



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

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University Women of Europe v. Sweden
Complaint No. 138/2016

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

Registered at the Secretariat on 3 November 2017

Collective Complaint

University Women of Europe (UWE) v. Sweden

Complaint No. 138/2016

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

(03/11/2017)

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

Introduction

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

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

² Extract of the Preamble of the ETUC Constitution.

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

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

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

I. General framework

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

A. *International law and material*

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

1. United Nations

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

a) *Universal Declaration of Human Rights*

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

Article 1

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

Article 23

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

b) *International Covenant on Civil and Political Rights*

(1) Text

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

Article 2

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

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

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

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

Article 3

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

Article 26

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

(2) General interpretation

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

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

c) International Covenant on Economic, Social and Cultural Rights

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

(1) Text

Article 2

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

Article 3

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

Article 7

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

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

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

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

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

(2) General interpretation

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

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

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

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

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

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

(1) Text

Article 1

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

Article 2

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

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

¹¹ Convention on the Elimination of All Forms of Discrimination against Women, 18.12.1979.

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

Article 3

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

Article 11

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

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

(2) General interpretation

(a) *Concerning the Gender pay gap*

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

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

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

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

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

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

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

(i) Estonia (2016)¹³

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

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

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

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

(ii) Slovakia (2015)¹⁴

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

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

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

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

(iii) Spain (2015)¹⁵

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

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

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

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

(iv) Denmark (2015)¹⁶

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

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

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

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

¹⁶ Concluding observations on the eighth periodic report of Denmark, CEDAW/C/DNK/CO/8, 11.03.2015.

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

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

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

e) *Further pertinent material*

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

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

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

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

2. International Labour Organisation

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

a) *Convention No. 100¹⁷*

(1) Text

Article 1

For the purpose of this Convention

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

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

Article 2

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

2. This principle may be applied by means of

(a) national laws or regulations;

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

(c) collective agreements between employers and workers; or

(d) a combination of these various means.

Article 3

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

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

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

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

Article 4

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

(2) General interpretation

(a) *General Survey 2012*

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

Gender pay gap

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

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

Equal value: The cornerstone of the Convention

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

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

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

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

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

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

Comparing jobs, determining value

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

Scope of comparison

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

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

Objective job evaluation methods

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

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

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

b) *Convention No. 111*¹⁹

(1) Text

Article 1

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

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

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

Article 3

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

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

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

(2) General Interpretation

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

(a) *General Survey 2012*

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

Introduction

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

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

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

²⁰ See note 18.

Thematic issues

Defining discrimination

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

Direct and indirect discrimination

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

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

Grounds of discrimination: An evolving area

[...]

Sex discrimination and gender equality

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

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

3. Council of Europe

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

a) *European Convention on Human Rights*

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

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

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

Article 14 - Prohibition of discrimination

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

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

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

Article 1 - General prohibition of discrimination

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

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

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

b) European Social Charter (ESC)²⁵

(1) Text

Article 4 – The right to a fair remuneration

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

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

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

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

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

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

Article E – Non-discrimination

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

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

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

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

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

(2) Compilation of case law (Digest 2008)

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

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

(a) *Article 4§3*

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

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

The principle of equal pay

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

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

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

Guarantees of enforcement

Legislative means

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

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

Judicial safeguards

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

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

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

Methods of classification and comparison and other measures

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

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

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

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

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

(b) *Article 20*

Definitions and scope

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

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

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

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

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

Means of enforcement

Legal framework

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

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

Right of appeal

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

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

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

Adequate compensation

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

Adequate compensation means:

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

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

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

Protection against reprisals

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

Particular rights of women

[...]

Equal opportunities and positive measures

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

Appropriate measures include:

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

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

(3) Statement of interpretation

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

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

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

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

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

c) Further pertinent material

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

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

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

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

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

4. European Union (EU)

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

a) *Legislative framework*

(1) Primary Law

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

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

Article 21 - Non-discrimination

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

Article 23 - Equality between women and men

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

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

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

Article 2

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

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

Article 8³⁰

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

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

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

²⁹ Art. 119 EC-Treaty.

³⁰ (ex Article 3(2) TEC).

*Article 157*³¹

1. Each Member State shall ensure that the **principle of equal pay** for male and female workers for equal work or work of equal value is applied.

2. For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

(a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;

(b) that pay for work at time rates shall be the same for the same job. [...]

(2) Secondary law

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

Article 4 - Prohibition of discrimination

For the same work or for work to which equal value is attributed, direct and **indirect discrimination** on grounds of sex with regard to **all aspects and conditions of remuneration** shall be eliminated.

In particular, where a **job classification system** is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of **sex**.

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

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

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

Article 88

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

Article 91 [...]

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

b) *General interpretation*

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

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

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

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

c) Further pertinent material

(1) EU Institutions

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

Gender equality

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

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

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

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

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

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

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

(2) Other bodies

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

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

³⁴ C(2014) 1405 final, 07.03.2014.

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

³⁶ (2011/2285(INI), 24.05.2012.

³⁷ (2017/2008(INI), 03.10.2017.

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

(a) *Gender pay gap*

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

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

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

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

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

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

B. Further pertinent material

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

1. *Concerning the Gender pay gap*

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

Gender pay gap in unadjusted form⁴¹

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

³⁸ All those bodies offer websites comprising important additional information.

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

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

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

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

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

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

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

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

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

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

⁴² Extract – in alphabetical order.

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

Countries	Men (%)	Women (%)	Gap (points)
Italy	67.1	32.9	34.2
Netherlands	69.8	30.2	39.6
Norway	56.0	44.0	12
Portugal	84.5	15.5	69
Slovenia	79.0	21.0	58
Sweden	64.5	35.5	29

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

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

C. Legal Principles

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

1. General considerations

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

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

2. Gender pay gap

a) General considerations

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

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

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

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

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

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

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

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

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

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

for attaining equal pay if nothing fundamentally different happens earlier.

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

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

b) Substantive requirements

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

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

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

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

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

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

c) *Procedural requirements*

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

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

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

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

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

d) *Interim conclusions*

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

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

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

a) *General considerations*

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

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

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

b) Substantive requirements

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

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

c) Procedural requirements

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

d) Interim conclusions

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

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

II. Specific situation

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

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

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

b) Secondly, UWE alleges that a very small number of women occupy decision-making positions within private companies. There is no legislation imposing quotas, although there is a Code of good governance which has equality among its objectives.

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

⁵⁰ Decision on admissibility, 4 July 2017.

A. *International case-law*

1. *United Nations*

89 The situation in the respondent State has been examined in relation to the obligations deriving from two relevant instruments as follows:

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

90 After considering the seventh periodic report submitted by Sweden, the Human Rights Committee (CCPR) adopted the following 'Concluding Observations':⁵¹

C. Principal matters of concern and recommendations

National human rights institution

8. The Committee notes that **several bodies**, such as the Parliamentary Ombudsman, the Chancellor of Justice and the **Equality Ombudsman, have a mandate of promoting and protecting human rights; however, the scope of their authority remains restricted to specific instruments** and does not include international norms, including the Covenant. Therefore, the Committee, while acknowledging the State party's continued efforts towards the establishment of an independent national human rights institution, remains concerned (see CCPR/C/SWE/CO/6, para. 4) about the slow progress in this regard (art. 2).

9. The Committee reiterates its recommendation (see CCPR/C/SWE/CO/6, para. 4) that the State party establish, without undue delay, an independent national human rights institution invested with a broad human rights mandate and provide it with adequate financial and human resources, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

Anti-discrimination framework

10. While noting the legislative and institutional reforms in the area of non-discrimination, including the adoption of the 2009 Discrimination Act (2008:567) and its subsequent amendments of January 2013 and 2015, the Committee remains concerned about the **limited scope of coverage and existing protection gaps owing to the fact that the existing anti-discrimination laws and regulations fail to afford protection against all status based forms of discrimination and do not cover discrimination in all areas of public life.**

The Committee is further concerned: (a) that the **Equality Ombudsman is not empowered to invoke international standards**, including the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights), which is part of Swedish law, and that it cannot exercise jurisdiction over cases of discrimination by some government agencies, such as the police, the prison service, prosecutors and the courts, when they exercise public authority, as such discrimination is not regulated by the Discrimination Act; and (b) that qualifying criteria for legal aid may limit in practice access to judicial remedies of victims of discrimination. The Committee notes that an inquiry into the adequacy of the current anti-discrimination framework is ongoing (arts. 2, 3 and 26).

11. The State party should consider, in the framework of the current review of its anti-discrimination legislation, expanding the scope of protection against discrimination under its domestic law by, inter alia, introducing a prohibition of discrimination in all spheres and sectors in full compliance with the antidiscrimination provisions of the Covenant. The State party should also improve the accessibility of effective remedies against any form of discrimination, including by considering expanding the mandate of the Equality Ombudsman to all forms of discrimination

⁵¹ Adopted at its 3258th meeting, held on 23 March 2016. See also http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSWE%2fCO%2f7&Lang=en.

and expanding the legal aid criteria to enable victims of discrimination to pursue their cases in court where the interests of justice so require.

Gender equality

18 The Committee, while acknowledging the measures taken to ensure equal rights and opportunities for women and men and the progress made in that regard, remains concerned (see CCPR/C/SWE/CO/6, para. 7) about the obstacles faced by women in accessing fulltime employment and the **persistent gender wage gap**, despite its slight decrease in recent years (arts. 2, 3 and 26).

19. *The State party should step up its efforts with a view to promoting women's equal access to full-time employment and to eliminating the gender wage gap by tackling vertical and horizontal segregation in employment and addressing differences in pay between men and women for the same work.*

b) International Covenant on Economic, Social and Cultural Rights

91 Examining the sixth periodic report of Sweden, the Committee on Economic, Social and Cultural Rights (CESCR) has come to the following 'Concluding Observations'.⁵²

C. Principal subjects of concern and recommendations

National human rights institution

9. The Committee, while appreciating commitments made by the State party with regard to the **establishment of a national human rights institution** in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), remains concerned that existing equality bodies are mandated to cover specific areas only, and that the **Equality Ombudsman has limited mandate and independence**, and thus only partially complies with the aforementioned Principles and therefore is accredited with "B" status.

10. *The Committee recommends that the State party expedite the process of establishing an independent human rights institution in full conformity with the Paris Principles, and that the State party ensure that due attention is given to economic, social and cultural rights in the institution's mandate and that the institution has the necessary human and technical resources to fulfil its mandate. The Committee also recommends that the State party ensure that existing equality bodies, including the Equality Ombudsman, cover all areas relevant to economic, social and cultural rights, and that the Equality Ombudsman fully conforms with the Paris Principles.*

Employment of women

25. The Committee is concerned that despite the progress achieved in the area of women's employment, a **gender wage gap persists** in the State party, notably as women are concentrated in low-paid jobs and remain overrepresented in part-time work arrangements (arts. 3 and 7).

26. *The Committee recommends that the State party promptly reintroduce the annual pay surveys, as indicated during the dialogue, that it take effective measures, including the adoption of temporary special measures, so as to achieve substantive equality between men and women in access to and choice of work, and in the enjoyment of just and favourable working conditions, and that it continue its efforts towards a more equal sharing of family responsibilities between men and women.*

⁵² Adopted at its 49th meeting, held on 24 June 2016. See also http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fSWE%2fCO%2f6&Lang=en.

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

92 In its 'Concluding observations' concerning the combined eighth and ninth report of Sweden, the Committee on the Elimination of Discrimination against Women (CEDAW) has expressed the following concerns and recommendations:⁵³

C. Principal areas of concern and recommendations

Legislative framework

14. The Committee notes that the Instrument of Government and the Discrimination Act regulate and prohibit discrimination based on sex in the State party. It further welcomes the information provided that approximately 90 per cent of relevant legislative and policy measures contain a gender analysis. The Committee is concerned, however, that: [...]

(b) The **Discrimination Act**, owing to its **restricted list of prohibited grounds** of discrimination, may not comprehensively address multiple and intersecting forms of discrimination against women; (...)

15. *The Committee calls upon the State party to ensure that the provisions of the Convention are duly incorporated into the domestic legal system and directly applicable in the national courts. The State party should also evaluate and, if necessary, revise, the scope of protection of the Discrimination Act in order to ensure that it contains a definition of discrimination against women in accordance with article 1 of the Convention, covering, inter alia, intersecting forms of discrimination against women. The Committee further recommends that the State party amend its Criminal Code to ensure that rape is defined on the basis of there being a lack of consent by the victim.*

Access to justice

16. The Committee welcomes the allocation of increased resources to the Equality Ombudsman and to local anti-discrimination offices. It also welcomes the fact that the State party is carrying out an inquiry to analyse access to justice in discrimination cases and propose corrective action, if necessary, including with regard to the work and mandate of the Equality Ombudsman. Nevertheless, the Committee is concerned at the complexity of the legal proceedings foreseen under the Discrimination Act, which may hamper access to justice for women victims of rights violations, in particular for victims belonging to disadvantaged groups.

17. *In line with general recommendation No. 33 (2015) on women's access to justice, the Committee recommends that the State party, based on the findings of the inquiry reviewing its work on discrimination, take all necessary measures to remove barriers for women victims of discrimination and enable them to effectively use the Discrimination Act to claim their rights, including by allocating adequate human, technical and financial resources. The State party should pay particular attention to the needs of disadvantaged groups of women, such as Sami women, Roma women, migrant women, women living in remote areas, asylum-seeking and refugee women and women with disabilities. The Committee further recommends that the State party ensure that the Equality Ombudsman is provided with adequate resources to effectively fulfil its broad mandate.*

National machinery for the advancement of women and gender mainstreaming

18. The Committee commends the State party on its elaborate system of gender mainstreaming, its efforts to assess the impact of that system and its commitment to gender-responsive budgeting. It notes that the Minister for Children, the Elderly and Gender Equality, placed under the Ministry of Health and Social Affairs, is responsible for overall coordination and monitoring in relation to gender mainstreaming. Nevertheless, the Committee is concerned that the coordination and management of gender mainstreaming efforts are not always sufficiently clear and coherent and that the monitoring and impact evaluation of measures taken are not sufficiently comprehensive. It is further concerned that differences exist in the implementation of the gender

⁵³ Considered at its 1379th and 1380th meetings, on 18 February 2016.

mainstreaming strategy between municipalities and regions and that gender-responsive budgeting is not sufficiently utilized at the municipal levels.

19. *In the light of the upcoming adoption of its new gender mainstreaming strategy, the Committee calls on the State party:*

(a) To strengthen effective coordination and ensure clear and coherent management of the national machinery for the advancement of women at all levels, including through considering the establishment of a Government agency for gender equality as recommended by the Gender Equality Inquiry;

(b) To reinforce monitoring mechanisms to comprehensively and regularly assess progress in its implementation of the strategy and evaluate the impact of such efforts, with a view to taking remedial action;

(c) To strengthen the implementation of the gender mainstreaming strategy at the municipal and regional levels and ensure that all Government bodies involved receive sustained guidance and support in their implementation efforts, including sufficient human, technical and financial resources;

(d) To ensure systematic implementation of gender-responsive budgeting at all levels;

(e) To ensure that its third strategy for human rights includes a clear gender perspective and focus on women's rights.

National human rights institution

20. The Committee notes the work carried out by the **Equality Ombudsman** within its mandate to combat discrimination. Nevertheless, it is concerned at the absence of an independent national human rights institution with a broad mandate to work on all aspects of human rights, including women's rights and gender equality, in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

21. *The Committee recommends that the State party establish, within a clear time frame, an independent national institution, with a broad mandate in the area of human rights, including women's rights and gender equality, in accordance with the Paris Principles, as adopted by the General Assembly in its resolution 48/134.*

Temporary special measures

22. The Committee commends the State party on **achieving gender parity in the cabinet and in leadership positions on the boards of State-owned companies**. It also notes that the State party **plans to propose legislation on quotas, if the objective of achieving a level of women's representation on the management boards of private companies of at least 40 per cent has not been achieved by 2016**. Nevertheless, the Committee remains concerned at the low number of women in leadership positions in academia, in top management positions and on the boards of private companies.

23. *The Committee recommends that the State party increase the use of temporary special measures, including statutory quotas, in all areas covered by the Convention in which women are underrepresented, such as decision-making positions in high-level public administration, private and public companies and academia. Such measures should include specific targets and time frames, in accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, in order to ensure the achievement of substantive equality of women and men.*

Employment

34. The Committee welcomes the generally high rate of labour force participation of women in the State party and the various measures taken to facilitate the reconciliation of family and work life, including the establishment of a parental insurance scheme, combined with an extensive system of public child and old age care and improved rules on parental benefits. It further notes that the State party plans to reintroduce a mandatory annual pay survey. The Committee is concerned, however, at continued horizontal and vertical occupational segregation, with women concentrated

in part-time work, predominantly for family reasons, and the **persistent gender pay gap**, which adversely affects women's career development and pension benefits. It further regrets that 75 per cent of parental leave is still taken by women and that migrant women, women belonging to minority groups, refugee women and women with disabilities have limited access to the labour market. The Committee notes that the State party has not ratified the Domestic Workers Convention, 2011 (No. 189) of the International Labour Organization. In addition, while welcoming the adoption in 2015 of the Action Plan on Business and Human Rights, the Committee is nevertheless concerned at its limited impact to date on the activities of Swedish companies operating abroad.

35. The Committee recommends that the State party intensify its efforts to ensure equal opportunities for women in the labour market, including traditionally male-dominated sectors such as information technology and science, create more opportunities for women to gain access to full-time employment, increase the incentives for men to use their right to parental leave and take specific and proactive measures to eliminate occupational segregation and to reduce the gender pay gap. The State party should take into account the needs of disadvantaged groups of women and consider in this regard the use of temporary special measures such as financial incentives. The Committee recommends that the State party ratify the Domestic Workers Convention, 2011 (No. 189) of the International Labour Organization. It further recommends that the State party uphold its due diligence obligations to ensure that companies under its jurisdiction or control respect, protect and fulfil women's human rights when operating abroad.

2. International Labour Organisation

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

a) *Convention No. 100*

Direct Request (2015)⁵⁴

The Committee notes the observations of the Swedish Confederation of Professional Employees (TCO), the Swedish Trade Union Confederation (LO) and the Swedish Confederation of Professional Associations (SACO) received 10 November 2014.

Articles 1 and 2 of the Convention. Gender wage gap and occupational segregation. The Committee notes that according to EUROSTAT, the **gender pay gap (in an unadjusted form)** amounted to 15.9 per cent in 2012. The Committee recalls that in its previous report, the Government indicated several causes of the gender wage gap, including occupational segregation, the influence of stereotypes in relation to women's areas of study, and the role of family responsibilities in reducing women's employment levels. The Committee notes the Government's indication that the Delegation for Gender Equality in Working Life, established in 2011, has the function of proposing further action to reduce the gender wage gap, and that its report is due at the end of 2014. The Government further refers to an inquiry carried out under the Discrimination Act, which recommended the implementation of annual pay surveys. The Committee notes that the Government provides no information on the measures adopted to address occupational sex segregation. *The Committee asks the Government to continue to provide information on the concrete measures adopted to address the gender pay gap and occupational sex segregation, including any actions suggested by the Delegation for Gender Equality in Working Life and the results achieved. The Committee asks the Government to take measures to collect and provide up-to-date statistical information on the distribution of men and women in the different sectors of economic activity, occupational positions and their respective levels of remuneration in the public and private sectors.*

Article 2. **Pay surveys and action plans for equal pay.** The Committee recalls that according to Chapter 3, section 10 of the Discrimination Act, employers must carry out pay surveys every three years. Chapter 3, section 11 provides for the obligation of employers to draw up an action plan for equal pay following the survey. In this regard, the Committee notes that the Government indicates that no information on the number of plans is available. The Government further

⁵⁴ Adopted 2014, published 104th ILC session (2015).

indicates that the Equality Ombudsman was charged with supervising and promoting the work of employers on pay surveys and that an examination of the work of employers on pay surveys, analysis and action plans for equal pay will be carried out during 2014. *The Committee asks the Government to provide detailed information on the results of the activities carried out by the Equality Ombudsman regarding the implementation of Chapter 3, sections 10 and 11 of the Discrimination Act, with respect to pay surveys and the plans for equal pay as well as the measures taken thereon, in particular any wage adjustments implemented.*

Public sector. The Committee recalls the Government's previous statement that the "statistical job classification in the national government sector" (BESTA) provides information on the pay structure for the various types of jobs in the national government sector. *The Committee asks the Government to provide a copy of the BESTA and to indicate the manner in which pay surveys are implemented in the context of the national government sector.*

Article 4. Collaboration with workers' and employers' organizations. The Committee notes the Government's indication that the responsibilities of the Delegation for Gender Equality in Working Life include analysing the manner in which the social partners may contribute to gender equality in employment and occupation. *The Committee asks the Government to provide information on the concrete measures adopted following any recommendations from the Delegation for Gender Equality in Working Life with respect to the role of the social partners in addressing the gender pay gap. Please also provide information on any other forms of cooperation or joint activities of the Government and the social partners to promote the application of the principle of the Convention as well as on any measures taken to apply the principle of the Convention through collective agreements.*

Enforcement. The Committee recalls that the Government had previously indicated that it was encountering difficulties in the **investigation of complaints on pay discrimination** between men and women. In this respect, the Committee notes that the Government has appointed a Commission of Inquiry (Dir. 2014:10) to submit proposals on how work against discrimination can be organised and made more efficient so that victims may assert their rights. The Committee also notes that the Equality Ombudsman received 11 complaints regarding gender pay discrimination in 2013 and eight such complaints in 2012. *The Committee asks the Government to indicate any measures undertaken or envisaged, including proposals by the Commission of Inquiry (Dir. 2014:10), to improve the investigation of complaints relating to the principle of the Convention. The Committee asks the Government to continue to provide information on complaints regarding pay discrimination between men and women, including the remedies provided and sanctions imposed.*

b) Convention No. 111

There is nothing relevant to highlight from the latest CEACR Direct Request of 2014.

3. Council of Europe

94 In examining the situation in Sweden, the ECSR has come to the following 'Conclusions':

a) Article 4§3

Conclusions 2014

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

Legal basis of equal pay

The Committee notes that a new Discrimination Act (2008:567 – Diskrimineringslagen, DL) entered into force in Sweden on January 1, 2009. At the same time a new agency, the Equality Ombudsman, was established to supervise compliance with the Act.

According to Chapter 3, Section 2 of the Act employers and employees are to endeavour in particular to equalise and prevent differences in pay and other terms of employment between women and men who perform work which is to be regarded as equal or of equal value. Work is to be regarded as of equal value to other work if, on an overall assessment of the requirements

and nature of the work, it can be deemed to be equal in value to the comparator work. The assessment of the requirements of the work is to take into account criteria such as knowledge and skills, responsibility and effort. In assessing the nature of the work, particular account is to be taken of working conditions.

Guarantee of enforcement and judicial safeguards

The Committee recalls that the compensation for someone who has suffered wage discrimination on the ground of gender must be sufficient to make good the damage suffered by the victim and act as a deterrent to the offender.

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

The Committee asks what rules apply in this regard.

Methods of comparison and other measures

According to Chapter 3, Section 1 of the Discrimination Act, employers and employees are to cooperate on active measures to bring about equal rights and opportunities in working life regardless of gender. Every three years, employers are to conduct a pay survey in order to discover, remedy and prevent non-objective gender differences in pay and other terms of employment.

The Committee notes that the pay analysis conducted by the National Mediation Office for 2012 shows that the unweighted pay difference between women and men amounted to 14%. The single most important explanation for the pay disparity is that women and men work in different occupations where there are different levels of pay. Other factors that have a bearing are age, sector, education and whether the work is full- or part-time. According to the report, the unexplained pay difference amounted to 6%. The pay analysis does not provide any answer to whether the remaining disparity is due to discrimination, although, according to the report, this may comprise part of the explanation.

The Committee notes from Eurostat that in 2012 the unadjusted gender pay gap stood at 15.9%.

In reply to the Committee's question whether in equal pay litigation cases it is possible to make comparisons of pay and jobs outside the company directly concerned, the Committee notes from the supplementary information provided by the Government that the Discrimination Act does not prevent that a comparison is made with other companies in equal pay litigation cases along the lines of the situations described in the Statement of Interpretation of Article 20 (Conclusions 2012). A comparison should be made to a person in a comparable situation and an assessment of what is a comparable situation should be made in each individual case. Work is to be regarded as of equal value to other work if, on an overall assessment of the requirements and nature of the work, it can be deemed to be equal in value to the other work. In assessing the nature of the work, particular account is to be given to working conditions.

The Committee asks for examples of equal pay cases where comparison has been made to a comparable worker in another company.

Conclusion

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

b) Article 20

Conclusions 2012

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

Equal rights

A new Discrimination Act (Swedish Code of Statutes 2008:567) entered into force in Sweden on January 1, 2009. At the same time a new agency, the Equality Ombudsman, was established to supervise compliance with the Act. The new Act replaced seven previous acts against discrimination, for example the Equal Opportunities Act (Swedish Code of Statutes 1991:443). At the same time, the former four Ombudsmen against discrimination were merged into one Ombudsman.

According to the Act (Chapter 2 Section 1), an employer may not discriminate against a person who, with respect to the employer, is an employee, is enquiring about or applying for work, is applying for or carrying out a traineeship, or is available to perform work or is performing work as temporary or borrowed labour. The prohibition does not prevent measures that contribute to efforts to promote equality between women and men and that concern matters other than pay or other terms of employment. A new penalty, compensation for discrimination, was introduced for infringements of the Discrimination Act (Chapter 5). Compensation for discrimination is designed to both compensate for the violation represented by an infringement and act as a deterrent against discrimination. The general aim of introducing this new type of indemnity is to make the general courts change their practices and award higher indemnities. An indemnity to cover economic loss is additionally paid in the case of discrimination or victimisation by an employer.

Besides prohibiting employers from discriminating against a person on, inter alia, grounds of gender, the Discrimination Act also requires employers to take active measures to promote equal opportunities at the workplace (Chapter 3). The rules on active measures in the previous acts against discrimination were, in principle, transferred into the new Act, except for a few changes. According to Chapter 3, Section 1, employers and employees are to cooperate on active measures to bring about equal rights and opportunities in working life regardless of sex. Further, every three years, employers are to draw up a plan for their gender equality work. This obligation does not apply to employers with less than 25 employees.

Employers and employees are in particular to endeavour to equalise and prevent differences in pay and other terms of employment between women and men who perform work which is to be regarded as equal or of equal value. They are also to promote equal pay growth opportunities for women and men (Chapter 3 Section 2). In order to discover, remedy and prevent unfair gender differences in pay and other terms of employment, the employer must conduct pay surveys every three years (Chapter 3 Section 10). Further, employers with 25 employees or more are to draw up action plans for equal pay every three years (Chapter 3 Section 11).

The Ombudsman's principal task is to ensure compliance with the Discrimination Act. The Ombudsman registers and investigates complaints and may bring an action, as a party, on behalf of an individual who consents to this. The Ombudsman also investigates complaints from employees on parental leave who feel they have been treated unfairly for having taken such leave. The Ombudsman has taken measures to increase the knowledge about the Discrimination Act among employers.

The Committee recalls that in its previous conclusion (Conclusion 2006) it found the situation not to be in conformity with the Charter because it found that the employment insurance legislation indirectly discriminated against women working part-time. Social security legislation requires a minimum working-time of three hours per day or 17 hours per week to be entitled to unemployment insurance. Part-time contracts the length of which is below such minimum mostly concern women. The Committee seeks clarification of the qualifying periods for affiliation to the social security system, as it notes that according to MISSOC¹ the qualifying conditions for unemployment benefit are

- To have been employed or self-employed for at least 6 months and at least 80 hours of work per month during the last 12 months or
- To have been employed or self-employed for at least 480 hours during a consecutive period of 6 months with at least 50 hours of work every month during the last 12 months (working condition).

While the conditions for receipt are inter alia, being capable of working and being able to undertake work on behalf of an employer for at least 3 hours each working day and an average

of at least 17 hours per week, which is slightly different from what the Committee noted previously. Meanwhile it reserves its position on this issue.

As regards **pay comparisons** the Committee refers to its statement in the General introduction and asks for information on this issue.

Specific protection measures

The Committee examines rules relating to pregnancy, maternity and parental leave under Articles 8 and 27 respectively.

Position of women in employment and training and measures to promote equal opportunities

The National Mediation Office analyses wage growth from a gender equality perspective. According to their latest study, the **pay gap** between women and men in 2010 was 14.3%, i.e. women's pay was 85.7% that of men's. If differences in occupation, sector, education and working hours are taken into account, the pay gap is approximately 5.9%. During the period 2005–2010, the pay gap between women and men narrowed in both the private and the public sector. According to the report the fact that men and women work in different occupations to a large extent explain the differences.

In June 2009, the Government presented a strategy for gender equality in the labour market and the business sector. The strategy contains both an analysis and a description of specific measures aimed at promoting equal opportunities for women and men to develop their potential in the labour market and the business sector. More than 60 measures have been presented, and 235 million SEK (approximately 26€ million) is to be invested.

In its Conclusions 2008, the Committee noted that the Equal Opportunities Ombudsman was currently examining the wage mapping of the biggest employers (in the private sector), covering a million employees. The results are briefly described as follows:

- 60 per cent of employers had introduced pay adjustments or other measures in order to achieve equal pay for women and men performing work regarded as equal or of equal value.
- 44 per cent had identified unjustified pay differentials that were to be remedied. Pay adjustments totalled at least 72 million SEK (approximately 7€ million).
- The pay adjustments concerned at least 5,800 employees, of which about 90 per cent were women. This means an average monthly pay rise of just over 1,000 SEK (100€ per person).
- A third of the employers had taken steps other than pay adjustments to achieve equal pay. These included professional development for staff members, training for pay-setting managers and recruitment measures to increase the proportion of women in senior positions.

Conclusion

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

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

1. Concerning the Gender pay gap

95 From different sources, including all the conclusions and/or observations of the above-mentioned bodies, the main regulatory instruments in relation to discrimination on the grounds of sex in general and equal pay for equal work in particular -and without being exhaustive- the following:

- 2008 Discrimination Act (2008:567) (and its subsequent amendments).

- In a more detailed and comprehensive way the Swedish ETUC affiliates have described the legal and collective bargaining framework pertinent to the national situation (see Annex).

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

- According to the Commission, based on Eurostat 2014 figures, in Sweden, the gender pay gap stands at 13.8 %⁵⁵ (the average gender pay gap in the EU is 16.7 %) and the gender overall earnings gap in Sweden stands at 27.1% (the average gender overall earnings gap in the EU is 39.8 %).⁵⁶
- A report of the Swedish National Mediation Office (which is amongst others responsible for the content and scope of the official wage statistics) shows that the gender wage gap decreased every year since 2007 but still stood at 12% in 2016. It also notes a (still) large variation between different sectors with the largest wage difference of 21.1% exist for women in county councils (and this mainly due because the large share of women working there are assistant-nurses while the few men are mainly doctors).⁵⁷
- More figures can be also found in observations from the Swedish ETUC affiliates. (see Annex).

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

97 There exists no regulatory framework on representation of women in decision-making positions in private enterprises.⁵⁸

98 In April 2016, the average share of women on the boards of the largest publicly listed companies registered in the EU-28 Member States reached 23.3 %. For Sweden, the figure is 36.1%.⁵⁹

99 According to the so-called Allbright Report 2017, and compared to 2016, the proportion of women in senior positions increased by merely a percentage point to 21%, taking there by also into account that there was a significant increase of new companies. Women only hold CEO positions in 6% of the listed companies. Only 39 of 298 listed companies have a senior management team within the range of an equal gender distribution.⁶⁰

⁵⁵ According to the Eurostat figures for 2015, this stands now at 14.0%. (See also table in Part I.B.1)

⁵⁶ European Commission factsheet gender pay gap 2016 - Sweden ; http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/2016/gpg_country_factsheet_se_2016_en.pdf

⁵⁷ Swedish National Mediation Office (2016) Löneskillnaden mellan kvinnor och män 2016. Vad säger den officiella lönenstatistiken?, Stockholm: Medlingsinstitutet. (Available at http://www.mi.se/files/PDF-er/ar_foreign/Wagediff.pdf) More information on wage statistics is available in English at: <http://www.mi.se/other-languages/in-english/wage-statistics-in-english/>

⁵⁸ There exists however a Swedish Corporate Governance Code of 2004, a self-regulation, which recommends that companies should strive for gender balance on the board. The recommended target for listed companies in FTSE 100 is 25% by 2015 to all board members. FTSE 350 companies are recommended setting their own aspirational targets to be achieved by 2013 and 2015.

⁵⁹ European Commission, **Factsheet July 2016. Gender balance on corporate boards - Europe is cracking the glass ceiling**; http://ec.europa.eu/justice/gender-equality/files/gender_balance_decision_making/1607_factsheet_final_wob_data_en.pdf

⁶⁰ Allbright (2017) Women CEOs choose gender equality, Stockholm: Allbright, September 2017. (available at:

C. *Application of the legal principles*

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

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

1. *Concerning the Gender pay gap*

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

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

a) *Substance*

104 Pay discrimination between women and men is a major and serious problem. In Sweden active measures have been in progress for many years aimed at evening out unfair pay differences between women and men. Pay discrimination is forbidden by law and an employer is obliged by law to actively survey and remedy discriminatory pay. No further legislative measures in the area are planned at present; it is a matter of ensuring compliance with the existing rules.

105 Along with the government regulations and the work of government agencies, the social partners work actively to remove pay differences between women and men. The collective agreements often contain special rules on how this work should be done in practice and measures to facilitate women's entry into male-dominated industries. The parties have also on several occasions in recent years made collective agreements on special pay increases in female-dominated agreement areas.

106 The fact that a phenomenon is prohibited does not, however, automatically mean that it ceases or disappears. Pay discrimination between women and men still exists despite the fact that it is prohibited and that there are a number of tools both in legislation and collective agreements that are intended to even out pay differences. However, progress is in the right direction. The trade union organisations in Sweden want to emphasise that further state intervention in this area is undesirable. The social partners must be given the space to agree on how their joint work should be conducted by means of sector-specific rules. Direct state intervention in the wage formation process in Sweden would severely undermine the role

and strength of the trade union organisations and damage effective cooperation between the social partners

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

- Statistical evidence (see above para. 96) shows that there is still a gender pay gap. Even if it might have been reduced during the last time **any** Gender pay **gap** does not fulfil the non-discrimination requirement based on sex.
- The official statistics are still excluding **small (micro) seized enterprises**. It is therefore most probable that the Gender pay gap is even higher in these enterprises.

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

b) Procedure

109 Moreover, from a procedural perspective (i.e. a general framework to ensure a satisfactory application and enforcement/supervision of the principle of equal pay), and despite a good functioning labour market model build on very active social partners and strong collective bargaining (complemented with supervisory/enforcement bodies such as the labour inspectorate), the result of eliminating the gender pay gap is not (yet fully) achieved.

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

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

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

a) Substance

112 Statistical evidence (see above para. 98) shows that there is still an under-representation of women in decision-making bodies within private companies. Even if there might be relevant legislation and even if the degree of representation of women would have increased it is not to be disputed that women are not sufficiently represented within these bodies.

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

b) Procedure

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

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

III. Conclusions

A. Substantive conclusions

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

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

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

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

B. Procedural request

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

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

Annex

Observations from LO Sweden, TCO and Saco in the case between the UWE and Sweden in the ECSR

Brief information on the situation in Sweden

Pay differences between men and women are a problem in all countries. According to national pay statistics the pay difference between men and women in Sweden in 2016 was 12 per cent,

which is a decrease of 0.5 percentage points since 2015. Taking into account differences in occupation, sector, education, age and working hours there is still an unexplained pay difference of 4.5 per cent. These pay differences are generally greater in the private sector than in the public sector and are greater for white-collar workers. Between 2005 and 2016 pay differences decreased by 4.3 percentage points in total, i.e. 26 per cent, and the unexplained pay difference by 2.3 percentage points, i.e. 29 per cent. The major part of the pay difference is due to men and women working in different occupations. Thus progress is in the right direction but there are still remaining pay differences that are quite unacceptable and that require continual active work.

Wages and conditions of employment in Sweden are regulated through collective agreements. Collective agreements are subject to civil law. An employer is bound by a collective agreement by joining an employer organisation or by signing a collective agreement directly with a trade union organisation. More than 90 per cent of employees in Sweden work at workplaces where collective agreements apply, despite the fact that no system exists for making collective agreements generally applicable. A basic premise for the labour market model is that the State does not interfere in wage formation. There is very strong support throughout the Swedish society for this principle. State intervention in the wage formation process risks counteracting effective cooperation between the parties for the purpose of combating pay differentials and halting the positive progress described above.

Legislation in Sweden

Prohibition of discrimination

Discrimination between women and men, including pay discrimination, is forbidden in law. The Discrimination Act (2008:567) contains a prohibition against both direct and indirect discrimination; Chapter 2, Section 1. Among other things the Act implements the prohibition in EU law against wage discrimination in Sweden. The Act is mandatory and cannot be contracted out of. The Act's prohibition against discrimination naturally also applies to collective agreements. Anyone violating the discrimination prohibition may be ordered to pay both financial and general damages. In addition, a discriminatory individual employment contract or collective agreement may be declared invalid or adjusted if the person discriminated against so requests.

Preventive work

Chapter 3 of the Discrimination Act contains provisions aimed at preventing gender discrimination and promoting equal rights and opportunities regardless of sex. Under these provisions an employer is obliged to conduct prevention and promotion measures by examining whether there are risks of discrimination or other obstacles to equal rights and opportunities, analysing the reasons for any risks, taking the measures that can reasonably be demanded and following up and evaluating this work. The work must be conducted on a continuous basis and where necessary scheduled.

An employer shall take active measures in particular as regards working conditions, pay and other terms of employment, recruitment and promotion, training and skills development, as well as the opportunity to combine employment and parenthood. Employers are also obliged to promote gender balance in different types of work, among different categories of employees

and in management positions, by means of training, other skills development and other appropriate measures. This work must also be followed up and evaluated.

Pay survey

As regards discovering, remedying and preventing unfair gender differences in pay and other terms of employment, every year the employer is to survey and analyse provisions and practices on pay and other terms of employment that are applied by the employer, as well as pay differences between women and men who perform work that is to be regarded as equal or of equal value.

The employer is thereafter to analyse whether existing pay differences are directly or indirectly associated with gender. The analysis is to refer in particular to women and men performing work that is to be regarded as equal, In addition a survey is to be made between groups of workers that perform work that is or is generally considered to be dominated by women and other groups of employees and assess whether the work for these groups may be regarded as of equal value.

Employers with 25 or more employees must document in writing their active measures to combat unfair wage differences between women and men. Employers with between 10-24 employees must document their pay survey in writing annually.

Under the Act employers and employees are to cooperate on active measures.

One central government agency, the Equality Ombudsman, is tasked with supervision of employers' compliance with the obligations under the Discrimination Act to draw up gender equality plans and pay surveys. The agency may apply to a special Board to order an employer to fulfil his or her obligations subject to a conditional financial penalty. The agency may also represent individuals who consider that they have suffered discrimination. However, employees belonging to a trade union organisation are in the first instance represented by the trade union organisation of which they are a member.

Remit of the National Mediation Office

The National Mediation Office is tasked with an annual analysis of the gender pay gap in the Swedish labour market on the basis of official statistics: http://www.mi.se/files/PDF-er/att_bestalla/loneskilnader/L%C3%B6neskillnader%20juni%202016.pdf

One of the chapters in the annual report on collective bargaining and wage formation for 2016 reviews the collective agreements that have special gender equality initiatives and the existence of collaboration between the parties on gender equality issues and working groups in various agreement areas: http://www.mi.se/files/PDF-er/att_bestalla/arsrapporter/AR16_ny.pdf (Chapter 5). Many agreements also address the procedure for compliance with the anti-discrimination legislation pay survey requirement.

The work of the social partners

Collective agreements

As mentioned before, wages and conditions of employment in Sweden are regulated through collective agreements. The collective agreement is a powerful tool for combating pay

discrimination in various ways and for promoting equal opportunities for women and men in working life.

The basic premise is that collective agreements do not contain discriminatory conditions. Many collective agreements explicitly stipulate that the parties at local level, before starting to negotiate on pay and the distribution of pay rises, are to investigate and analyse whether any unfair pay differences between women and men exist at the workplace. This means that the parties are to make a joint pay survey for different employee groups to discover whether there are gender-related differences between employee groups at the workplace that perform work that is equal or to be regarded as of equal value. In that work comparison is above all made between groups that are female-dominated and groups that are male-dominated. If unfair pay differences are discovered they are to be rectified before the ordinary pay review is started.

Many central collective agreements, including agreements for groups of academics, do not specify margins for pay increases. They are called agreements with no specific figures. Instead, the agreements set out guidelines for wage formation. This means that the margin and distribution are decided entirely at local level. This means that much of the work of achieving gender equal pay is done at local level, mainly as part of pay talks between managers and employees. Studies by Saco (Swedish Confederation of Professional Associations) have shown that pay dialogues favour women with an academic education and even reduce some of the gender pay gap. The explanation may be that the individual woman and her performance is made visible and assessed in the pay dialogues, thus reducing the effect of "statistical discrimination" - that women are assessed as a group.

The collective agreements may also contain rules that in other respects are intended to stimulate women to advance in their career within the companies. In some industries they also contain rules that are to remove obstacles for women to work in the industry, for example rules on separate changing rooms for women and men in the construction industry.

Initiatives to reduce the gender pay gap

The main reason for pay differences between women and men is that the Swedish labour market is still very gender segregated. Occupations in health care and social services are highly female-dominated, while occupations in the construction sector for example are highly male-dominated. The trade unions affiliated to the Swedish Trade Union Confederation (LO) have on several occasions in recent years agreed to demand higher percentage pay increases for agreement areas that are female-dominated with low wages with a view to reducing the differences. The collective agreements signed have also contained such special initiatives. Another example is that the parties in the healthcare and social services sector made an agreement in 2016 on considerable pay increases for assistant nurses, a highly female-dominated occupational group.

An example from the Confederation of Professional Employees (TCO) area of how the parties can work together to reduce the gender pay gap is the collective agreement between the Employers' Association of the Swedish Banking Institutions (BAO) and the Financial Sector Union in the Equal Pay project.⁶¹

⁶¹ The Employers' Association of the Swedish Banking Institutions, BAO and the Financial Sector Union of Sweden, FSU have agreed to undertake a specific task in order to tackle non-objective pay gaps in the banking and finance sector during the agreement period from 2011 and it is still going on. This joint initiative is to be carried out as a project called Equal Pay. The background is that during negotiations

Summary

Pay discrimination between women and men is a major and serious problem. In Sweden active measures have been in progress for many years aimed at evening out unfair pay differences between women and men. Pay discrimination is forbidden by law and an employer is obliged by law to actively survey and remedy discriminatory pay. No further legislative measures in the area are planned at present; it is a matter of ensuring compliance with the existing rules.

Along with the government regulations and the work of government agencies, the social partners work actively to remove pay differences between women and men. The collective agreements often contain special rules on how this work should be done in practice and measures to facilitate women's entry into male-dominated industries. The parties have also on several occasions in recent years made collective agreements on special pay increases in female-dominated agreement areas.

The fact that a phenomenon is prohibited does not, however, automatically mean that it ceases or disappears. Pay discrimination between women and men still exists despite the fact that it is prohibited and that there are a number of tools both in legislation and collective agreements that are intended to even out pay differences. However, progress is in the right direction.

The trade union organisations in Sweden want to emphasise that further state intervention in this area is undesirable. The social partners must be given the space to agree on how their joint work should be conducted by means of sector-specific rules. Direct state intervention in the wage formation process in Sweden would severely undermine the role and strength of the trade union organisations and damage effective cooperation between the social partners .

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concerning the new agreement, the social partners noticed that when they looked at the common pay statistics there was a pay gap between men and women that was hard to explain. According to common equality statistics for the banking and finance sector in 2011, female employees had a median pay of 91 % in relation to men. A difference in pay is objective so long as it may relate to differences in an individual's competence, skills, effort etc. in accordance with the bank/company pay principals for setting salaries. BAO and FSU agree that non-objective pay gaps should not occur. Objective pay is also one of the preconditions of being an attractive employer. The banking and finance sector should be at the forefront and compete for the best personnel today, and in the future. Efforts to deal with non-objective pay differences are therefore also a strategic business issue.

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