



**Hotrec**  
Hospitality Europe

APRIL 2021

# HOTREC Position paper on 'Pay Transparency Directive'

## GENERAL REMARKS

HOTREC takes note of the Commission proposal for a Directive on “*Strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms*” – ([2021/0050 \(COD\)](#)).

HOTREC fully supports the right to equal pay between women and men for equal work or work of equal value, as stated in the Treaties, EU legislation and different measures at national level.

Nevertheless, HOTREC considers that **binding legislation will not address the root causes of the gender pay gap** as explained extensively in the different consultations sent to the European Commission, as well as on different hearings.

## EXECUTIVE SUMMARY

- HOTREC fully supports the principle of equal pay – that is men and women are not paid differently only based on their gender
- **Binding legislation** will not address the root causes of the gender pay gap
- The Directive might jeopardize existing legislation at national level or collective agreements where social partners are competent for wage setting, as it gives the power to the legislator to shape pay systems
- Performance and competences need to be part of the objective criteria to analyse the principle of equal pay for equal work and work of equal value. Nevertheless, the latter is extremely difficult to be handled by companies
- We welcome that **micro-enterprises and SME's are excluded** from the obligation of reporting and developing joint pay assessments
- Nevertheless, micro-enterprises still need to comply with rules such as the **right to information**. This means more bureaucracy and costs for small companies
- The proportionality principle does not seem to apply, especially to companies with more than 250 employees (the level of detail aimed at by the proposal is too high for human resources)

- Experience from different Member States shows that pay reporting obligations were not the solution to decrease the gender pay gap
- **Remedies and enforcement** are very heavy (including the shift of the burden of proof on employers). Social dialogue should be encouraged
- Gender pay gap can be tackled if **gender stereotypes & labor market segregation** are addressed and if provisions for **childcare & the elderly** are developed and made affordable
- A balanced solution would be for the Commission to continue putting forward **country-specific recommendations that address the causes of the gender pay gap** during the annual European Semester exercise.

## ECONOMIC CONTEXT

According to the European Commission's Communication Europe's moment: Repair and Prepare for the Next Generation<sup>1</sup>, **travel and tourism is one of the most affected ecosystems by the COVID-19 and requires €161 billion<sup>2</sup> worth of investment** to bounce back to pre-crisis levels.

COVID-19 crisis is putting the **survival of companies** in our sector at risk and **millions of jobs are at stake**.

Before COVID-19, the hospitality sector, the voice of hotels, restaurants, and cafés, provided 12 million jobs, represented 2 million companies (90% of them are micro-enterprises) and contributed with 5% of the GDP to the EU economy.

Nevertheless, and for one year now, most hotels, bars, restaurants, cafés were closed either due to lockdown measures or due to the lack of customers (no consumer trust and travel restrictions). During Q2 2020, the sector's turnover in the EU dropped by 63.25% compared to Q2 2019<sup>3</sup>. Bankruptcies are expected to hit thousands of establishments. During Q4 2020, the sector's turnover dropped by more than 50% compared to Q4 2019<sup>4</sup>.

Overall, and in employment terms, the European Commission foresees a decrease of 6 million jobs for the tourism sector in the months ahead<sup>5</sup>. Comparing Q2 2020 to the same period in 2019, there was a 19% drop of employment in accommodation, food service and beverage, resulting in the loss of 1.84 million jobs. Q3 2020 vs Q3 2019: there was a 10% drop and 1.58 million fewer jobs<sup>6</sup>.

Now it is not the right time to put forward a Directive that will add more financial and administrative burdens to companies in the hospitality sector.

## SECTOR SPECIFICITIES

It is also to take into account that 90% of the 2 million companies represented by the sector are micro-enterprises (while 9.8% are SME's). Out of the 12,5 million people employed in the sector, 54% are women. The sector is very fragmented and has very low profit margins.

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<sup>1</sup> [COM\(2020\)456](#) final

<sup>2</sup> [SWD\(2020\)98](#) final

<sup>3</sup> Eurostat [source](#)

<sup>4</sup> Eurostat [source](#)

<sup>5</sup> [COM \(2020\)550](#) final

<sup>6</sup> Eurostat [source](#)

## ANALYSIS OF MOST RELEVANT ARTICLES

### Article 1 – Subject matter

The Commission's report on Directive 2006/54/EC recognises that most Member States' legislation explicitly prohibits pay discrimination. Other Member States have a general prohibition on sex discrimination<sup>7</sup>. Therefore, there is already legislation in place to prevent and combat pay discrimination.

The Commission's 2020 evaluation of the legal framework on the equal pay framework mentions that the effectiveness of the legal framework is hampered by the lack of clarity and awareness of the concept of equal pay for equal work and work of equal value<sup>8</sup>. HOTREC thinks that the problem might rely on the fact that **“equal pay for equal work and work of equal value” is in itself a concept difficult to implement and evaluate.**

A helpful solution could pass by **guidance from the European Commission on the application of the concept of equal pay.**

Overall, HOTREC considers that binding legislation will not address the root causes of the gender pay gap.

### Article 4 – Same work and work of equal value

HOTREC fully supports the right to equal pay between women and men for equal work or work of equal value, as stated in the Treaties, EU legislation and different measures at national level.

Nevertheless, we consider that the article might **contradict well-established collective bargaining agreements**, as it mandates Member States to take measures that oblige employers to have pay structures in accordance with the principle of “equal pay for equal work”. This also means that the **European Court of Justice (ECJ) might start issuing court rulings** on a matter that is usually dealt by social partners when setting wages.

We also think that to base the Directive on the principle of “same work or work of equal value” **does not bring legal certainty** to the proposal.

In fact, we consider positive that wage setting systems are based on a **gender-neutral job evaluation** and classification systems, as this brings motivation to employees and incentives to companies, looking for the right skills.

We also consider positive that methodologies to evaluate pay levels are based on objective criteria, such as **educational, professional and training requirements, skills, effort and responsibility, work undertaken and the nature of the tasks involved**. This means that salary differences are justified, even if workers are performing the same tasks.

Nevertheless, we consider that **“productivity”, “competences”** and “length of service” would also need to be part of the criteria. This is essential to motivate workers. And this is where the challenge to reach legal certainty relies, as it is very difficult to measure the value of work and identify whether it is equal or not.

For instance, in Finland, the Supreme Court gave a precedent decision on 15 January 2020, by stating that: *“(…) when making the evaluation whether jobs are comparable, all aspects relevant regarding pay including content tasks, their quality and nature, and working conditions are to be taken into account. If distinct differences can be distinguished in one or several of these aspect, the jobs in question are generally not comparable and thus cannot be deemed as same or of equal value”<sup>9</sup>.*

The development of tools and **methodologies** to compare work of equal value can be helpful. . But collective-bargaining agreements need to be taken into account to avoid that companies and employers' organisations would need to check every collective bargaining agreement and potentially readjust the content.

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<sup>7</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2013:0861:FIN>

<sup>8</sup> [https://ec.europa.eu/info/sites/info/files/swd-2020-50\\_en.pdf](https://ec.europa.eu/info/sites/info/files/swd-2020-50_en.pdf) – page 64

<sup>9</sup> Case no ECLI:FI:KKO:2020:4, para.14



## Article 5 – Pay transparency prior to employment

HOTREC does not agree that applicants for employment shall have information about the initial pay level or its range before the interview. Depending on information that the employer might receive during the interview (e.g. skills, education, competences, experience) the salary may need to be adapted.

Moreover, this provision simply undermines the negotiating capacity of the employer. **Employers should keep their negotiating power on salaries.** This is particular relevant for senior positions.

We understand the intention of the Commission in willing to level payment between men and women from the start of the contract. But we consider that the provisions against pay discrimination already laid out in law are sufficient in this regard.

## Article 7 – Right of information

HOTREC takes note that companies should only **provide information** on their individual pay level and the average pay level, broken down by sex, for categories of workers doing the same work or work of equal value, **if required to do so by the employees.**

Nevertheless, HOTREC alerts to the fact that this will bring an **added administrative and financial burden to micro-enterprises** (90% of the hospitality sector) and SME's. In fact, a person (e.g. human resources) would need to work on the definition of equal work and work of equal value. At a time when the sector is striving to survive, more burdensome rules should be avoided.

We also consider that the information that is requested to be provided, does not take into account that salaries are based on **performance /competence / qualifications / previous experience, length of service.** Therefore, the results received would not be based on realistic data.

In addition, we would like to point out that this system might lead to a **lack of data privacy and confidentiality for the workers**, in case comparisons between salaries can be established. In small companies, and particularly micro-enterprises, where employees performing similar jobs could be down to a minimum of 2 people, any information could expose individual private information, even if presented in an aggregate way. This goes against the GDPR Regulation.

Therefore, **when there is no minimum number of comparators available, the principle of same work and work of equal value should not be applied on a mandatory basis.** The minimum should be set up at national level.

To provide information externally on wage settings and on pay might go against established collective bargaining practices. Employees should be allowed to request information on pay levels via the **rules of disclosure of collective bargaining agreements.**

## Article 8 – Reporting on pay gap between female and male workers

HOTREC welcomes the fact that companies with less than 250 workers are exempted from the obligation of reporting.

But we regret the **high level of administrative and financial burden** that the remaining companies will need to go through (e.g. overall pay gap; median pay gap; quartile pay band). This prescription **does not respect national systems or companies.**

To create more certainty we suggest applying this provision for companies that employ more than 250 employees consistently for a period of at least 2 years. This would avoid the uncertainty on whether Art 8 applies to companies or otherwise if their employee count only exceeds 250 temporarily or for short periods.

It is to note that for instance in Sweden, according to the **Swedish Discrimination Act**, employers need to conduct yearly surveys on equal pay due to gender, which include, amongst others: survey and analysis of regulations that employer applies to gender; survey and analysis of the differences between women and men with equal work; survey and analysis on the differences between groups of employees who perform work that is or is regarded as women dominated. These represent a **voluminous administrative work** for employers to handle every year and **the outcome is insignificant** (compared to the administrative costs for the company). According to the Swedish National Audit Office (SNAO), **it is most uncertain if the regulation on equal pay services has contributed to the reduction of pay inequality between women and men** ([link](#)). SNAO also concluded that the demand on documentation did not affect gender inequality; overall, the employers have difficulties on how to implement the regulation. While being very time consuming, the effect on decreasing the pay gap is marginal.

Such examples should have been taken into account by the legislator.

HOTREC cannot agree with the provision of art.8/3, which aims at making information on pay gap between female and male employees by categories of workers doing the same work or work of equal value **public**. Public information could serve as a tool for third parties to demolish the reputation of companies, particularly if data is misinterpreted, consciously or otherwise. Together with the power of social media, which can easily be manipulated with misinformation, companies could face serious consequences.

Our suggestion is that the rule expressed in Art 8/5 becomes the **mandatory rule– it should be up to Member States to compile the information expressed in arts 1/a to 1/g**.

Art. 8/4 should be revised according to the above. ([link](#)).

### **Article 9 – Joint Pay Assessment**

HOTREC welcomes the fact that SME's are exempted from this requirement.

We also welcome that the legislator recognises that pay differences might be due to objective and gender-neutral factors.

Nevertheless, we regret that it is up to the employer to prove that the difference in payment is a result of objective reasons. The level of administrative procedures is simply too high and usually there is an objective ground for the difference in pay.

We also disagree that pay reporting should be done based on categories of workers. The burden of establishing such a criteria is enormous. Therefore, the principle of equal work or work of equal value should only apply for employees doing the same work and tasks.

### **Article 10 – Data protection**

We agree that only aggregated data can be collected in line with the GDPR.

HOTREC does not agree that worker's representatives can be provided with information on disclosure of the pay of an identifiable person as it might jeopardize individual's rights.

## REMEDIES AND ENFORCEMENT

Victims of discrimination should have the right to compensation and other remedies. But these mechanisms should be settled at national level.

We believe that the description of the mechanisms is very detailed and does not respect the diversity of the national judicial systems.

Moreover, solutions should try to be found via the social dialogue (and not directly via legal remedies).

### Solutions and way forward

Overall, HOTREC considers that **binding legislation will not address the root causes of the gender pay gap**.

Average income of men and women should be differentiated from the principle of “equal pay for equal work”.

The root causes of the gender pay gap rely on the **segregation of work between male and female dominated industries**, explained by the concentration of one sex in certain occupations that might be lower paid than others. It might also happen due to societal or cultural pressures on women, that they carry other life goals and opt for career breaks, early retirement, or part-time work to care for the family instead of pursuing full time work and professional development.

HOTREC proposes the following solutions:

- EU funding, national funding and coordinated national policies to build up the necessary **childcare infrastructures, after school hour programmes for children as well as facilities for the elderly, affordable to all users, and with flexible opening schedules** (that would encourage working citizens to combine work-life balance and career progression).
- Education programmes at early age (to help change culture and mentalities);
- Coaching on career paths to show how salaries can improve even in traditionally low paying sectors as responsibilities increase, through the years of experience and promotion within organisations;
- Best practices sharing;
- Interpretative guidance on EU Court of Justice’s case law;
- Targeted awareness-raising campaigns on equal rights and opportunities between men and women;
- Deployment of trainings (so that the skills for the right positions can be acquired both by men and women);
- Voluntary actions, deployed by companies, to recognise the talents and competences of their employees (both men and women)
- European Commission to continue putting forward **country-specific recommendations that address the causes of the gender pay gap** during the annual European Semester exercise.

HOTREC will, in any case, be willing to discuss the proposal with the Council of the EU and the European Parliament to reach the best possible outcome for the hospitality sector.

