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From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY
OF THE EVALUATION of the relevant provisions in the Directive
2006/54/EC implementing the Treaty principle on 'equal pay for equal work
or work of equal value'

Delegations will find attached document SWD(2020) 51 final.

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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE EVALUATION

**of the relevant provisions in the Directive 2006/54/EC implementing the Treaty principle
on ‘equal pay for equal work or work of equal value’**

{SWD(2020) 50 final}

EXECUTIVE SUMMARY

This document evaluates the EU legal framework for equal pay between women and men for equal work or work of equal value.

This equal pay principle is enshrined in the European Treaties since 1957 (today Article 157 TFEU) and covered by EU law. In 2006, a number of existing directives on gender equality in matters of employment and occupation were ‘recast’ and consolidated into a single Directive 2006/54/EC (the Recast Directive) that also incorporated relevant case-law of the Court of Justice of the European Union. In 2014, the Directive was complemented by Commission Recommendation 2014/124/EU on pay transparency.

Despite the legislation, there is still a significant gap between men’s and women’s gross hourly earnings (known as the ‘gender pay gap’) of around 16% on average, ranging from 4% in Romania to 26% in Estonia¹. The indicator measures the difference between average gross hourly earnings of male paid employees and of female paid employees as a percentage of average gross hourly earnings of male paid employees. It combines possible differences in pay between men and women for ‘equal work or work of equal value’, with the impact of differences in the average characteristics of men and women in the labour market. It therefore gives an overall picture of gender inequalities in terms of pay and measures a concept broader than the concept of equal pay for equal work.

Although the gender pay gap can only be partially, and unquantifiably, attributed to direct and indirect pay discrimination, the persistence of the gap at relatively high levels suggests that discrimination might not be a negligible factor. Qualitative findings, such as legal cases brought to courts and public surveys, support this hypothesis. The Commission has therefore evaluated the existing EU legal framework according to the regulatory fitness criteria.

The evaluation finds that the Recast Directive and the Pay Transparency Recommendation are important in that they implement the legal principle that women and men are entitled to equal pay for equal work or work of equal value, and provide measures to ensure the effective application of that principle.

There are still some problems, however, with the effective implementation of equal pay in practice. The following findings emerged from the evaluation.

- **Definitions:** Existing legal concepts such as ‘pay’ and ‘work of equal value’ are not defined uniformly across national legislation, and require the assessment of factors that can be complex. It is not always easy to determine what counts as equal work, or work of equal value. This deters victims of pay discrimination from bringing claims, and makes claims more complex for litigants and courts to manage. Greater clarity on how to apply existing concepts could be helpful.
- **Pay transparency:** Lack of transparency about pay within organisations means that pay discrimination goes undetected or, where suspected, is difficult to prove. Binding measures could improve pay transparency, encouraging organisations to review their pay structures to provide for equal pay for women and men for the same work and work of equal value, and enabling victims of discrimination to bring claims. Equality bodies, labour inspectorates and trade unions can play an important role in this context.

¹ Figures are based on 28 Member States, see Eurostat (2019), Gender pay gap statistics, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics

- **Burden of proof:** Although it is necessary only to establish a presumption of discrimination before the burden of proof shifts to the employer, it is not always easy for victims and courts to know how to establish this. The evaluation suggests that pay transparency measures have the potential to support the use of the reverse of the burden of proof, by helping workers determine the average pay for women and men performing the same work or work of equal value. Enabling workers to provide evidence which allows discrimination to be presumed would swiftly trigger the reverse burden of proof for the employer.
- **Victim support:** Building an equal pay case is a complex and therefore costly task. For many victims, it is too difficult to bring a claim without legal representation or support. They may also fear further victimisation (even though the Recast Directive prohibits it). The fact that victims are unlikely to bring claims reduces the deterrent effect of the legislation. Equality bodies could be better equipped to assist victims of discrimination, either by bringing claims on their behalf or by being empowered to investigate cases and take decisions. Better legal aid could also be made available to victims.
- **Compensation and other sanctions:** Compensation awards are not high enough to have a deterrent effect on employers. Sanctions could be improved to increase their deterrent effect.
- **Gender-neutral job evaluation and classification systems:** Such systems help detecting indirect pay discrimination related to the undervaluation of jobs by measuring and comparing jobs whose content is different but of equal value. In this way, they support a transparent pay system and enhance clarity on what is considered work of equal value, thus contributing to reducing the gender pay gap. Nevertheless, the use of gender-neutral job evaluations and classifications as part of wage determination is generally limited in the private sector.
- **Awareness raising:** Lack of awareness about equal pay rights, and the right not to be victimised for bringing a claim, means that injustices are more likely to continue. More needs to be done to raise awareness of these rights.