equality of Women and Men has also indicated that this is one of the factors that explain the low number of cases on pay discrimination. The Committee considers that defining this notion is essential to ensure legal certainty and pay transparency.

162. In view of this situation, the Institute for the Equality of Women and Men, issued a methodological instrument called the ‘Gender neutral checklist for job assessment and classification’, which was given legal recognition. Indeed, the Law of 22 April of 2012 allowed for a large-scale evaluation of function classifications regarding their gender neutrality. Since 2014, the Labour Inspectorate (FPS Employment) verifies all new job classifications, and this monitoring role has as a goal to ensure that the same neutral standards are applied. However, under the domestic legal framework, there is neither a legal obligation to change function classifications if they do not pass the test of gender neutrality nor any real sanction if the classifications are not changed. Joint industrial committees are only obliged to give a valid justification for not changing the function classifications within a period of 2 years. It is only when they do not give such a justification that they are named on a list that is transmitted to the Minister of Employment and to the Institute for the Equality of Women and Men.

163. The Committee also observes that UWE alleges that there are shortcomings in the system of job classifications. The legislation adopted only applies to the private sector and according to UWE, its impact is limited because of a set of elements, including the fact that the obligation to draw up an analysis report does not apply to smaller companies, i.e. those companies employing less than 50 workers.

164. The Committee also notes that the Institute for the Equality of Women and Men points to several shortcomings concerning the evaluation of the gender neutrality of function classifications conducted by the FPS Employment. Concerning the evaluation method, the function classifications do not pass the test of gender neutrality if job titles have an exclusively masculine form, while others have an exclusively feminine form. According to the Institute’s observations, “this criterion alone is unsatisfactory to judge whether or not the function classification is indeed gender neutral. Due to this method, only few function classifications were considered not to be gender neutral, namely between 5-6% of the evaluated classifications.”

165. Concerning job comparisons, the Committee refers to the conclusion adopted on Article 4§3, in which it held that the situation was in conformity with the Charter on this issue because it was possible to compare jobs across companies in the same sector (Conclusions 2014, Belgium, Article 4§3).

166. The Committee considers that the obligation to recognise and respect the principle of pay transparency in practice is not satisfied.

Equality bodies and other institutions

167. The Committee considers that the satisfactory application of the Charter cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised (ICJ v. Portugal, Complaint No. 1/1998, op.cit., §32). The Committee has considered that measures to foster the full effectiveness of the efforts to combat discrimination include setting up of a specialised body to monitor and promote, independently, equal treatment, especially by providing discrimination victims with the support they need to take proceedings (Conclusions XVI-1, Article 1§2, Iceland). The status of such equality bodies in terms of their mandate, their independence and resources must be clearly defined. In this context, the Committee also has regard to the criteria for national human rights institutions set out in the so-called Paris Principles adopted in 1993 by the United Nations General Assembly.

168. As regards the mandate of equality bodies, the Committee considers that it should include provision for functions such as the following:

- monitoring and promotion: in cooperation with Labour Inspectorates or other relevant bodies, monitor the situation regarding gender discrimination, including in respect of pay, and produce regular reports; conduct inquiries at their own initiative and make recommendations; raise awareness of the equal pay principle across society.

- decision-making: receive, examine, hear cases of discrimination; issue binding or authoritative decisions on complaints concerning alleged discrimination and ensure the implementation of such decisions.

- assistance to victims: provide personal and legal support to complainants; mediate settlements in cases of discrimination; represent victims in cases of discrimination; and monitor the implementation of decisions in such cases.

169. The Committee further considers that in addition to having a clear and comprehensive mandate, these specialised equality bodies must be equipped with the necessary human and financial resources as well as infrastructure to ensure that they can effectively combat and eliminate pay discrimination.

170. The Committee wishes to emphasise that it is not within the scope of the examination of this complaint to conduct an exhaustive analysis of the conformity of the situation with the above criteria. The Committee will restrict its examination to assessing in light of the information available to it the effectiveness of equality bodies and other relevant institutions in ensuring equal pay for equal work or work of equal value.

171. The Committee notes that in Belgium the Institute for the Equality of Women and Men is responsible for guaranteeing and promoting gender equality and for combatting any form of gender-based discrimination and inequality. The Institute not only has monitoring and promotion functions, but it may also provide support to litigation and information on gender equality cases lodged and pending. The Committee also takes note that the number of notifications the Institute receives annually has increased significantly over the past years, from the 196 notifications recorded in 2009 to 549 notifications in 2016.

172. The Committee also notes that as from 2014, the Institute signed a co-operation agreement with the Labour Inspectorate (FPS Employment), making it possible for the two bodies to co-operate concerning gender discrimination. The Labour Inspectorate has the power to draw up reports where its inspections result in the finding of an offence. The reports may give rise, where the offences are serious enough, to an order for the perpetrators to pay an administrative fine or to the initiation of court proceedings.

173. In the event of a complaint being lodged before the Institute, it may ask the Labour Inspectorate to investigate certain facts, and then draw up a report that will be submitted to the Institute. This report may be used in court.

174. The Committee further notes that the Institute has broadened its functions over the years, rendering the gender pay gap more visible through training, public debates and recommendations to national policies. According to the above-mentioned Country Report on gender equality, the Institute has been afforded competences to enforce its tasks. It has also launched projects concerning the gender neutrality of function classifications in cooperation with the Labour Inspectorate, the trade unions, and the employers' organizations, which resulted in a practical manual for companies on how to review function classifications, making them more analytical.

175. Another body that monitors equality between women and men and dealing with equal pay is the Ombudsperson. The Committee notes that the role of the Ombudsperson in combating the gender pay gap is confined to large companies.

176. The Committee also notes that the budget of the Institute for the Equality of Women and Men has grown over the years rising from €5,253,916 in 2011 to €6,500,000 in 2017 according to the information published by EQUINET.

177. On the basis of the above, the Committee considers that the obligation to maintain an effective equality body with a view to guaranteeing the right to equal pay has been satisfied.

Concluding assessment

178. Firstly, with regard to the recognition of the right to equal pay, the Committee notes that in Belgium, the right to equal pay for men and women is recognised by domestic legislation and subsequent regulations. The Committee considers that the obligation to recognise the right to equal pay in the legislation is satisfied.

179. Secondly, with regard to access to effective remedies, the Committee notes that some obstacles remain in accessing remedies, but there is a shift in the burden of proof and no upper limits on compensation for workers who are dismissed as a result of gender discrimination claims. The Committee considers therefore that the obligation to ensure access to effective remedies is satisfied.

180. Thirdly, with regard to the systems to evaluate and compare jobs and pay transparency, the Committee notes that there are no legal provisions establishing comparative parameters to pinpoint equal value where work is performed by men and women; there is no guarantee in practice for the principle of pay transparency in the private sector; and there are some shortcomings in the job classification systems. The Committee considers, therefore, that the obligation to recognise and respect the principle of pay transparency in practice is not satisfied.

181. Lastly, with regard to the equality bodies, the Committee notes that the Institute for Equality between Women and Men has specific functions in relation to the fight against gender pay discrimination. It has a large mandate with several and varied functions, which have grown over the years and are mainly promotion, prevention, monitoring and assistance to victims. The Committee considers, therefore, that the obligation to maintain an effective equality body with a view to guaranteeing the right to equal pay is satisfied.

182. In view of the above, the Committee holds that there is a violation of Articles 4§3 and 20.c of the Charter on the ground that the obligation to recognise and respect pay transparency in practice is not satisfied.

II. ALLEGED VIOLATION OF ARTICLE 20.C OF THE CHARTER AS REGARDS MEASURES TO PROMOTE EQUAL OPPORTUNITIES BETWEEN WOMEN AND MEN IN RESPECT OF EQUAL PAY

183. Article 20.c of the Charter reads as follows:

Article 20 – Right to equal opportunities and equal treatment in employment and occupation without sex discrimination

Part I: “All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.”

Part II: “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: (...)

...

c terms of employment and working conditions, including remuneration;

A – Arguments of the parties

1. The complainant organisation

184. UWE states that according to Belgian legislation, in companies which employ 50 workers or more, a Committee must be set up and in this case on each list of candidates submitted for each category of worker the number of women and men should be proportionate to the number of male and female workers employed in the technical operating unit concerned. Employers who regularly employ 100 workers or more on average are required to draw up an analytical report based on a special form. Those who regularly employ 50 workers but fewer than 100 are required to submit this report using an abridged form.

185. UWE notes that most obligations concerning the production of statistical documents apply to companies with committees or works councils over 100 workers for the purposes of establishing staff representative bodies, but according to the data given by the Belgian Social Security Office, 99% of companies in Belgium are small or medium-sized companies, which means that these companies do not have to respect these obligations.

186. UWE further states that the principle of equal pay for women and men is enshrined in Belgian legislation. However, despite this major body of law, equal pay is not yet a reality. In 2013, the pay gap for hourly earnings was 10% to the disadvantage of women. The gap was 23% if the calculation was based on annual earnings. This percentage is so much higher because of the uneven distribution of working hours. 48% of the gap in yearly earnings can be accounted for by various objective factors (women do more part-time work, are employed primarily in sectors where workers work fewer hours, etc.). However, a large proportion of the gap also remains unexplained. Even though the 2012 legislation required a comparative review of men’s and women’s pay to be made every two years and an Action plan to be drawn, there are still important wage disparities. In most companies in Belgium, workers do not know how much other workers earn or what benefits they receive. It should be an obligation for employers to publish these figures as is the case with their accounts.

187. The gender pay gap includes three different elements: the differences in salaries as such; the number of hours worked during a period of activity, which includes part time jobs; and the consequences of interrupting work time for any reason, such as taking care of children, maternity or paternity leaves, etc. UWE notes that, according to Eurostat, in 2017, the gender pay gap in Belgium was 18.1%; the hour gender pay gap was 47.6% and the gender employment rate gap was 34.3%. The calculation of the gender pay gap may hide inequalities. The Institute for the Equality of Women and Men therefore has added a further indicator, such as the annual wages of workers full

and part time, and the resulting gender pay gap is higher, 20.6%. Moreover, other advantages, such as the right to have a service car or a telephone are not included in the salaries calculations for the gender pay gap purposes. According to UWE, the statistics and figures provided are therefore not fully reliable.

188. UWE states that, in spite of the legislation adopted, the State has failed to respect its obligations to adopt measures to promote the right to equal pay. The gender dimension is missing in the State policy, as well as in the allocation of resources, the methodology, the implementation and the monitoring of such policies. There is no implementation structure or follow up controls established.

189. The employment policy is based almost exclusively on collective bargaining and is incoherent. There is no a State general framework which would allow the development of a strategic plan and a global change to eradicate pay inequalities. The Royal implementation decree needed to implement positive Action has never been adopted, ten years after the Gender Equality Law.

190. Finally, UWE states that the Government has not given enough information on the type of powers and the financial contributions given to the administrative bodies in charge of implementing the employment policies. The complexity of the Belgian system and the amount of existing bodies may also be a factor of dispersion and lack of effectiveness. Controls and implementation are missing.

2. The respondent Government

191. Since 2007, the Institute for the Equality of Women and Men and the FPS Employment have produced statistics on the gender pay gap and since 2012 their report has also included information on inequalities between women and men with regard to non-wage-related benefits.

192. The Institute has also developed a method of calculating the pay gap within undertakings, which gives employers a ready means of determining the size of this gap. It offers a practical tool for improving employers' and employees' information on and awareness of earnings differentials and helps to increase the transparency of individual firms' wage and salary structure. A database on good practices in undertakings has also been draw up and in 2016 the European Commission asked Belgium to describe its legislation on pay differentials to the other member states as an example of good practice.

193. The Government states that combating the pay gap is a priority for Belgium, which has one of the lowest gender pay differentials in Europe, one that continues to decline: from 15% in 2001, to 11% in 2011, and 6.6% in 2014 - well below the EU average. The pay gap has a number of interdependent and multidimensional aspects: hours worked, sector, age, training and so on. To make its efforts to reduce this gap still more effective, Belgium has opted for a transversal approach that takes account of these complex and interdependent aspects.

194. The Government maintains, contrary to UWE, that Belgium has well analysed the use of the relevant indicators. One of these indicators is the pay gap calculated on the basis of gross hourly wages, which was 7.6% in 2014. The second is the gap measured in terms of gross annual earnings, which is 20.6% because it includes part-time employment. The pay gap may also be subdivided into two parts: an explained part, representing 48.2% of the total, and an unexplained part that accounts for the remaining 51.8%. The explained part results from women's high representation in less well paid sectors and/or their interrupted careers. On an hourly basis, women earn on average €1.60 less than men, €0.87 of which therefore reflects pure discrimination while the remainder does not arise from discrimination within the meaning of Article 4§3 of the Charter.

195. The Government submits that it deploys all the legal, financial and operational means at its disposal to secure genuine progress towards achieving the Charter's objectives and undertakes regular assessments of the effectiveness of the strategies it has adopted.

196. The Government denies that the relevant legislation is ineffective or not yet applied, as UWE maintains. The recentness of the 2012 legislation makes it difficult to assess its impact, but it has helped to improve the standard of sectorial job classifications and of social dialogue. A task force of representatives of the social partners has also been set up to exchange information on progress in implementing the legislation and problems that have arisen.

197. Combating the pay gap is a matter of concern, not only to law makers but also to the social partners. Collective agreements, particularly number 25 and 25 b of 19 December 2001 and 25 c of 9 July 2008, provide for equal remuneration for male and female workers. They have become obligatory and must be complied with in the negotiation process. Measures to secure equal pay implemented under the last-named agreement include neutral job classifications, aggrieved workers' right to seek a judicial remedy and protection for workers who have lodged complaints.

198. The Government disagrees with UWE's argument that it is difficult to identify any policy to incorporate a gender dimension into other areas of activity. However, in 2007 Belgium enacted so-called gender mainstreaming legislation, whose purpose was quite specifically to strengthen the equality aspects of all Belgian federal policies, as well as of management plans, draft budgets, evaluation reports and published indicators and statistics.

199. Moreover, UWE also alleges that collective bargaining mainly takes place at individual enterprise level and that the government does not promote equality. However, negotiations are conducted at three levels: cross-sectorial, sectorial and individual undertakings, the last of which is the lowest level. An ILO study has placed Belgium and its system of social dialogue among the top three European Union countries in terms of equal pay.

200. Finally, structural effects and stereotypes are clearly factors that help to establish a pay gap, but steps have been taken to combat this in Belgium, for example by identifying good practices, by establishing a national Action plan to promote gender equality, by introducing gender budgeting, by requesting enterprises to produce gender equality plans, by reinforcing social partners to include gender equality in all collective bargains, by evaluating the impact of the legislation adopted and by conducting campaigns in education to combat stereotypes.

B – Assessment of the Committee

a) Key figures as regards equal pay in Belgium

201. According to Eurostat, in 2017, women's gross hourly earnings were on average 16.2 % below those of men in the European Union (EU-28). In Belgium, the gender pay gap stood at 6% in 2017. It stood at 10.2% in 2010, 6.6% in 2014, 6.5% in 2015 and 6.1% in 2016. The gender overall earnings gap in Belgium was 31.1% in 2014, whereas the EU average was 39.6%. The adjusted or “unexplained” gender pay gap is quite low at 2.5% compared to an EU-28 average of 11.5% (2014 data, see the Eurostat study “A decomposition of the unadjusted gender pay gap using Structure of Earnings Survey data”, 2018).

b) Collection of data on equal pay and measures to promote equal opportunities

202. The Committee considers that in order to ensure and promote equal pay, the collection of high-quality pay statistics broken down by gender as well as statistics on the number and type of pay discrimination cases are crucial. The collection of such data increases pay transparency at aggregate levels and ultimately uncovers the cases of unequal pay and therefore the gender pay gap. The gender pay gap is one of the most widely accepted indicators of the differences in pay that persist for men and women doing jobs that are either equal or of equal value. In addition, to the overall pay gap (unadjusted and adjusted, the Committee will also, where appropriate, have regard to more specific data on the gender pay gap by sectors, by occupations, by age, by educational level, etc.

203. The Committee considers that States are under an obligation to analyse the causes of the gender pay gap with a view to designing effective policies aimed at reducing it. The Committee here recalls its previous holding that the collection of data with a view to adopting adequate measures is essential to promote equal opportunities. Indeed, it has held that where it is known that a certain category of persons is, or might be, discriminated against, it is the duty of the national authorities to collect data to assess the extent of the problem (*European Roma Rights Centre v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27). The gathering and analysis of such data (with due safeguards for privacy and to avoid abuse) is indispensable to the formulation of rational policy (*European Roma Rights Centre v. Italy*, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23).

204. The Committee further recalls that the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact (*ICJ v. Portugal*, Complaint No. 1/1998, *op.cit.*, §32). Conformity with the Charter cannot be ensured solely by legislation and States Parties must take measures to actively promote equal opportunities. Besides the fact that legislation must not prevent the adoption of positive measures or positive Action, the States are required to take specific steps aimed at removing *de facto* inequalities that affect women's and men's chances with regard to equal pay.

205. While the Committee acknowledges that the realisation of the obligation to take adequate measures to promote equal opportunities is complex, the States Parties must take measures that enable the achievement of the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources (*International Association Autism-Europe (AIAE) v. France*, Complaint No. 13/2002, *op.cit.*, §53).

206. Under Article 20.c of the Charter the obligation to take appropriate measures to promote equal opportunities entails gender mainstreaming which is the internationally recognised strategy towards realising gender equality. It involves the integration of a gender perspective into the preparation, design, implementation, monitoring and evaluation of policies, regulatory measures and spending programmes, with a view to promoting equality between women and men, and combating discrimination. The Committee considers that gender mainstreaming, as recommended in particular by the Committee of Ministers of the Council of Europe (Recommendation Rec(1998)14), should cover all aspects of the labour market, including pay, career development and occupational recognition, and extending to the education system (Conclusions XVII-2, Article 1 of the 1988 Additional Protocol, Greece).

207. States should assess the impact of the policy measures adopted in tackling vertical or horizontal occupational gender segregation in employment, improving women's participation in a wider range of jobs and occupations.

208. Among other measures that States could adopt to reduce the gender pay gap and which the Committee regards as relevant indicators for assessing compliance with the obligations laid down by the Charter the following are highlighted:

- adoption and implementation of national Action plans for employment which effectively ensure equality between women and men, including pay;
- requiring individual undertakings to draw up enterprise or company plans to secure equal pay;
- encouraging employers and workers to deal with equality issues in collective agreements;
- raising awareness of the equal pay principle among employers, organisations and the public at large, including through the activities of equality bodies.

209. The Committee notes that the Government has collected and analysed disaggregated data, in order to evaluate the situation of women in the labour market. Since 2006, the Federal Government produced official gender pay gap data annually. As from 2007, the Institute for the Equality of Women and Men in cooperation with the Federal Public Service Employment, Labour and Social Dialogue, and the Directorate-General Statistics publish an annual report that contains clear policy recommendations. Moreover, in order to obtain accurate statistics, the 2012 law on tackling the gender pay gap requires that the gap should be measured and discussed on all levels of collective bargaining (national, sector, subsector and company). It also requires that all enterprises with at least 50 workers present a gender pay gap report every two years.

210. Some of the data collected show a correlation between the high number of women in low-income sectors or whose careers are frequently interrupted, and their lower wages compared to men. The Committee also takes account of the fact that UWE alleges that companies with fewer than 50 workers are not covered by the calculations despite the fact that such companies account for 99% of Belgian employers. The Government does not dispute this argument but asserts that 80% of Belgian enterprises do not have any staff and that most Belgian workers are employed by companies with more than 50 workers, companies that are covered by these data.

211. The Committee takes into account the large array of measures taken by the Government to counter the factors contributing to the gender pay gap. These measures include the national Action plan to promote gender equality, the introduction of gender budgeting, by requesting enterprises to produce gender equality plans, as well as the reinforcement of social partners' obligations to include gender equality in all collective bargains. The measures also include monitoring the impact of the legislation adopted and conducting campaigns in education to combat stereotypes.

The Committee notes that Belgium has a rather low gender pay gap compared to the average in the European Union. The sectors with the highest gender pay gap are aviation, production and distribution of electricity, gas, steam and cooled air; the manufacture of computer products and of electronic and optical products; the manufacture of clothing; and the supporting activities for insurance and pension funds.

212. The Committee further observes that the gender pay gap has decreased more than 4% and that it is steadily decreasing, although at a slower pace in the last years. It is also one of the lowest in Europe. The Committee therefore considers that the measures taken by the Government have succeeded in reducing the gender pay gap and that the measures adopted have resulted in measurable progress in this area.

213. In the light of the above considerations, the Committee holds that there is no violation of Article 20.c regarding the measures to promote the right to equal pay.

III. ALLEGED VIOLATION OF ARTICLE 20.D OF THE CHARTER AS REGARDS ENSURING BALANCED REPRESENTATION OF WOMEN IN DECISION-MAKING POSITIONS WITHIN PRIVATE COMPANIES

214. Article 20.d of the Charter reads as follows:

Article 20 – Right to equal opportunities and equal treatment in employment and occupation without sex discrimination

Part I: “All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.”

Part II: “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: (...)

(...);
d career development, including promotion.”

A – Arguments of the parties

1. The complainant organisation

215. According to UWE, the Law of 28 July 2011 “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”. In 2013, women represented 12.9% of the members of the boards of the largest companies listed on the Belgian Stock Exchange (the BEL20). No women were chairs of boards and none were CEOs.

216. Even though progress has been made as a result of the aforementioned legislation, it is still inadequate as the percentage of women board members in 2014 was 16.6%. The legal obligation is a 33% of women, and this has not been achieved for big enterprises. Smaller ones have until 2019 to achieve this goal, which according to UWE is an excessive delay. Progress is not only very slowly, but there is also an implementation problem, as the law has not been respected. In practice, there is no enforcement. Moreover, the legislation does not even apply to boards of directors. In 2008, women represented 7.4% in boards of direction of enterprises, in 2012 9.6% and in 2014 12.1%. In 2014, 47.8% of boards of directors had no female members and 39.1% had only one female member.

2. The respondent Government

217. The Law of 28 July 2011 aims to ensure the presence of at least one third of each sex on the board of directors of listed companies and some public autonomous companies. The law also provides for two sanctions for non-compliance. The first relates to the suspension of the financial benefits related to the directors' mandate. The second nullifies the appointment of the next director should this minimum not be reached and if the director belongs to the overrepresented sex (more than 2/3). In addition, the Institute for the Equality of Women and Men has developed accompanying measures, and in a recent report, it published that the proportion of women on these boards tripled between 2008 and 2016.

B – Assessment of the Committee

218. The Committee considers that Article 20.d of the Charter imposes positive obligations on States to tackle vertical segregation in the labour market, by means of, inter alia, promoting the advancement of women in decision-making positions in private companies. This obligation may entail introduction of binding legislative measures to ensure equal access to management boards of companies. Measures designed to promote equal opportunities for women and men in the labour market must include promoting an effective parity in the representation of women and men in decision-making positions in both the public and private sectors (Conclusions 2016, Article 20, Portugal).

219. The Committee observes that according to the European Commission's 2019 Report on equality between women and men, the proportion of women on management boards of the largest publicly listed companies in countries with binding legislative measures has risen from an average of 9.8% in 2010 to 37.5% in 2018. In countries with non-binding measures, including positive Action to promote gender balance, the corresponding percentages were 12.8% in 2010 and 25.6% in 2018, whereas in countries where no particular Action (apart from self-regulation by companies) has been taken, the situation remained almost stagnant with 12.8% on average in 2010 and 14.3% in 2018. The overall EU-28 average was 26.7% in 2018. The Committee further observes that PACE Resolution 1715(2010) recommends that the proportion of women on management boards of companies should be at least 40%.

220. Finally, the Committee recalls that in respect of Article 20.d, as for Article 20.c, States must take measures that enable the achievement of the objectives of the

Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.

221. The Committee observes that according to data provided by the European Institute for Gender Equality (EIGE) up to April 2019, the proportion of women on the management boards of Belgium's largest listed companies is 34.4%. It was 29.4% in 2017. In 2010, women represented 10.5% of board members in the largest listed companies.

222. The Committee notes that the introduction of the so called "Quota Law" (law of 28 July 2011) has had a clear positive impact on the number of women in the management boards of the largest listed companies and that the figures have evolved positively.

223. The Committee considers therefore that the Government has taken measures to meet its positive obligations to tackle vertical segregation in the labour market and has advanced in promoting the presence of women in decision-making positions of private companies. Although there is still progress to be made, as the PACE in its Resolution 1715 (2010) has recommended a goal of at least 40% of women representation which is not yet achieved, the legislation and the policies adopted have clearly improved the situation and contributed to tackling the existing obstacles.

224. Therefore, the Committee holds that there is no violation of Article 20.d of the Charter concerning the measures taken to ensure a balanced representation of women in decision-making positions within private companies.

IV. REQUEST FOR COMPENSATION

225. The Committee decides not to make a recommendation to the Committee of Ministers as regards the complainant's request for a payment of €10,000 in compensation for legal costs incurred in connection with the proceedings. It refers in this respect to the stance taken by the Committee of Ministers in the past (see Resolution CM/ResChS(2016)4 in *European Roma Rights Centre (ERRC) v. Ireland*, Complaint No. 100/2013) and to the letter of the President of the Committee addressed to the Committee of Ministers dated 3 February 2017 in which the President announced that the Committee would for the time being refrain from making recommendations to the Committee of Ministers concerning the reimbursement of costs.

226. The Committee nevertheless maintains its view that reimbursement of costs is in principle justified and appropriate under certain circumstances and an important factor in enabling the complaints procedure to attain the objectives and the impact that led the member States of the Council of Europe to adopt it in the first place.

CONCLUSION

For these reasons, the Committee concludes:

- as regards recognition and enforcement of the right to equal pay for work of equal value:
 - unanimously, that there is no violation of Articles 4§3 and 20.c of the Charter as regards recognition of the right to equal pay in the legislation;
 - by 9 votes to 6, that there is no violation of Articles 4§3 and 20.c of the Charter as regards access to effective remedies;
 - unanimously, that there is a violation of Articles 4§3 and 20.c of the Charter on the ground that pay transparency is not ensured;
 - unanimously, that there is no violation of Articles 4§3 and 20.c of the Charter as regards equality bodies;
- unanimously, that there is no violation of Article 20.c of the Charter as regards promotion of equal opportunities between women and men in respect of equal pay;
- unanimously, that there is no violation of Article 20.d of the Charter as regards measures to ensure a balanced representation of women in decision-making positions within private companies.



Petros STANGOS
Rapporteur



Giuseppe PALMISANO
President



Henrik KRISTENSEN
Deputy Executive Secretary