

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



European  
Social  
Charter

Charte  
sociale  
européenne



14 November 2017

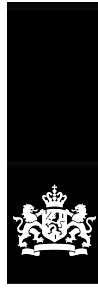
**Case Document No. 5**

**University Women of Europe (UWE) v. Netherlands**  
Complaint No. 134/2016

## **SUBMISSIONS BY THE GOVERNMENT ON THE MERITS**

Registered at the Secretariat on 3 November 2017





Observations of the Government of the Netherlands

on the merits

of complaint No. 134/2016

UNIVERSITY WOMEN OF EUROPE

v.

The Netherlands

## Introduction

1. By decision of 4 July 2017, the European Committee of Social Rights ('the Committee') declared admissible the complaint lodged by University Women of Europe ('UWE') on the basis of the 1995 Additional Protocol to the European Social Charter ('the Additional Protocol'), alleging a violation of the Revised Social Charter ('the Charter') by the Netherlands.
2. By letter of 24 July 2017, the Executive Secretary of the Committee forwarded the aforementioned decision to the Government, expressing the Committee's wish to receive the Government's observations on the merits of the complaint.
3. The complaint concerns the incompatibility of Dutch policy and practice regarding equal pay and equal opportunities for men and women with the following articles of the Charter:
  - article 1: the right to work;
  - article 4: the right to a fair remuneration;
  - article 20: the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex;
  - article E: non-discrimination.
4. In the admissibility decision the Committee summarised the extensive complaint and condensed it into two points:
  1. With respect to the gender pay gap, the complaint alleges that existing legislation in the Netherlands is insufficiently enforced, rendering it ineffective.
  2. With respect to the small number of women in senior positions in the private sector, the complaint alleges that legislation is ineffective due to the absence of sanctions for businesses that do not meet the 30% norm.
5. In its observations the Government will explain why it is of the opinion that in Dutch law, policy and practice everything possible is done to achieve or at any rate to facilitate equal pay and equal treatment.

## Merits of the complaint

6. The Government will first discuss the gender pay gap, focusing particular attention on supervision of compliance with legislation and the measures for achieving equal pay in practice. The Government will then consider the second point in the complaint: the underrepresentation of women in senior positions in the private sector.

*I. Equal pay*

*Overall gender pay gap and pay discrimination*

7. The complaint lodged by UWE seems to relate to pay discrimination as well as the overall gender pay gap.
8. The Government defines the overall gender pay gap as the difference between the average earnings of men and women as a percentage of the average earnings of men per working hour. The pay gap is calculated by comparing the combined earnings of all male employees with the combined earnings of all female employees. The term 'gender pay gap' must be distinguished from the term 'pay discrimination'. Pay discrimination refers to women receiving less pay than men for work of equal value.
9. The Government points out that Article 4 (3) of the Charter deals with the right to equal pay for work of equal value and thus relates to pay discrimination and not to the pay gap.
10. The Government is of the opinion that the Charter has not been violated since all the preconditions, in terms of legislation, policy and practice, for equal treatment of men and women have been created. This will be explained in more detail below.

*Enforcement and monitoring*

11. UWE complains that Dutch legislation regarding equal pay for men and women is ineffective because compliance is insufficiently enforced or monitored by government institutions. The Government disagrees. The enforcement system in place in the Netherlands is effective, although it is not structured in the way UWE seems to envision
12. The Government would note, first of all, that remuneration is determined between the employer and the employee on the basis of freedom of (employment) contract.
13. Therefore, aside from establishing a statutory minimum wage and legal frameworks for equal pay (for work of equal value), the Government refrains from interference with remuneration. This means equal pay in individual cases is not enforced by government institutions. The Government believes it is less effective to have government institutions tracking down, investigating and proving individual cases of unequal pay for work of equal value, and more effective to ensure access to appropriate and effective remedies that allow parties to address discrimination themselves.

14. Pay discrimination is prohibited under Dutch law. The Equal Treatment (Men and Women) Act (section 7 et seq.), Book 7 of the Civil Code (article 646 et seq.) and the Equal Treatment Act (section 5 et seq.) stipulate that equal pay must be given for work of equal value, unless the distinction is objectively justified. The different remedies to actually ensure the parties are able to address pay-discrimination are described below.
  - a. Complaint with the Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*, CRM)
15. The CRM, an independent human rights institution granted 'A status' in 2014, protects, monitors, explains and promotes human rights (including equal treatment) in the Netherlands through research, advice and information. The CRM draws up annual reports about the human rights situation in the Netherlands and publishes its research findings.
16. In addition to these general monitoring tasks, the CRM assesses individual complaints. The procedure is easily accessible and free of charge. Complaints can be submitted to the CRM using the complaint form on its website ([www.mensenrechten.nl](http://www.mensenrechten.nl)). The CRM will examine the complaint and hold a hearing at which both parties can express their views. The complainants need only demonstrate a prima facie suspicion of discrimination.
17. In principle the CRM presents its findings within eight weeks of the hearing. In its findings the CRM may include a recommendation to the responsible party on how discrimination can be avoided in future. Under section 11 of the Act establishing the Netherlands Institute for Human Rights (*Wet College voor de Rechten van de Mens*), the CRM notifies the complainant or, if the complainant is a representative, the victim of discrimination, and the party accused of discrimination of its findings in writing, stating its reasons. The CRM publishes its findings on its website. The CRM's findings are not legally binding, but Dutch courts often take them into account in their own assessments.
18. Between 2007 and 2016 the CRM received 266 complaints regarding a remuneration component. The CRM presented findings in 124 of the 266 cases (the other complaints were withdrawn, some after the parties arrived at a settlement, or declared manifestly unfounded). In 41 cases (approximately 33%) the complaints concerned an alleged distinction on the grounds of sex. In 25 of those 41 cases (61%) an unlawful distinction on the grounds of sex was found (see the table below).
19. Table: Findings in the period 2007-2016 in cases concerning pay or a remuneration component, by grounds of distinction and whether the distinction was unlawful.

	Distinction not found to be unlawful	Distinction found to be unlawful	
Other grounds	35	48	83
On grounds of sex	16	25	41
	51	73	124

20. These figures show that the CRM plays an important role in addressing pay inequality.

b. Enforcement in a court of law

21. Regardless of whether a case has been assessed by the CRM, disputes can also be brought before a civil court or civil service tribunal. This option is not free of charge. Civil courts base their judgments on the parties' claims and the arguments put forward. The burden of proof has shifted. The civil court can order an employer found to have engaged in discrimination to pay compensation at the claimant's request. In addition, the civil court can impose a penalty, if the demand is made and the court deems it reasonable and fair in the case in question. Finally, the court can order one party to pay the other party's legal costs. Civil servants can bring comparable legal proceedings before a public service tribunal. It has been shown that Dutch courts attach great value to the CRM's findings and usually take them into account in their judgments.

c. Mediation by a municipal antidiscrimination bureau (ADB)

22. Another free-of-charge option is mediation by a municipal antidiscrimination bureau, which offers members of the public independent and efficient legal aid. Complaints can be submitted to an ADB online or by phone. After a complaint is filed, the bureau contacts the complainant, who then explains the details of the case. With the complainant's consent, the ADB contacts the individual or organisation accused of discrimination. The ADB attempts to resolve the complaint through mediation and can, if necessary, refer the complainant to other bodies and provide guidance during any follow-up steps.

d. Monitoring and research

23. At the beginning of 2016, the CRM published the findings of a study into the gender pay gap among staff at institutions of higher professional education (*hogescholen*) and the origins of that pay gap. This study uncovered over 30 remuneration criteria that can result in gender discrimination. Examples of these criteria include remuneration based on last earned salary or

on salary negotiations with a candidate and inadequate pay increases following promotion. In these cases pay is not based on the value of the work. The application of these criteria was shown to benefit men more often than women. The parties to collective agreements in the sector set to work using the findings of the survey and sharing knowledge and ideas on how to prevent pay disparities within institutions of higher professional education in the future.

24. In 2009 the Equal Treatment Commission, the predecessor of the CRM, carried out a similar study into the salaries of hospital staff. The CRM is currently investigating the gender pay gap in the insurance industry. Its report is due to be published on 27 November 2017.
25. By bringing to light social factors that contribute to wage inequality, these studies raise awareness, which in turn will contribute to the reduction and eventually the elimination of pay disparities. The CRM publishes recommendations for employers along with its findings.
26. The Inspectorate Social Affairs and Employment, part of the Dutch Ministry of Social Affairs and Employment, is responsible for carrying out inspections of compliance with statutory measures meant to ensure the labour market functions properly and worker safety is protected. This involves monitoring compliance with the rules to combat illegal work, circumvention of the minimum wage, labour exploitation, rogue job placement services and other forms of labour market fraud, and with measures that promote safe and healthy working conditions, such as working hours and breaks for staff, and measures that limit risks to staff, consumers and the surrounding area. The Inspectorate identifies developments and risks in the social affairs and employment domain and reports on these matters to parties concerned. Its tasks do not include monitoring pay-related issues involving individual employees, as this would be impracticable, due to the extensive assessment these cases would require.
27. In more general pay-related matters the social partners (employers and employees) can exert influence. In the Netherlands wage scales (that is: general remuneration arrangements for defined jobs) are laid down in collective agreements. The social partners watch over the application of these scales. The Government can support the social partners in this task. At the request of the social partners the Minister of Social Affairs and Employment can make specific provisions of collective agreements generally binding. This means that these provisions then apply to all businesses in the sector of industry concerned regardless whether individual employers and employees are members of the employers' and employees' organisations that concluded the collective agreement.



28. The social partners also have the statutory power to submit to the Minister a request, stating reasons, to investigate compliance with one or more specific provisions in order to collect data that can be used in civil proceedings against an employer. Investigations of this nature are carried out by the Inspectorate Social Affairs and Employment. The Inspectorate reports to the Minister as to whether or not the provision or provisions of the collective agreement have been complied with. The findings can be used as evidence in civil proceedings.
29. Works councils in the private sector also have a statutory tool for promoting equal pay at their company. Under section 27, subsection 1 (c) of the Works Councils Act an employer requires the approval of the works council to adopt, amend or revoke a remuneration or job rating system. Such a system classifies wages and jobs. A works council can ask the CRM to assess a proposed remuneration system to establish whether it contains any discriminatory elements. If the CRM finds any such elements, for instance if wages for jobs performed mostly by women are lower for no apparent reason, the works council can withhold its approval. Under section 28 of the Works Councils Act the works council is also tasked with guarding against discrimination within the company and specifically promoting equal treatment of men and women. This may include addressing pay disparities between men and women.

*Conclusion with respect to alleged pay discrimination*

30. The Government concludes that there are sufficient means to enforce equal treatment in terms of pay. A choice has been made for a system of enforcement which does not include binding interventions in employment relationships, and thus respects the freedom of contract. Instead, a system is put in place which offers the parties involved accessible ways of asserting equal pay rights and ensuring the compliance with equal pay rules. In addition, monitoring instruments are given to workers' representing bodies to use their influence to the same effect in a more general way. In the Governments' opinion the Netherlands fulfils its obligations under the Charter.

*Overall pay gap*

31. UWE's complaint also relates, at least in part, to the overall gender pay gap referring to the fact that on average male workers have higher earnings than female workers. As stated before (see paragraph 9), the overall gender pay gap must be distinguished from pay discrimination. The overall pay gap is largely the result of the difference in positions of men and women on the labour market. Differences may result from differences in job grade, work experience, education, full-time and part-time work, irregular hours and other factors. Labour market segregation between male and female professions and specialisms is another cause.

32. Biannually, Statistics Netherlands (CBS) carries out an investigation commissioned by the Ministry of Social Affairs and Employment into gender-based pay disparities to determine the overall gender pay gap. The most recent investigation shows that in the Netherlands the overall pay gap is shrinking. In the public sector the difference in pay between men and women decreased from 16% in 2008 to 10% in 2014. This means that, measured in terms of the total population of employees, male employees earned 16% more on average than female employees in 2008 and that this gap decreased to 10% by 2014. In the private sector the figure decreased from 22% to 20% over the same period. These findings show that the overall gender pay gap is decreasing.

*Other means of influencing and ensuring equal pay*

33. In addition to putting in place a system of effective legislation, sufficient supervision and monitoring and accessible remedies for enforcement, various efforts are made in the Netherlands to eradicate pay inequality between men and women. These efforts relate to addressing social causes and providing information.

34. A long-term publicity campaign called '*Zet een streep door discriminatie*' ('Strike out discrimination') was launched in 2015. This campaign was set up as part of the national action plan against discrimination and is intended to raise awareness that any form of discrimination is unacceptable. The call to 'strike out discrimination' encourages individuals, businesses and government agencies to help prevent and combat discrimination. The campaign will run until the end of 2018. One part of the campaign focuses specifically on labour market discrimination during the recruitment and selection process. The aim is to raise awareness amongst employers and boost overall willingness to report discrimination.

35. Information for employers and employees about labour-related topics is available on various websites including [www.loonwijzer.nl](http://www.loonwijzer.nl), [www.stvda.nl](http://www.stvda.nl), [www.overheid.nl](http://www.overheid.nl) and the CRM's website. These websites contain a lot of practical information and guidelines. The websites [www.loonwijzer.nl](http://www.loonwijzer.nl) and [www.stvda.nl](http://www.stvda.nl) allow employees to do a 'salary check' to compare their salaries to those of employees in a similar situation in terms of occupation, education and work experience. On these websites employees will also find a calculator for checking gross and net pay, a checklist for equal pay and employment conditions, and an equal pay quick scan, which allows employees and employers to check whether their organisation makes pay distinctions based on gender, working hours or origin. The websites also offer a step-by-step plan for works councils. The CRM's website also offers a quick scan to check for unequal pay.

36. Some employees' associations hold events relating to labour and pay. The Trade Union Confederation FNV organises sessions aimed specifically at helping women trade union members prepare for salary negotiations. The National Federation of Christian Trade Unions offers similar sessions for all its members regardless of gender, and the Trade Union Federation for Professionals arranges special salary negotiation training sessions.
37. The Netherlands Institute for Social Research (SCP), a government agency which conducts research into both solicited and unsolicited social scientific research, also plays an important role. Every two years the SCP publishes the Equal Rights Monitor, which covers key developments with regard to gender equality. In the most recent edition from late 2016 the SCP notes that progress in equal opportunities for women is slow but that positive trends have been identified  
([https://www.scp.nl/Publicaties/Alle\\_publicaties/Publicaties\\_2016/Emancipatiemonitor\\_2016](https://www.scp.nl/Publicaties/Alle_publicaties/Publicaties_2016/Emancipatiemonitor_2016)).
38. For instance, the crisis has had a stronger impact on men than on women. With the number of women on the labour market already rising in 2016, the SCP expects a further increase as the employment situation improves. Young mothers' labour participation is relatively sensitive to financial incentives. A number of government measures have been implemented to strengthen these incentives. Other positive findings are the rise in women's level of education and the increase in acceptance of mothers and fathers sharing work and care responsibilities.
39. Modernising care leave and paternity leave, tackling the negative effects of flexible working and improving the quality of childcare will further boost women's labour participation and thereby encourage a change in culture with regard to women's economic independence and men's freedom of choice in taking on care responsibilities. Information and awareness campaigns, sharing best practices and online tools are mentioned as steps in the right direction.

*Specific issues in UWE's complaint*

40. According to UWE the decision not to give the Ombudsman, the CRM or the Inspectorate Social Affairs and Employment far-reaching monitoring powers with regard to equal pay for men and women is a political choice that proves gender equality is not a priority in the Netherlands (see paragraph 4.4. of the complaint). As is stated in paragraph 14, this choice has been made to allow those directly involved to assert and enforce the right to equal pay through simple and accessible processes. This is a matter of efficiency rather than of priority.

41. The Government also wants to underline that the CRM and the National Ombudsman are not one and the same, as is implied in paragraph 4.4 of the complaint. The National Ombudsman investigates citizens' complaints against actions taken by administrative authorities or their staff. Nor did the CRM replace the temporary equal opportunities policy review committee (*Visitatiecommissie Emancipatie*), as UWE appears to presume.
42. UWE's arguments in paragraph 4.4 of the complaint that female employees who demand equal pay run a considerable risk of being dismissed and that proceedings are costly and physically and emotionally draining are barely substantiated and are, at least in part, inaccurate.
43. As explained above, procedures have been designed to be as straightforward as possible and some are free of charge. It should be pointed out again that the burden of proof rests with the employer after the employee has raised a prima facie suspicion of discrimination.
44. The Government does not understand UWE's observation (in paragraph 4.4 of the complaint) that the limitation period under Dutch law for recovering damages in pay disputes is too short, as UWE does not refer to any legislative provision.
45. The limitation period for claiming equal pay is five years, in line with the generally applicable national limitation period for pay claims laid down in the Civil Code. In the Government's opinion this period does not impermissibly limit the possibility of recovering damages.
46. Besides, Dutch law contains provisions concerning good employment practice and good employee conduct. Good employment practice means that an employer's invocation of the limitation period of a pay claim can, in certain circumstances, be deemed unreasonable. This applies in particular when the employer is partly responsible for the limitation period expiring because he discouraged the employee from making a claim. If this is the case the employer's limitation defence will fail and the claim can be awarded.

*Overall conclusion with respect to equal pay*

47. In the light of the above the Government is of the opinion that by providing the statutory framework, a range of appropriate remedies and activities to raise awareness and share information about pay discrimination, it has created a structure of enforcement to effectively achieve equal pay and consequently meets the obligations that the Charter places on the States Parties.

## II. Women in senior positions

48. The second point in UWE's complaint concerns the underrepresentation of women in senior positions in the private sector. UWE claims that national legislation is not being complied with and believes that this legislation is ineffective due to the lack of sanctions against businesses that do not meet the norm of 30%.
49. The Government does not agree with UWE. The Government is working at both legislative and policy level to ensure that women can reach senior positions. Businesses are encouraged to appoint more women to senior positions. The Government thus fully meets the obligations set out in article 20 of the Charter.
50. UWE contends that the Government has violated the Charter and refers to five criteria laid down in a previous case as criteria that effective policy must meet (paragraph 4.1 of the complaint). The Government would point out that the criteria to which UWE refers relate to article 31 of the Charter and not to article 20.
51. With regard to article 20 of the Charter the Committee has indicated that 'the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact 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;
  - encouraging employers and workers to deal with equality issues in collective agreements;
  - setting more store by equality between women and men in national action plans for employment.
- Action taken must be based on a comprehensive strategy for incorporating the gender perspective into all labour market policies.' (Digest of the Case Law of the European Committee of Social Rights, <https://rm.coe.int/168049159f>, p.138)
52. UWE's complaint relates to the representation of women in decision-making positions in private companies. These observations will therefore only address the Government's policy with regard to the private sector.

53. The Government agrees with UWE that the small number of women in senior positions is an issue. The Government believes that equal representation of women in decision-making positions is very important and beneficial to companies. International research has also shown that having homogeneous boards of directors and supervisory boards negatively affects companies' financial results and slows economic growth. Balanced representation of women in board positions is therefore desirable not only from the perspective of gender equality but also for economic reasons.
54. The Government's comprehensive strategy to increase the number of women in board positions in large companies deploys a wide range of instruments, such as legislation, evaluation, monitoring, grants, information campaigns and communication. The Government has chosen to combine a statutory target with a activation policy, and to continuously monitor whether the desired progress is being made. The Government believes that by promoting self-regulation the desired goal of ensuring that at least 30% of management and supervisory board positions at large public limited companies (NV) and private limited companies (BV) are held by women can be achieved.
55. Below, the Government will discuss its practical and effective approach.

#### *Legislation*

56. Effective since January 2013, the Management and Supervision Act (referred to below by its Dutch acronym WBT) regulates the composition of the management and supervisory boards of large public limited companies (NV) and private limited companies (BV). One component of this act is the statutory target scheme based on articles 2:166 and 2:276 of the Civil Code. In accordance with this scheme, large public and private companies must wherever possible take gender balance into account when appointing and nominating directors, drawing up job profiles for supervisory board members (non-executive directors) and when designating, appointing, recommending and nominating supervisory board members (non-executive directors).
57. In accordance with article 2:166, paragraph 1 and 2:276, paragraph 1 of the Civil Code, gender balance means that at least 30% of board positions are held by women and at least 30% by men. If the statutory target is not achieved, large public and private companies must, under article 2:391 paragraph 7 of the Civil Code, explain in the directors' report why gender balance has not been achieved, what steps the company has already taken to achieve gender balance in the future and what further steps the company intends to take. This is the 'comply or explain' principle.

58. The auditor responsible for checking the annual accounts and the directors' report must verify whether this explanation has been included. If an explanation is missing, this must be mentioned in the auditor's report. It is up to the annual general shareholders meeting to decide whether the explanation given is adequate. If no explanation is given, the directors' report is deemed not to have met the statutory requirements and any interested party can, under article 2:447 in conjunction with article 2:448 of the Civil Code, request the Enterprise Division (*Ondernemingskamer*) of Amsterdam Appeal Court to order the company to draw up the directors' report in accordance with its instructions. With respect to listed companies the Netherlands Authority for the Financial Markets (AFM) is also authorised to submit such a request.
59. In 2015 more than 5,000 companies fell within the scope of the WBT ([www.rijksoverheid.nl/documenten/rapporten/2016/11/01/bedrijvenmonitor-topvrouwen-2016](http://www.rijksoverheid.nl/documenten/rapporten/2016/11/01/bedrijvenmonitor-topvrouwen-2016)). The statutory target scheme was set to lapse in January 2016, but was extended and will apply until 2020 ([www.rijksoverheid.nl/actueel/nieuws/2017/03/02/5000-bedrijven-aan-de-lat-voor-30-streefcijfer-vrouwen-aan-top](http://www.rijksoverheid.nl/actueel/nieuws/2017/03/02/5000-bedrijven-aan-de-lat-voor-30-streefcijfer-vrouwen-aan-top)).
60. Since the statutory target was introduced in 2013, progress towards gender balance on management and supervisory boards of large public and private companies has been monitored annually by the Talent to the Top Monitoring Commission. This independent commission was established by the Minister of Education, Culture and Science, who is also responsible for gender equality.
61. In 2014 women held 9.6% of seats on management boards and 11.2% of seats on supervisory boards at the 5,000 companies that fall within the scope of the WBT. At the 200 largest companies women hold 7.4% of seats on management boards and 19.3% of supervisory board seats.
62. An improvement was observed in 2015: the percentage of women on management boards increased to 9.6% and on supervisory boards to 12.5% for the 5,000 large companies, and to 9.1% and 19.3% respectively for the 200 largest companies.
63. By mid-2016, 18 months after the scheme was launched, the figures for the top 5,000 large companies had risen to 10.2% for management boards and 13.1% for supervisory boards. The increase among the largest 200 companies was greater: 10.5% of management board members and 21.5% of supervisory board members were women.

64. In the 18 months leading up to mid-2016 the number of women on the management and supervisory boards of the largest 200 companies increased by 2.1 and 3.2 percentage points respectively. For the group of 5,000 large companies the increase was 0.6 of a percentage point on management boards and 1.9 points on supervisory boards.
65. In light of these figures the Government decided in 2016 to continue its approach, as long as the number of women in board positions keeps growing. The Monitoring Commission has proposed that the statutory target of 30% be replaced by a quota of 30% in 2020 if by the end of 2019 the number of women on the management and supervisory boards of the organisations that fall within the scope of the WBT has not reached at least 20%. If a quota is introduced, sanctions can be imposed if it is not met ([www.rijksoverheid.nl/documenten/kamerstukken/2016/12/15/kamerbrief-over-vrouwen-naar-de-top.pdf](http://www.rijksoverheid.nl/documenten/kamerstukken/2016/12/15/kamerbrief-over-vrouwen-naar-de-top.pdf)).<sup>1</sup>
66. In 2019 the Government will take stock of the progress that has been made, as recommended by the Monitoring Commission.

#### *Policy*

67. In addition to the statutory framework, the Government employs an activation policy using various policy instruments. Since 2015, the Government and the Confederation of Netherlands Industry and Employers (VNO-NCW) have been collaborating in the 'Women at the Top' programme, which focuses on the 200 largest companies in the Netherlands and relevant stakeholders including auditors, works councils, shareholders and recruitment and selection agencies.
68. The programme comprises various measures aimed at drawing attention to the statutory target and ensuring that businesses undertake efforts to achieve it. Examples of measures are a database of board-ready women, a dedicated website ([www.nagiverennaardetop.nl](http://www.nagiverennaardetop.nl)), a research-based brochure on the pitfalls in the recruitment and selection procedure, and the launch of the Executive Search Code. These measures are discussed in greater detail below.

##### *a. Database*

69. In 2015 all supervisory board members of the largest 200 businesses received a letter asking them to identify 'board-ready women' in their network and, if the the women in question agree to it, nominate them for the database that the Government and the president of VNO-NCW launched in the same year. The database now contains the names of over 1,200 women.

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<sup>1</sup> that on 31 December 2019 20% of management and supervisory board members must be women. If this percentage is not achieved, the commission proposes that the target of 30% be replaced in 2020 by a quota of 30%, so that sanctions can be imposed if the target is not met. If the target of 20% is achieved, the new target will be 30% by 31 December 2023.



70. The database is managed by the Top Women Foundation (*Stichting Topvrouwen*). The foundation also ensures that businesses keep the issue on the agenda by deploying two 'trailblazers', sharing best practices and organising events. In this way businesses are encouraged and supported in their efforts to achieve the statutory target of 30%.

*b. Recruitment and selection*

71. As part of its activation policy, the Government focuses on recruitment and selection and on increasing the transparency of appointments to company boards. Also, the publication of all vacancies on management and supervisory boards should stimulate recruitment and selection of women.

72. In 2016 the Government also commissioned a study into the pitfalls in the recruitment and selection process that limit women's chances of being appointed. Earlier this year the findings of this study and the experiences of businesses and recruitment and selection agencies were incorporated into a guide published by the Top Women Foundation (<https://www.topvrouwen.nl/nieuws/samen-streven-naar-een-diverse-en-evenwichtige-bestuurskamer>). This guide makes information and expertise on avoiding pitfalls in the recruitment and selection process available to the 5,000 companies to which the statutory target applies.

73. To boost transparency the Government has launched a website ([www.navigerennaardetop.nl](http://www.navigerennaardetop.nl)) which publishes vacancies on management and supervisory boards of the 200 largest companies in the Netherlands.

74. In 2016, to underline the importance of proportional representation of women on management and supervisory boards, the Government – together with VNO-NCW – organised a conference for companies with all-male boards. This meeting gave the Minister of Education, Culture and Science, who is also responsible for gender equality, an opportunity to personally engage in conversation with these companies and has since resulted in the appointment of several women.

75. This policy activates not only board-ready women and sitting executive and supervisory directors, but also other stakeholders, including accountants and auditors, shareholders and works councils. In May 2015 the Talent to the Top Foundation (now D&I Company), which at that time was receiving a government grant, introduced the Executive Search Code. Recruitment and selection agencies that sign up to the Code commit themselves to including more women on their longlists for board positions. The Code sets out nine principles, such as ensuring that at least 30% of the candidates on longlists are women, advising companies on how to draft recruitment profiles that are aimed at increasing diversity and providing effective guidance for

women candidates throughout the selection process (<http://di-company.nl/tools/code-executive-search>).

76. The Government actively encouraged the commission responsible for evaluating and updating the Corporate Governance Code for all Dutch listed companies (<http://www.mccg.nl/?page=3763>) to devote more attention to the subject of diversity. As a result, the 2016 version of the Code focuses more strongly on diversity than the previous version. Its scope has been widened to include management boards and executive committees, as well as supervisory boards (see point 2.1.5. and 2.2 of the code). The 2016 code also includes a separate provision regarding accountability for diversity policy (in 2.1.6 of the code).

*c. Research*

77. The Dutch Government commissioned a study into women's advancement to jobs just below executive level because it appeared the proportion of women on management boards is increasing more slowly than on supervisory boards, which are usually made up of people from outside the company.

78. The Government also commissioned the Atria institute on gender equality and women's history to carry out a study into gender diversity policy in seven countries (Denmark, Finland, France, Germany, Latvia, Sweden and the United Kingdom) to draw lessons and use the outcomes as input for Dutch policy. These countries all do well in terms gender diversity while the measures in place range from no policy to statutory quotas or other legislative measures.

*d. Evaluation*

79. A full evaluation of the WBT is currently being conducted. In the context of the evaluation of the impact of the Act, a study of the effectiveness of the statutory target is looking at examples from abroad and the quantifiable results. The findings will be used to analyse how the target could be achieved more effectively, taking into account the type of organisation to which it would apply and their organisational structure and governance model. A qualitative evaluation of the impact of the statutory target is also being conducted; this entails surveying stakeholders' views on the target and analysing their experiences of the Act's effects. The evaluation of the Act is expected to be completed this autumn.

80. Every four to seven years a policy review is conducted to assess the efficiency and effectiveness of equal opportunities policy. The 2018 policy review will include the Women at the Top programme.

*Specific issues in UWE's complaint*

81. In paragraph 4.5 of its complaint UWE summarises Dutch policy aimed at increasing the number of women on company boards. This summary includes a number of inaccurate assumptions and misunderstandings. In order to ensure an accurate and complete picture of the Dutch Government's 'Women at the Top' policy, the Government wishes to make some observations:

- Although it is correct that the WBT does not contain sanctions, it does in fact operate on the 'Comply or Explain' principle. Companies that do not meet the statutory target are required to be transparent about their efforts to achieve a more equal gender balance.
- The complaint states (in first part of paragraph 4.5) that the WBT was due to lapse on 1 January 2016. The statutory target provision of the WBT has been extended and will remain in force until at least 2020.
- The number of companies that must meet the statutory target is not 100, as stated in the first paragraph of section 4.5, but approximately 5,000.
- In the second part of section 4.5 the 'Talent to the Top' charter is mentioned. This Dutch charter was introduced in 2008, not 2015. In 2016 the number of signatories was 261. The charter was initiated by the Talent to the Top Foundation (now D&I Company).
- Although the Government acknowledges that there are only a few good examples, UWE's statement that no management boards are chaired by women is inaccurate (third paragraph of section 4.5). The management boards of PostNL (Herna Verhagen) and Shell (Marjan van Loon) are both chaired by women.
- UWE believes that because the Dutch Government has not opted for quotas and sanctions, the obligations arising from the Charter are not being fulfilled effectively. The Government notes that the Charter does not require the introduction of quotas and sanctions.

*Conclusion with regard to women in senior positions*

82. The Government concludes that Dutch law, policy and practice, as described above, ensure a practical and effective approach to the representation of women in decision-making positions in companies. Consequently, Dutch law, policy and practice comply fully with the Charter.

### Claim for just satisfaction or costs incurred

83. In Chapter V of the complaint UWE claims compensation in the amount of €10,000. In the title of this chapter, this claim is referred to as 'just satisfaction', but it emerges from the description in the text that the amount is meant for costs incurred.
84. The Government is of the opinion that this claim should be denied.
85. First, there is no legal basis in the Charter itself nor in the Collective Complaints procedure set out in the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints adopted in 1995.
86. Second, the Committee of Ministers of the Council of Europe, to whom the European Committee of Social Rights reports, has to date never seen cause to grant claims for just satisfaction or costs incurred. The Government would refer to the resolution regarding complaint no. 16/2003 against France and a recent complaint against Ireland no. 100/2013. Justifiably, the Committee of Ministers appears to have considered that for collective complaints just satisfaction is not appropriate, since it is generally intended to compensate personal injury or suffering.

### Conclusion

87. The Government is of the opinion that it uses every possible means at its disposal to achieve equal treatment of men and women. Extensive legislation is in place aimed at realizing equal treatment on the labour market and prohibiting gender discrimination, as well as an effective enforcement system, although it may not be structured in the way UWE seems to envision. In addition, many efforts are made to stimulate necessary changes in society.
88. The desired goal of equal treatment of men and women cannot be achieved through (enforcement of) legislation alone. Differences in pay or equal opportunities on the labour market also result from differences in job grade, work experience, education, full-time and part-time work, irregular hours and labour market segregation between male and female professions and specialisms. These relate to existing views of society. Raising awareness of the effects these can have on equal treatment of men and women and promoting changes is at least as important.
89. Therefore, the Government has chosen an integrated approach, which means combating unequal treatment falls to society as a whole. When it comes to equal pay social partners, individual employers, human resources officers, collective agreement negotiators, people responsible for job evaluation systems and works councils play an important role, but a contribution may also be expected from individual employees. With respect to women in senior

positions in the private sector, there is also an important role for employers' organisations, individual employers and works councils, as well as recruitment and selection agencies, accountants and auditors and shareholders.

90. In view of the above, the Government concludes that Dutch law, policy and practice, as described above, comply with the obligations of the Charter and that no violation can be identified. The Government therefore asks the Committee to dismiss UWE's complaint as unfounded.

The Hague, 3 November 2017



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