

## EU Commission Pay Transparency proposal: Good objective, wrong tool

### *An ECEG & Ceemet joint position paper*

**Employers of the chemical and metal, engineering and technology-based (MET) industry sectors support the overall Commission’s objectives to promote gender equality and implement the principle of equal pay between men and women at European level. However, they consider that the proposal for a Directive on pay transparency is not the right way forward.**

**Brussels, 30 June 2021** – ECEG (European Chemical Employers Group) and Ceemet – European Tech & Industry Employers agree with the Commission’s aim to promote gender equality, reduce the gender pay gap and fight pay discrimination at the European level. Gender equality is a fundamental value of the European Union and pay discrimination is simply inadmissible. Both sectors are highly committed in the promotion of equal opportunities and equal remuneration between men and women, with gender neutral and activity-based collective agreements in their respective sectors.

However, both organisations disagree with the Commission’s assumption that the introduction of pay transparency measures at European level would tackle the problem of gender pay gap and address the issue of pay discrimination. On the contrary, the root causes of the problems will not be addressed by the proposed Directive, while creating a number of difficulties for social partners, businesses and Member States.

### COMMISSION’S PROPOSAL: 3 MAJOR RISKS FOR EMPLOYERS

#### **1. IT WILL UNDERMINE SOCIAL PARTNERS' AUTONOMY AND THEIR FREEDOM TO NEGOTIATE**

Art. 4 makes Member States responsible for ensuring that pay structures are based on the “equal pay for equal work” principle and it identifies criteria to assess whether workers are in a comparable situation. The article therefore gives Member States the power to determine the content of pay structures without explicitly respecting gender neutral collective agreements and it empowers the European Court of Justice to issue court rulings on national collective agreements and wage setting.

Ceemet and ECEG consider that these provisions seriously interfere with collective bargaining negotiations and undermine social partners' autonomy, especially in those countries where the social partners are solely or mainly responsible for wage setting. Moreover, this interference will threaten the flexible and free labour markets of the EU Member States.

The autonomy of social partners must be respected, as well as their responsibility in identifying criteria for wage-setting systems.

## **2. IT WILL IMPOSE HEAVY ADMINISTRATIVE BURDENS ON EMPLOYERS AND COMPANIES**

The Commission underestimates the administrative costs for companies deriving from the implementation of the Directive. The prescriptive text includes very detailed measures and different levels of requirements, which will imply high administrative costs and impose a disproportionate and unjustified heavy burden on companies. Moreover, the very detailed provisions of the proposed Directive are sometimes hardly compatible with already existing national systems and this failure to take into account national legislations on the topic will add another layer of complexity.

In this context, Art. 7 to 9 represent the most problematic provisions. The obligation to provide information to workers regarding the pay level of "categories of workers doing work of equal value to theirs" (Art.7), implies that HR personnel should define the categories of workers doing the same work or work of equal value to the person requesting this information. Considerable efforts would be needed from the employers, both in terms of budget, timing and human resources availability in order to comply with these requirements. This will be even more problematic if we consider that the obligation applies to all types of companies, including SMEs. These often lack necessary HR functions and would therefore need to hire external consultants and/or experts to comply with the above-mentioned requirements. Similarly, Art. 8 (reporting on pay gap) and 9 (joint pay assessment) will impose heavy burden on companies, hardly having a positive effect on reducing pay differences in the labour market, as highlighted by evidence provided by Member States where such measures are already in place<sup>1</sup>.

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<sup>1</sup> The report of the National Swedish Audit Office (NAO) "The Discrimination Act's equal pay survey requirement" (2019) highlights that the obligation for employers to produce a documented pay survey and analysis on an annual basis imposes a heavy administrative burden on employers. The work behind equal pay surveys is quite demanding and creates a lot of problems both for SMEs and bigger enterprises. The report also expresses some reservations on the effectiveness of the implemented measures and it shows that, while the obligations from the Swish legislation are burdensome to conduct, they have rarely led to the discovery of unfair pay differences between men and women.

Additionally, Art. 9 imposes the obligation on companies to prove that any difference in remuneration between men and women is justified by objective criteria and not due to discrimination. Discrimination is thus the starting point and presumed to have taken place.

### 3. IT WILL PROMOTE LITIGATION AND POTENTIALLY INCREASE COURT CASES

ECEG and Ceemet agree that victims of discrimination must be supported and receive appropriate tools to enforce their rights. However, the Commission goes far beyond its competences in Art. 14 to 20 as it regulates matters regarding compensation (Art. 14), legal proceedings (Art. 15), legal and judicial costs (Art. 19) and penalties (Art. 20) in an extremely prescriptive manner. It should be left to the Member States to be regulated as this is a national prerogative. The associations are concerned that these provisions will promote litigation at company level, increase court cases and tensions in the working environment, damaging the relationship between employers and workers. The obligation for employers to prove that no discrimination has taken place in case obligations in Art. 5 to 9 have not been correctly implemented (Art. 16) will put them implicitly at fault, leading to needless litigation, without addressing the core problem of discrimination.

## CONCLUSION: 4 POINTS TO CONSIDER

Ceemet and ECEG urge the EU Institutions to reconsider their approach by:

- ensuring that the **autonomy of the social partners** is fully respected;
- considering **alternative policy measures** focused on combatting gender segregation and stereotypes;
- increasing **women's participation** in the labour market and
- promoting the improvement of the **quality and availability of (child)care facilities** on a national level.

Both organisations express their willingness to constructively cooperate and exchange with the EU institutions in order to reach a balanced approach of the proposal, which fully respects the autonomy of social partners and safeguards the competitiveness of European companies.

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## ABOUT

### [Ceemet](#)

The **Council of European Employers of the Metal, Engineering and Technology-based industries** is the European employers' organisation representing the interests of the metal, engineering and technology-based industries. Through its national member organisations it represents 200 000 companies across Europe. The vast majority of them are SMEs, providing over 35 million jobs of direct and indirect employment.



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### [ECEG](#)

The **European Chemical Employers Group**, ECEG, founded in 2002, is a recognised European Sectoral Social Partner, representing the chemicals, pharmaceuticals, rubber and plastics industries in Europe. Our sector provides approximately 3.3 million direct jobs in more than 94.000 enterprises.



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