

NATIONAL COMMISSION FOR THE PROMOTION OF EQUALITY

# Equal Pay for Work of Equal Value

between  
Women and Men in Collective Bargaining

## RESEARCH REPORT



PREPARE THE GROUND FOR  
**ECONOMIC INDEPENDENCE**



Rights, Equality and Citizenship Programme 2014-2020  
Project part-financed by the European Union  
Co-financing rate: 80% EU funds; 20% National Funds



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Published in 2020 by the National Commission for the Promotion of Equality  
Production: Outlook Coop

This project is co-financed by the European Union  
and the Government of Malta, in accordance with  
the rules of the Rights, Equality and  
Citizenship programme 2014-2020.

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FOREWORD BY THE

# Commissioner for the Promotion of Equality

**The Prepare the Ground for Economic Independence (PGEI)** Project, co-financed by the Rights, Equality and Citizenship Programme 2014-2020, is another link in the chain of projects undertaken by the NCPE over the years to strengthen its work on highlighting the importance of women's economic empowerment. The PGEI project focused on addressing the gender gaps over the lifecycle. Besides the public at large, the project had three main target groups; students, working age adults and organisations.

In order to concretise this work, one of the objectives of the project was to empower union representatives with multi-faceted knowledge on equal pay for women and men.

NCPE has always acknowledged the important role of trade union representatives when negotiating collective agreements. It is for this reason that the following research study has been carried out in order to find out, through a qualitative study, how trade union representatives in Europe deal with the concept of equal pay during collective agreements negotiations.

An innovative development for this study has included the identification of Equal Pay Tools developed by European countries, which served as a basis for the development of a similar Tool by NCPE. It is envisaged that this Tool will check an organisation/company's equal pay for work of equal value between women and men during NCPE Equality Mark audits.

A special thanks goes to Ms. Marika Fsadni and Ms. Loredana Falzon- the researchers involved in this research, as well as the NCPE staff who worked on this project.

**Renee Laiviera**

Acting Executive Director, NCPE

August 2020

# Research Consultants' Acknowledgements

This report was designed, researched and written by Ms Marika Fsadni and Ms Loredana Falzon of M.FSADNI & Associates. The Research Consultants were responsible for the design, co-ordination and execution of the research field operations and also for the reporting of the findings of the research project.

The Research Consultants are very grateful to NCPE for entrusting them with this interesting and very challenging research project. Sincere thanks go to NCPE's Commissioner and Acting Executive Director, Ms Renee Laiviera, and also to Ms Annalise Frantz and Ms Joana Micallef for their significant contribution during the whole course of this research project.

M.FSADNI & Associates would also like to sincerely thank the European Trade Union Representatives, namely, Ms Vroni Lemeire, Policy Officer at The General Labour Federation of Belgium, Ms Synnøve Konglevoll, Special Advisor at The Norwegian Confederation of Trade Unions, and Mr Bjørn Fornes, Head of Negotiations Department at The Electricity and IT Association, Norway, for their vital input in this study.

The Study's salient research findings, conclusions and proposed recommendations were presented by Ms Fsadni at a national conference webinar, organised by NCPE on 26<sup>th</sup> August 2020. Indeed, this is the first ever study on exploring this research area in Malta and will serve as an initial platform to encourage other similar studies to be conducted in the near future.

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# 1. Introduction

This research study explores the concepts of ‘equal pay for same work’ and ‘equal pay for work of equal value’ between women and men. This study highlights the main causes of unequal pay, namely the lack of transparency and lower grading given to female-dominated jobs during job evaluations, while it also delves into the measures and recommendations that have been put forward to address the issue of equal pay between women and men.

Moreover, the study focuses on the challenges that are faced by European trade unions when bargaining for equal pay and explores the role of trade unions in achieving equal pay through collective bargaining. To this end, this study identifies various tools and measures that are used by European trade unions when negotiating for equal pay, for women and men, during collective agreement negotiations.



## 2. Executive Summary: Salient Findings, Conclusions & Recommendations

This section presents details on the project's research objectives and the research methodology adopted. It also presents an overview of the salient findings and conclusions emanating from this qualitative research study and presents recommendations on how the issue of equal pay in Malta may be better addressed, in particular by trade union representatives during collective agreement negotiations

### 2.1 Specific Research Objectives

- to research how trade union representatives in Europe deal with the concept of equal pay between women and men during collective agreement negotiations
- to identify tools that are used by trade union representatives when negotiating for equal pay during collective bargaining
- to develop training content for a training session to empower local trade union representatives with knowledge on equal pay
- to develop the content of an information booklet on equal pay to be presented to trade union representatives.

### 2.2 Research Methodology

- **Secondary Research:** A thorough literature review was conducted. Various international and local sources were consulted for the purpose of this research.
- **Primary Research:** One-to-one interviews were carried out with leading European Trade Unions and Trade Union Confederations.

### 2.3 Salient Research Findings

*The principle of equal remuneration for women and men for work of equal value is widely referred to as 'equal pay' (ILO<sup>1</sup>, 2019).*

#### 2.3.1 Equal Pay: An Overview

**Finding 1:** Unequal pay may result from two forms of discrimination, namely direct discrimination, and indirect discrimination.

**Finding 2:** The concept of pay goes beyond the basic salary.

- Unequal pay may result from two forms of discrimination, namely direct discrimination, and indirect discrimination.
- As defined by ILO (2013), “**equal pay for equal work**” means that similarly qualified women and men will be paid equally when they perform the same or virtually the same work in equivalent conditions”. This is a form of **direct discrimination** which occurs when; (i) sex is a specific criterion on which wages are set and/or (ii) the same job acquires different titles depending on the sex of the job holder.
- ‘**Equal pay for work of equal value**’ is defined as, “... when women and men perform work that is different in content, involving different responsibilities, requiring different skills or qualifications, and is performed under different conditions, but is overall of equal value, they should receive equal remuneration” (ILO, 2013). This is a form of **indirect discrimination**, which is more difficult to identify and address than direct discrimination.

1 International Labour Organization

The **concept of pay** does not only include the basic salary, but it also includes overtime supplements, special bonuses, travel facilities, training courses and termination payments (EQUINET<sup>2</sup>, 2019). In fact, European trade unionists are giving high importance to fringe benefits, as these are increasingly becoming another source of unequal pay.

### 2.3.2 The Main Causes of Unequal Pay

**Finding 3:** The lack of pay transparency is one main cause of unequal pay.

**Finding 4:** Pay transparency is mainly achieved through good pay data, which includes information on all aspects of pay.

**Finding 5:** Pay transparency measures are still absent in 13 EU member states, including Malta.

- Addressing **the lack of pay transparency** is one of the most important measures for tackling pay inequalities.
- The UK's Equality and Human Rights Commission (EHRC) defines a transparent system as "... one where employees understand not only their rate of pay but also the components of their individual pay packets. A transparent pay system avoids uncertainty, perceptions of unfairness and reduces the possibility of individual claims."
- Transparency is mainly **achieved through good pay data** which includes all information on all aspects of pay, including any fringe benefits and performance bonuses. Conducting 'pay audits' is the most effective tool that is used by European trade unions for gathering good pay data.
- To address the issue of pay transparency, in 2014, the **European Commission issued a recommendation that proposed:**

- employees are to be permitted to request information on all aspects of pay that is segregated by gender
- medium-sized companies with at least 50 employees should produce regular reports on the average pay by gender
- large companies with at least 250 employees are to carry out pay audits
- equal pay issues and pay audits are to be included in collective agreements.

However, the **impact of such recommendation has remained rather limited**, and pay transparency measures are still absent in 13 EU member states, including Malta.

Further to the 2014 EU recommendation, in her political guidelines for 2019-2024, European Commission President Ursula von der Leyen committed to closing the gender pay gap. Commissioner for Equality, Helena Dalli announced actions to introduce legally binding pay transparency (Strasbourg Plenary Session, 2020).

- **Policy Considerations:** Pay transparency measures should be introduced in Malta's legislation and Malta should implement the 2014 EU recommendation on transparency. This will help address the lack of pay transparency.

**Finding 6:** Lower-grading given to female-dominated jobs during job evaluations is another main cause of unequal pay, as women's skills tend to be perceived as being intrinsic to women's nature.

- "Women's skills are often undervalued because they seem to reflect 'female' characteristics, rather than acquired skills and competencies", and this leads to the women's skills being undervalued during job evaluations (EU Commission, 2013, p.6).
- European trade union representatives observed that one must be very careful of unconscious discrimination when evaluating women's and men's work.
- An inclusive job evaluation is the most used tool by European trade unions to determine 'equal value' and to classify jobs.

<sup>2</sup> European Network of Equality Bodies



### 2.3.3 Collective Bargaining: The Challenges for Trade Unions

- When negotiating for equal pay, European trade unions face a number of challenges. The key challenges that are faced by trade unions are:
  - i. addressing the lack of transparency and lack of information on sex-disaggregated pay data
  - ii. conducting inclusive job evaluations
  - iii. raising awareness on, and addressing the underlying causes of pay differentials
  - iv. ensuring the effective role of employers in the design, implementation, and monitoring of the principle of equal pay
  - v. addressing the lack of women representation in trade unions.

#### 2.3.3.1 WOMEN REPRESENTATION IN TRADE UNIONS

**Finding 7:** Sexism is one main challenge that is faced by women in trade unions.

- A research study conducted by ILO ACTRAV in 2019, concluded that, **only 30% of trade union negotiators worldwide, are women.**
- Pillinger (2010) identified five **main reasons for the lack of representation of women** on collective bargaining teams, namely:
  - i. the negative stereotyping against women participation in unions

- ii. women holding themselves back due to time constraints and hostility from their male colleagues
  - iii. women lacking the confidence to go for leadership roles
  - iv. women being discouraged through the historical 'male' culture of unions
  - v. women lacking the knowledge on union structures and how to get into decision-making positions.
- To encourage more women participation in trade unions, a good number of European trade unions have **set-up a women's committee within the trade union**, and such committees play an important role in the fight for equality between women and men.
  - **Policy Considerations:** Local trade unions should strive towards setting up such women's committees to encourage more female participation at the union and to ensure that female issues are on the union's agenda.

#### 2.3.3.2 PREPARING FOR BARGAINING FOR EQUAL PAY

**Finding 8:** Being well prepared for bargaining for equal pay, is crucial for trade unions to succeed in their negotiations.

- For effective collective negotiations to take place, it is important for negotiators to be skilled, knowledgeable, and familiar with the subjects on the agenda (ILO, 2015).
- When negotiators are preparing for bargaining, it is important that 'equal pay' is included on the agenda, if this is to be achieved.
- The ILO (2013) proposes a number of tools which are used by European trade unions when preparing for bargaining for equal pay, namely:
  - i. **Developing a pay equity strategy** by looking at the experiences and resources of other organisations. This will help trade unions to define their

trade union strategy prior to entering the negotiation phase.

- ii. **Raising awareness** amongst trade union members on equality issues and educating trade union members on recognizing the different forms of discrimination, by distributing material to, and holding meetings with, all trade union members on equal pay.
- iii. Involving **the wider community** by building alliances and coalitions with other groups, such as woman rights' groups.
- iv. **Communicating the message across the media** by making use of appropriate communications technology, developing appropriate media releases, and undertaking media interviews.
- v. **Obtaining the views of silent employees** by distributing questionnaires to all employees at the workplace.
- vi. **Gather information** through inclusive job evaluations and equal pay audits.

iv. an action plan to remove any potentially unlawful differences in pay.

- European trade unionists observed that convincing employers to conduct a pay audit is challenging, since **pay audits are costly and time-consuming**. The EHRC (UK) lists a number of arguments which European trade unionists may present to employers to convince them to conduct a pay audit, namely:
  - i. transparent pay systems send a positive message about a company's values
  - ii. pay is a key motivator at work
  - iii. fair and non-discriminatory pay systems are a legal requirement
  - iv. failure to ensure equal pay might lead to legal claims and reputational damage.
- In some countries, like Austria, Finland, Sweden, Belgium and Norway, there is **legislation** which obliges employers to conduct pay audits and to produce income reports. A study conducted by ETUC<sup>3</sup> in 2014 found that in countries where pay audits are mandated by law, it was easier for trade unions to conclude collective agreements with employers on equal pay.
- **Policy Considerations:** Malta should introduce a law mandating employers to conduct pay audits, and the collected statistics (salary tied to specific designations) should be made available to trade unions, always allowing for data protection provision. This will allow trade union negotiators to identify any discrepancies in pay for women and men and be in a better position to negotiate for equal pay.

### 2.3.3.3 NEGOTIATION TOOLS: PAY AUDITS

**Finding 9:** Conducting 'pay audits' is the most effective tool that is used by European trade unions for gathering pay data and for addressing the issue of transparency.

- **Pay audits** are important for highlighting the factors that generate unequal pay.
- According to the Equal Pay Portal (2019), **pay audits help trade unions and employers to determine:**
  - i. whether male and female employees are doing equal work
  - ii. whether male and female employees, who are doing equal work, are receiving the same pay and benefits and, if not, to identify why
  - iii. whether reasons for any differences in pay for women and men doing equal work are legitimate

### 2.3.3.4 NEGOTIATION TOOLS: INCLUSIVE JOB EVALUATION

**Finding 10:** 'Inclusive job evaluation' is the most used tool by European trade unions to determine 'equal value' and to classify jobs.

- An inclusive job evaluation allows for the **comparison of jobs** to determine the relative position of one job to another on a wage or salary scale (ILO, 2013).
- An inclusive job evaluation is one that is analytical, meaning that it breaks jobs down into components and allocates points to each component.
- The ILO (2013) identifies skills and qualifications, responsibility for money and people, effort required and working conditions, as the four **key criteria of an analytical job evaluation**.
- **Some jobs that have been compared as being of 'equal value'**, through job evaluations, are caterers and cleaners with gardeners and drivers; social affairs managers with engineers and librarians with refuse collectors (ILO, 2013).
- **Policy Considerations:** Local trade unions should encourage employers to conduct inclusive job evaluations to determine work of equal value. Trade unions should be involved in the process of such job evaluation, to ensure that the evaluation is being conducted in a proper manner and that it is free of any bias.

#### 2.3.3.5 EQUAL PAY TOOLS DEVELOPED IN EUROPEAN COUNTRIES

**Finding 11:** A number of European countries have developed tools to help employees, employers and trade unions to check whether a company is implementing equal pay for women and men.

- The **'Logib' tool** was developed in Switzerland. This tool uses a self-assessment calculator, with the aim of checking on whether a company is implementing equal pay for work of equal value.
- In Germany, the **'Logib-D' tool** was developed with the aim of identifying factors which determine the difference in salary between women and men, where women and men share the same employment characteristics.
- The **'Equal Pay Standard'** is a pay management system in Iceland, which was developed to help employers prevent salary discrimination. In Iceland, companies which employ more than 25 employees, must undergo an equal pay audit, for which they will then receive an equal pay certification.
- The **'Paywizard' tool** is a project that was initiated in the Netherlands in 2016. 'Paywizard' is an online salary calculator which allows employees to compare their salary to the salary of other people doing a similar job. Such tool is now available in 70 countries, including Malta.

#### 2.3.3.6 AFTER BARGAINING FOR EQUAL PAY

**Finding 12:** After bargaining, trade unions should exercise continuous monitoring of the situation to ensure that the collective agreement is being honoured.

- Following collective agreement negotiations trade unions must **ensure that the collective agreement is being honoured**. According to ILO (2001), the actions that are taken by trade unions to ensure that the collective agreement is honoured are:
  - i. publishing the collective agreement with a summary of its main points
  - ii. informing their members on the proper methods of handling disputes and assuring them of confidentiality
  - iii. collecting statistics on recruitment, promotions, dismissals, salary levels and training programmes on a regular basis
  - iv. exercising continuous monitoring to gain insight for future collective agreements.



## 3. Research Objectives

The overriding research objective of this qualitative study was to analyse and identify the work that is undertaken by trade unions with respect to **equal pay for work of equal value between women and men** during collective agreement negotiations.

The specific research objectives of this research study were:

- to **research how trade union representatives** in Europe deal with the concept of equal pay for women and men during collective agreement negotiations
- to **identify tools** that are used by trade union representatives when negotiating for equal pay for women and men during collective bargaining
- to **develop training content** for a training session to empower local trade union representatives with knowledge on equal pay for women and men
- to **develop the content of an information booklet** on equal pay for work of equal value between women and men for trade union representatives.

## 4. Research Methodology

To achieve the outlined research objectives, the Research Methodology adopted to attain these objectives comprised the following:

### Secondary Research

- **A thorough review of international and local literature** to develop a clear understanding of what has been said and written on equal pay between women and men, and to identify tools and tactics that are used by European trade unions when bargaining for equal pay for women and men. Various international and local sources were consulted for the purpose of this literature review, namely:
  - **International Sources:**
    - i. International Labour Organisation (ILO)
    - ii. European Commission
    - iii. European Network of Equality Bodies (EQUINET)
    - iv. European Trade Union Confederation (ETUC)
    - v. European Trade Union Institute for Research (ETUI)
    - vi. Equality bodies of European countries.
  - **Local Sources:**
    - i. Department of Industrial and Employment Relations (DIER)
    - ii. University of Malta
    - iii. Jobsplus
    - iv. Online news sources.

### Primary Research

- **A qualitative research study** which comprised of one-to-one interviews with leading European Trade Unions and Trade Union Confederations. A total of three (3) trade union representatives

were interviewed. The three trade union representatives hailed from:

#### i. The General Labour Federation of Belgium (FGTB)

The FGTB is present in all employment sectors and it intervenes to defend all workers across Belgium. In 1997, the Union introduced a Women's Bureau, and in 2002 the Federal Congress elected the first female President of FGTB, to reflect its commitment towards gender equality. Furthermore, in 2014 the three large Belgian trade unions signed the Gender Mainstreaming Charter, which reflects their commitment towards equality between women and men, both within the union structure and the labour market.

#### ii. Norwegian Confederation of Trade Unions (LO Norge)

LO Norge represents a total of 25 Norwegian trade unions, which represent different industries and professionals. Its main task is to ensure fair pay and working conditions to its members, and to contribute to a society in which everyone is entitled to equal opportunities. Once every two years the LO negotiates with employers on improvements in the collective agreements. Equal pay for equal work is at the top of LO's agenda.

#### iii. The Electricity and IT Association, Norway (ELog IT Forbundet)

ELogIT Forbundet has the task of organising all employees within the ICT, energy and electrical installation industry in Norway. The association has over 39,000 members, and yearly, it negotiates some 30 collective agreements. Amongst other aims, working for full equality between women and men, is one main purpose of ELogIT Forbundet.

# 5. Salient Research Findings

**This section presents a detailed overview of the research findings.** The specific research areas that are being presented in this section are:

- 5.1 Equal Pay: An Overview
- 5.2 The Main Causes of Unequal Pay
- 5.3 EU Legislation on Equal Pay
- 5.4 The Equal Pay Day
- 5.5 Collective Bargaining: An Overview
- 5.6 Collective Bargaining: The Challenges for Trade Unions
- 5.7 Preparing for Bargaining for Equal Pay
- 5.8 Negotiation Tools
- 5.9 Equal Pay Tools developed in European Countries
- 5.10 After Bargaining for Equal Pay
- 5.11 Bargaining Models in European Countries
- 5.12 Court Cases on Equal Pay
- 5.13 Malta's Situation.

## 5.1 Equal Pay: An Overview

The principle of equal remuneration for women and men for work of equal value is widely referred to as 'equal pay' (ILO, 2019).

The right to equal pay has been acknowledged by the International Labour organisation (ILO) since 1919 through Article 427 of the Treaty of Versailles (ILO, 1919), mentioning the principle of equal remuneration for work of equal value between women and men, as one of "special and urgent importance".

In 1951 the Equal Remuneration Convention (C100) highlighted the importance of equal remuneration for work of equal value, irrelevant of the employee's gender (ILO, 2015). Such convention addressed the roles of

wage setting mechanisms and social partners, while obliging members of the ILO to ensure that women and men receive equal pay for work of equal value (ILO ACTRAV<sup>4</sup>, 2019).

The Discrimination (Employment and Occupation) Convention (C111) in 1958, also addressed issues relating to unequal pay between women and men, while it also highlighted employers' and workers' organisations roles in ensuring equal pay, such as through collective agreements (Rubery & Johnson, 2019). Unequal pay may result from two forms of discrimination, namely direct discrimination, and indirect discrimination (Oelz, Olney & Tomei, 2013).

### 5.1.1 Equal Pay for Equal Work - Direct Discrimination

As defined by ILO equal pay for equal work means that:

*"similarly qualified women and men will be paid equally when they perform the same or virtually the same work in equivalent conditions"* (Oelz et al. 2013, p. 31)

Unequal pay for the same work is considered as a form of direct discrimination which may occur when:

- **sex is a specific criterion on which wages are set**, such as for example, having a female cook who prepares lunches for company directors receiving a lower salary than a male chef who cooks breakfast, lunch and tea for employees (UK EHRC<sup>5</sup>, 2019).
- **the same job acquires different titles depending on the sex of the job holder**, as depicted in **Exhibit 1** below:

4 Bureau for Workers' Activities

5 Equality and Human Rights Commission



### Exhibit 1 – Same job acquires different titles depending on the sex of the job holder

MALE Job Title	FEMALE Job Title
Assistant Manager	Manager's Assistant
Chef	Cook
Janitor	Cleaner
Information Manager	Librarian

Source: Oelz et al. (2013), Equal Pay: An Introductory Guide. Geneva: International Labour Office.

Direct discrimination still takes place, but it is easier to identify and resolve than equal pay for work of equal value (Oelz et al, 2013).

#### 5.1.2 Equal Pay for Work of Equal Value – Indirect Discrimination

The concept of equal pay for work of equal value,

*“covers not only cases where women and men do the same or similar work, but also the more usual situation where they do different work. When women and men perform work that is different in content, involving different responsibilities, requiring different skills or qualifications, and is performed under different conditions, but is overall of equal value, they should receive equal remuneration”*

(Oelz et al., 2013, p. 31).

Such indirect discrimination might be the result of various factors, such as gender bias in job evaluations and in job grading systems. Oelz et al. (2013) argue that equal pay may apply in situations where jobs that are performed by women and men:

- Are performed under different conditions
- Require different qualifications or skills
- Require different levels of effort
- Involve different responsibilities
- Are performed in different places or enterprises/by different employers.

European trade union representatives observed that it is very important to look at equal value, because women and men often work in different sectors and jobs, and hence there is the existence of sex segregation in the labour market. In fact, to depict this, a Belgian trade union representative mentioned an example of ...

Female employees at a textile factory (a predominantly female sector) receiving a lower salary than male employees at a food manufacturing factory (a predominantly male sector).

Another example is the ongoing ‘Supermarket equal pay claim’ across the UK, which involves the ‘big five’ UK supermarkets (Asda, Co-op, Morrisons, Tesco, and Sainsbury). In this case, employees who are employed at shop floor level, who are mostly female, are being paid a lower salary than warehouse employees, who are mostly male. The shop floor employees are claiming that they work long hours and must interact with customers throughout their shifts, and hence are arguing that their work is of equal value to the work of their co-workers at warehouse level (Equal Pay Now UK, 2020).

#### 5.1.3 The Concept of Pay

The concept of pay does not only cover basic pay, but it also includes overtime supplements, special bonuses, travel facilities, training courses and termination payments (EQUINET<sup>6</sup>, 2019).

Hence, one trade union representative observed that it is very important for trade unions to exercise continuous monitoring, to be able to identify any possible determinants of discrimination in the process of defining employees’ pay ...,

*“... Fringe benefits are increasingly becoming another source of unequal pay. Women tend to receive less of such benefits than men. Such fringe benefits are now being included in the gender institute’s equal pay report and*

6 European Network of Equality Bodies

*more attention is being given to such benefits. It appears that the gap is shifting from the basic salary to such fringe benefits ...”*

## 5.2 The Main Causes of Unequal Pay

The lack of pay transparency and a lower-grading given to female-dominated jobs during job evaluation, are two main causes of unequal pay. Furthermore, Pillinger (2014) argues that in some countries, unions face a problem with applying the principle of ‘work of equal value’ due to the lack of a legal definition and/or difficulties in implementing equal value, while some unions have also argued that employers tend to be unwilling to address issues that are related to equal pay for work of equal value.

### 5.2.1 The Lack of Pay Transparency

The lack of pay transparency is one main difficulty of tackling unequal pay (Pillinger & Wintour, 2019; Rubery & Koukiadaki, 2016; EU Commission, 2014; Pillinger, 2014). The Danfoss sex discrimination case of 1989 (Case 109/88), at the European Court of Justice, was the first case which brought attention to the issue of pay transparency in the European Union (EU).

In the Danfoss case, the employees’ union took Danfoss to the Industrial Arbitration Board, on a case of unequal pay for two female employees, who were receiving an overall lower salary than their male colleagues who were in the same wage group. Following the decision of the industrial board, that there was no proof of discrimination, the employees’ union presented more detailed statistics on the wages that were paid to 157 employees over the span of 4 years, which showed that the average salary paid to men was higher than the average salary paid to women. The burden of proof for such case, states, that it is evident that this issue originates from a system that is implemented in a manner that a woman is unable to identify the reasons for the difference in her pay, and that of a man doing the same work (Union of Commercial and Clerical Employees v. Danish Employers’ Association, 1989). To this end the European Court of Justice tried to address the

problem by reversing the burden of proof, by requiring the employer to prove that a certain practice is not discriminatory (Eurofound, 2007).

Pay transparency is being given a lot of importance within the EU, as this is regarded as one of the most important measures for tackling pay inequalities. The Equality and Human Rights Commission (EHRC) in the United Kingdom (UK) defines a transparent pay system as,

*“one where employees understand not only their rate of pay but also the components of their individual pay packets. A transparent pay system avoids uncertainty, perceptions of unfairness and reduces the possibility of individual claims” (Rubery & Koukiadaki, 2016, p. 58).*

Some unions in Austria, Norway, Iceland, and Belgium have “negotiated agreements which require sectoral level and workplace level disaggregated pay data to be made available to negotiators” (Pillinger, Schmidt & Wintour, 2016, p. 8).

Pillinger & Wintour (2019) argue that pay transparency is of utmost importance for informing the content and scope of pay negotiations and collective agreements for promoting gender-neutral salary setting. Transparency is mainly achieved through good pay data, and hence it is of extreme importance for trade unions to have updated labour market data of high-quality, as this will allow them to make effective cross sectoral pay comparisons (Rubery & Koukiadaki, 2016).

European trade unionists agree that transparency is of utmost importance for achieving equal pay. However, one trade unionist observed that achieving transparency might conflict with the data protection law in the case of small-sized companies, or categories in a which there are very few employees. To address such issue, in Belgium, it was decided that for any categories with three (3) employees or less, the details are to be left blank, to allow for data protection provision.

The trade union representatives also observed that in certain circumstances it is very difficult to achieve transparency. One trade unionist mentioned the following as one such scenario,

*“A male is the project manager of two employees – one male and one female. The project manager delegates the work to the two employees. At the close of project, the female employee receives a lower performance bonus than the male employee with the project manager’s argument being that the male employee has contributed more towards the project.”*

### 5.2.3 Lower Grading for Female-Dominated Jobs

Female-dominated jobs receiving a lower grading than male-dominated jobs during job evaluations, is another main cause of unequal pay (ILO, 2019; EU Commission, 2013; Oelz et al., 2013; Olney, Goodson, Maloba-Caines & O’Neill, 2002).

One trade unionist observed that one must be careful of unconscious discrimination while evaluating women’s and men’s work. Women’s



skills are perceived as reflecting female characteristics, rather than acquired skills and competencies, and this leads to women’s skills being undervalued (EU Commission, 2013). Furthermore, when job evaluation methods do capture the skills of typical female jobs, these still tend to score lower than typical male jobs. This is due to the false assumption that skills, which relate to jobs which resemble work that is performed by women for free at home, are intrinsic to women’s nature, rather than acquired through learning and experience. Hence, this leads to an under-estimation of female-dominated jobs and as a result, men benefit from higher wages than women (Oelz et al., 2013).

### 5.3 EU Legislation on Equal Pay

The Treaty of Rome of 1957 highlighted the principle of equal pay for women. Years later, in 1975, the principle of equal pay for work of equal value came into effect in the EU, with the Equal Pay Directive (Weiler, 2013). In 1999, the promotion of equality between women and men became a crucial task of the EU community through the Treaty of Amsterdam, which provided a legal basis for the directive of equal treatment between women and men.

In 2006, a set of directives on gender equality in employment were ‘recast’ and consolidated into a one Directive 2006/54/EC, referred to as the Gender Recast Directive. This Directive provides that for the same work or for work of equal value, direct and indirect discrimination on the ground of sex, is prohibited in all aspects and conditions of remuneration (EU Commission, 2020).

Furthermore, to address issues related to pay transparency, in 2014 the European Commission issued a recommendation that proposed the following:

- employees are to be permitted to request information on all aspects of pay that is segregated by gender
- medium-sized companies, with at least 50 employees, should produce regular reports on the average pay by gender

- large companies, with at least 250 employees, are to carry out pay audits
- equal pay issues and pay audits are to be included in collective agreements.

However, as highlighted in the 2017 report on the implementation of the 2014 Pay Transparency Recommendation, the impact of such recommendation has remained rather limited. Pay transparency measures are still absent in 13 member states (BG, CY, CZ, EE, EL, HR, HU, LV, MT, PL, RO, SI, SK), while two member states (IE and NL) are considering introducing such legislation (European Commission, 2020).

## 5.4 The Equal Pay Day

Another initiative that has been taken up by the EU is the setting up of the European Equal Pay day, celebrated annually and which has been taking place since March 2011 (EU Commission, 2013). The EU Commission marks the 4<sup>th</sup> November as the symbolic day that is dedicated to raising awareness on the gender pay gap, that is that female workers in Europe still earn on average less than their male colleagues. This annual event raises awareness on equal pay, while it is also used by trade unions to communicate their demands for equal pay, equal opportunities, and equal working conditions to the public (Pillinger, 2014).

Some activities that are organised by European trade unions to celebrate this symbolic day include equal pay actions, public debates, seminars, and press conferences (EU Commission, 2020). In fact, one Belgian trade unionist observed that this event is very important in Belgium and is heavily promoted with both employees and the wider community.

### 5.4.1 The Equal Pay Day in Malta

In Malta, the National Commission for the Promotion of Equality (NCPE) was the first entity to celebrate the Equal Pay Day in 2015 (NCPE, 2015) through the organisation of a national conference. NCPE has continued to do so annually to date. Amongst other

activities that were organised to celebrate this day, in 2018 NCPE embarked on a media campaign entitled 'PayM€qually' to communicate its message that a pay gap between women and men still exists, and that there are ways in which such gap can be addressed (Malta Business Review, 2018).

## 5.5 Collective Bargaining: An Overview

Article 2 of the Collective Bargaining Convention 1981 (ILO, No. 154) defines collective bargaining as,

*“all negotiations which take place between an employer, a group of employers or one or more employers’ organizations, on the one hand, and one or more workers’ organizations, on the other, for:*

- *determining working conditions and terms of employment; and/or*
- *regulating relations between employers and workers; and/or*
- *regulating relations between employers or their organizations and a workers’ organization or workers’ organizations.”*

One of the four main principles of the 1998 ILO Declaration of Fundamental Principles, which refers to collective bargaining, is the elimination and discrimination in respect of employment and occupation. Apart from emphasizing the commitment to the promotion of voluntary collective bargaining, this Convention also states that negotiations must take place in an independent and autonomous setting, if these are to be meaningful. The issues which are tackled in collective bargaining include working conditions, terms of employment and relationship regulation between employers and trade unions, and in turn such discussions lead to the drawing up of the collective agreement (ILO, 2015).

Equal pay is more likely to be achieved when bargaining is inclusive, minimum wages are higher, full-time working hours are shorter and in work places where managers have limited discretion and are obliged to follow

pay grading structures and practices that are based on skills and necessary experience (Rubery & Koukiadaki, 2016). Collective bargaining can help to address equal pay by ensuring that collective agreements focus on increased transparency and by ensuring gender-neutral job evaluations (ILO, 2019).

## 5.6 Collective Bargaining: The Challenges for Trade Unions

A study conducted by ILO ACTRAV in 2019 identified the following as the key challenges that are faced by trade unions when negotiating for equal pay:

- promoting and implementing legislation at different policy levels
- lack of access to information on pay differential and sex-disaggregated data
- conducting job evaluations which are free from any gender-bias
- raising awareness on, and addressing the underlying causes of pay differentials
- putting the issue of equal pay on the agenda of specialized equality or diversity bodies
- ensuring the effective role of social partners in the design, implementation, and monitoring of the principle of equal remuneration for work of equal value.

Olney et al. (2002) argue that the lack of women representation in trade unions might be another challenge that is faced by trade unions during collective bargaining; ILO ACTRAV (2019) have reaffirmed this, when they reported that only 30% of trade union negotiators worldwide are women. According to Pillinger (2010), the main reasons for the lack of representation of women on collective bargaining teams are:

- the negative stereotyping against women's participation in unions
- women holding themselves back and lacking the confidence to go for leadership roles
- women being discouraged through the culture of unions which values the

participation of men more than that of women

- women lacking the knowledge on union structures and how to get into decision-making positions.

Trade union representatives confirmed that sexism at trade unions is still one main challenge that is face by women in trade unions, with one trade unionist observing that:

*"... It has been observed that if women, who join a trade union, are confronted by sexism, they will end up leaving such trade union. The trade unions' culture is very old and male-oriented and therefore we need to strive to change this culture. As a trade union, it is important to have clear guidelines on what is acceptable behaviour among colleagues. Behaviour that might have been accepted ten years ago, should no longer be accepted today."*

To encourage more women participation in trade unions, some European trade unions have introduced gender quotas/additional seats for women. For example, in Belgium, one third of the trade union's Advisory Committee must be made up of female representatives. A good number of European trade unions have also set up a women's committee within the trade union, and such committee plays an important role in the fight for equality between women and men. Such committee is the place where issues related to women's themes are presented and analysed.

One Norwegian trade unionist observed that a committee for gender issues has been established by their trade union congress and its mission is ...

*"... to engage women in the union discussions and to create an environment in which women can speak to women. Such committee also aims at identifying talented individuals for leadership positions and to provide training."*

## 5.7 Preparing for Bargaining for Equal Pay

To ensure effective collective negotiations, it is of extreme importance for negotiators to be skilled, knowledgeable and familiar with the subjects on the agenda, while having a good understanding of the process within which the collective bargaining operates (ILO, 2015). Prior to entering any negotiations, the trade union negotiators should prepare themselves well and agree on a list of targets which they seek to achieve through the collective agreement negotiations. Trade unionists observed that if equal pay is to be achieved, then this must be included in the list of targets that is prepared by the negotiators.

OECD<sup>7</sup> (2017) recognises the impact of wage dispersion<sup>8</sup> and addresses income inequalities as one of the main functions of collective bargaining. As a first step towards effective collective bargaining for equal pay, trade unions should analyse the context in which bargaining is to take place, as this will allow them to define the appropriate action and achieve the desired results (ILO, 2001; ILO 2011).

The ILO (2001) proposes five main actions for trade unions to be well prepared when bargaining for equality:

- gather all facts and relevant statistics on the position of women and men at the workplace
- utilise national and international information networks to gather and exchange information
- be familiar with gender equality provisions under current government legislation, policies and regulations
- prepare arguments which clearly identify the benefits of gender equality at the workplace to the employers, such as a positive image for the company and more efficient use of human resources
- identify and prioritize demands for negotiations.

<sup>7</sup> Organisation for Economic Cooperation and Development

<sup>8</sup> The differences that exist in pay levels between individuals within and across jobs or organisational levels

## Developing a Pay Equity Strategy

Developing a pay equity strategy is an important step for trade unions to address equal pay through collective bargaining. All trade union representatives observed that it is of utmost importance for trade unions to define their strategy prior to entering the negotiation phase.

A pay equity strategy (**Exhibit 3**) should be developed by looking at the experiences and the resources of other organisations. Furthermore, targeting, timing and resources are very important to decide upon when developing a pay equity strategy:

- **Targeting** – ensuring that the right message is delivered to the right audience
- **Timing** – having a sequence of actions that build on each other
- **Resources** – having the necessary human, material, and financial resources to support the pay equity strategy (Oelz et al, 2013).

## Raising Awareness on Equal Pay

Trade unions should raise awareness on equality issues amongst all their members (ILO ACTRAV, 2019), and educate their members on recognizing different forms of discrimination (ILO, 2011). This may be achieved by distributing material to, and holding meetings with, all trade union members on equal pay (Oelz et al., 2013). ILO's Recommendation No. 163 (ILO, 1981) recognises the importance of training the collective bargaining negotiators, and hence trade unions should appoint competent bodies to provide the necessary training to negotiation teams so as to ensure that the members are skilled and knowledgeable on the related issues (ILO, 2015; Oelz et al., 2013).

## Building Alliances

To better promote equal pay, trade unions should also consider building alliances and coalitions with other groups in the wider community, such as human rights groups, woman rights' groups and economic development organisations. Communicating the message across the media, by making use of appropriate communications technology, developing appropriate media releases, and

undertaking media interviews, are also good tactics to help trade unions promote equal pay (Oelz et al., 2013).

#### **Obtaining the Views of Silent Employees**

Consulting women's committees to assess proposed clauses for discrimination, while also seeking the views of women and men who are absent or silent by distributing questionnaires to all employees, is an important step for collective bargaining preparations. Trade unionists recognise the high importance of obtaining the views of silent employees. Such 'silent employees' are the most important members of trade unions as these are the employees who lack the power to speak up and make their voice heard, unlike the white-collar employees who are more likely to have power and opportunity to speak up. Trade unionists observed that the trade union shop stewards are very helpful in obtaining the views of silent employees, and apart from distributing questionnaires, shop stewards also strive to raise awareness on equal pay amongst all employees.

#### **Gathering Statistics on Pay**

Trade union representatives should compile available statistics on employees at the workplace and analyse such data to gain better insight on existing gender inequalities (ILO, 2011; Olney et al., 2002; ILO, 2001). Pillinger (2014) argues that having a strong evidence base is important for convincing employers to take gender equality issues seriously, and draws on the example of French Trade Unions which base their argument on a detailed analysis of company reports, which take into account women's and men's pay, working hours, and training and career development, to outline the sources of discrimination and inequality, and then use such analysis for backing up their claim.

#### **5.8 Negotiation Tools**

To address the challenges that are faced during collective bargaining for equal pay, European trade unions make use of various tools to identify any direct or indirect discrimination, and to be in a better position to make a case for equal pay negotiations. The most effective tool for addressing the

### **Exhibit 3 - An Example of a strategic sequence for developing a pay equity strategy**



Source: Oelz et al. (2013), Equal Pay: An Introductory Guide. Geneva: International Labour Office.

issue of transparency is conducting ‘pay audits’, while ‘inclusive job evaluation’ is the most used tool to determine ‘equal value’ and to classify jobs.

### Pay Audits

The UK’s Equality and Human Rights Commission (2019) states that,

*“the first and most important step towards achieving equal pay is to carry out an equal pay audit (for large employers) or an equal pay review (for smaller employers)”.*

Such pay audits and reports are considered as being important for raising awareness (ILO ACTRAV, 2019), and for highlighting the factors that generate unequal pay (Rubery & Koukiadaki, 2016). Rubery & Koukiadaki (2016) argue that pay audits are most likely to be effective when they are mandated by law, while also involving trade unions in their implementation. According to the Equal Pay Portal (2019) such pay audits will help an organisation to determine:

- whether male and female employees are doing equal work
- whether male and female employees, who are doing equal work, are receiving the same pay and benefits, and if not, to identify why
- whether reasons for any differences in pay for women and men doing equal work are legitimate
- an action plan to remove any potentially unlawful differences in pay.

One Belgian trade unionist, who was interviewed for the purpose of this research study, described the use of pay audits for bargaining on equal pay as an explicit strategy, whereby the negotiators present figures and proof to the employers that there is evident existing discrimination between women and men. Furthermore, she also observed that such an explicit strategy is more likely to be used in those sectors where discrimination is highly visible.

In certain countries like Austria, Belgium, Finland, Norway, and Sweden a legislation obliges employers to conduct pay surveys and to produce income reports. Research suggests that due to such measures, in these countries, it was easier to conclude collective agreements with employers on equal pay (Pillinger, 2014). In fact, one Norwegian Trade Union representative observed that the equal pay directive in Norway obliges all public and private employers, with more than 50 employees, to keep statistics on equal pay and this system is quite effective for the monitoring of equal pay for women and men.

However, trade union representatives observed that in countries where equal pay audits are not mandated by law, negotiators are likely to find it challenging to convince employers to conduct an equal pay audit, since this is a costly and time-consuming exercise. The UK’s Equality and Human Rights Commission (2020) proposes the following arguments for trade unionists to present to the employers to convince them to conduct a pay audit:

- Transparent pay systems send a positive message about a company’s values and ways of working
- Pay is a key motivator at work
- Fair and non-discriminatory pay systems are a legal requirement
- Failure to ensure equal pay might lead to legal claims and reputational damage which will affect the company’s commercial success.

### Inclusive Job Evaluation

Job evaluation has been found to be the most effective tool for eliminating pay discrimination, as this process allows for the comparison of jobs to determine the relative position of one job to another on a wage or salary scale (Oelz et al., 2013).

The UK’s Equality and Human Rights Commission (2019) mentions four key criteria, that have been identified by courts and tribunals, as the standards that must be met



**Exhibit 4 – Jobs that have been compared as being of ‘equal value’**

Mostly FEMALE		Mostly MALE
Wardens in accommodation for the elderly	WITH	Security guards
School meal supervisors	WITH	Park supervisors
Caterers and cleaners	WITH	Gardeners and drivers
Social and community service workers	WITH	State and local government employees
Social affairs managers	WITH	Engineers
Speech therapists	WITH	Pharmacists
Librarians	WITH	Refuse collectors
Flight attendants	WITH	Pilots and mechanics
Account clerks	WITH	Letter carriers, mail handlers and sorters

**Source:** Oelz et al. (2013), Equal Pay: An Introductory Guide. Geneva: International Labour Office

for a job evaluation to provide defence for an equal value claim. The four key criteria are that the job evaluation must be:

- analytical
- thorough and impartial
- inclusive
- reliable.

To determine whether two different jobs are of equal value, conducting an analytical job evaluation is highly recommended (Oelz et al., 2013; Equal Pay Portal 2018). Such an analytical job evaluation breaks jobs down into components and allocates points to each component. Oelz et al. (2013) identify the following four main components of an analytical job evaluation:

- skills and qualifications
- responsibility for equipment, money, and people
- effort required
- working conditions.

**Exhibit 4** above illustrates a number of female-dominated and male-dominated jobs that have been compared as being of ‘equal value’ through analytical job evaluations.

A job evaluation is important for ensuring equal pay, since it takes into consideration the aspects that are required to perform work

to the expected level of efficiency and the conditions under which the work is carried out (Equal Pay Portal, 2018; Olney et al., 2002).

One trade unionist observed that, in Belgium, job evaluations are very important for the classification of jobs, and hence for achieving equal pay for women and men. In Belgium, actions for conducting inclusive job evaluations were initiated in the 1990s, and every 20 years the job classification must be re-evaluated.

The FGTB<sup>9</sup>, together with the trade unions, produced manuals and held training sessions with employers to empower them with knowledge on conducting analytical job evaluations that are inclusive, just and that are accepted by all employees as being a fair system. In its manual entitled ‘Checklist: Gender neutrality in job evaluation and classification’, the Belgian Institute for the Equality of Women and Men (2020) identifies six (6) criteria of an inclusive job evaluation, as illustrated in **Exhibit 5** below.

For a successful job evaluation, it is also recommended to have a panel of 3 or more job evaluators who have a broad knowledge of the jobs across the organisation and who are well-trained on equality issues,

<sup>9</sup> General Labour Federation of Belgium

while it is also important for the panel to be representative of the workforce in terms of gender and other characteristics (EHRC UK, 2019)

## 5.9 Equal Pay Tools Developed in European Countries

Various European countries have developed tools that are easily accessible to employees, employers and trade unions to check on whether a company is implementing equal pay for women and men. Some such tools are, 'Logib', 'Logib-D', 'Equal Pay Standard' and 'Paywizard'. Furthermore, in Malta, The National Commission for the Promotion of Equality (NCPE) is also currently working on developing an Equal Pay Tool that is suitable for Malta's labour market.

### 5.9.1 The 'Logib' & 'Logib-D' Tools

The 'Logib' tool was developed by the Federal Office for Gender Equality in Switzerland. The 'Logib' statistical tool uses a self-assessment pay calculator, with the aim of checking whether a company is implementing equal pay for work of equal value between women

and men. Such tool is suitable for companies having 50 or more employees.

Influenced from the 'Logib' tool, the 'Logib-D' tool was developed in Germany. Such tool is aimed at identifying factors which determine the difference in salary between women and men, where women and men share the same employment characteristics (European Commission, 2016). Such tools enable companies to verify the existence of equal pay for male and female employees by analysing pay and staffing structure (EU Commission, 2011).

### 5.9.2 The 'Equal Pay Standard'

In Iceland, a pay management system, 'The Equal Pay Standard', was developed to help employers prevent salary discrimination (Icelandic Women's Rights Association, 2020). This pay management system was developed by the Icelandic trade unions in collaboration with the employers' confederation and the government.

Initially, this system was based on a voluntary certification system, which aimed at monitoring and measuring equal pay and then reporting on the results (Pillinger, 2014). However, in 2018 the system was mandated by law to oblige companies and institutions in Iceland, with 25 or

## Exhibit 5 - The Six (6) Criteria of an Inclusive Job evaluation

- 1 The system must be analytical

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- 2 The system is used to evaluate all job characteristics throughout the company

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- 3 The system as a whole must apply various criteria, and male and female associated characteristics must occur equally

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- 4 Both group of characteristics must be able to score the same weight

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- 5 Values allocated by the system must be in proportion to effort required to do the work

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- 6 The system should be applied as a whole throughout the company.

more employees, to implement the 'Equal Pay Standard' by undergoing an audit and receiving certification. Furthermore, employers are expected to renew their equal pay certification every three years (Icelandic Women's Rights Association, 2020). This certification system had a positive effect, with companies reporting that there was a positive impact on new hires, since candidates feel more confident that equal pay will be implemented, while the female workforce appeared to be more trusting of the company and its wage policy (Wagner, 2018).

### 5.9.3 'Paywizard'

Some countries have developed tools which can be used by employees to compare their salary to the salary of other people who are doing a similar job. One such tool is the 'Paywizard' tool which is a project that was initiated in the Netherlands in 2016. This programme is now part of an international research network and is a free service that is available in 70 countries, including Malta (Wage Indicator, 2020). This online tool can be accessed by anyone, including employees, employers, and trade union representatives.

The tool is designed in an easy-to-use manner for comparing salaries. To use such tool, one must first select the country of employment and then one must input information relating to salary, demographics, rank, level of education and employment benefits. This will generate a report which provides a summary on where one stands on the salary scale, when compared to other employees who share the same characteristics. Apart from comparing salaries, this generated report also includes other job-related information, such as statistics on the level of satisfaction with the salary of employees who work in the same role, the percentage of employees who are covered by a collective agreement and the percentage of female and male employees who occupy the role.

### 5.9.4 NCPE's Equal Pay Tool

In Malta, The National Commission for the Promotion of Equality (NCPE) awards the Equality Mark certification to companies / organizations that make gender equality one

of their values, and whose management is based on the recognition and promotion of the potential of all employees, irrespective of their gender and caring responsibilities.

As part of its EU-funded project entitled 'Prepare the Ground for Economic Independence', the NCPE has developed an equal pay tool, which is suitable for Malta's labour market. This Tool enables organisations to verify the existence of equal pay between women and men performing the same work or work of equal value by analysing pay and staffing structures within their company, with the aim of enhancing the NCPE Equality Mark certification (NCPE, 2018).

## 5.10 After Bargaining for Equal Pay

Following up on negotiations through continuous monitoring would ensure that the collective agreement is being honoured (ILO, 2001).

### Inclusion of Specific Clauses in the Collective Agreement

One trade unionist observed that including clauses in the collective agreement, to ensure the collection of statistics, is very important since with access to such statistics negotiators will be in a better position when bargaining for equal pay. In fact, some clauses that are included by European trade unions in the collective agreement include:

- A request for the employer to keep sex-segregated statistics on pay levels
- A request for the employer to safeguard transparency with the employees
- A request for the employer to share the gathered statistics with the trade union
- The setting up of an 'equal pay' dispute resolution procedure.

Trade unions should ensure that the 'equal pay' dispute resolution procedure that is in place, has the adequate resources and capacity to address any breach of the collective agreement. Furthermore, trade unions should inform their members of the proper methods of handling disputes, and assure them of confidentiality (ILO, 2001).

European trade union representatives also observed that trade union negotiators must be careful of non-disclosure agreements (NDAs), as these might be incorrectly used by employers to cover discrimination by including a clause that prohibits employees from sharing their salary with their colleagues. Hence, trade unions should consider and assess the purpose of any NDAs when drawing up the collective agreement.

### **Publishing the Collective Agreement**

Publishing the collective agreement, along with a summary of its main points, is one way of ensuring that both the employees and employers are well-informed on their rights and duties respectively (OECD, 2017; ILO, 2001), thus ensuring that the terms are being adhered to. In fact, a number of European trade unions publish all collective agreements on their members' website page for ease of access.

Trade unions should also ensure that all policies, rights, and benefits are regularly communicated to all employees, and that statistics on recruitment, promotions, dismissals, salary levels and training programmes are collected on a regular basis. Furthermore, trade unions should exercise continuous monitoring of the collective agreement to gain insight for future collective agreements (Olney et al., 2002).

## **5.11 Bargaining Models in European Countries**

The ILO (2011) argues that there is a strong relationship between centralized<sup>10</sup> or coordinated<sup>11</sup> bargaining and lower wage differences. Thus, this suggests that a collective bargaining structure has an impact on achieving equal pay at the workplace. Different countries have adopted different strategies to address equal pay.

<sup>10</sup> Wages are negotiated on a national level through negotiations between same sector employers and one or more employees' union

<sup>11</sup> Unions coordinate their bargaining efforts with other International Unions

### **5.11.1 The Situation in Norway**

In 2006, a Commission was appointed by the Norwegian Cabinet, to provide an overview on the pay differences between genders, and to consider measures for reducing pay inequalities (Norwegian report, 2008).

Two thirds of all employees in Norway are covered by a collective agreement (Neergard, 2014). In Norway collective bargaining has a clear hierarchal structure. At the top of the hierarchy there are the basic agreements between union confederations and national employers' association, which set the framework for bargaining and issues regulation. This is then followed by agreements for specific industries (ETUI<sup>12</sup>, 2016).

In Norway gender discrimination is not socially acceptable and it is prohibited to enter into collective agreements that contravene the Gender Equality Act (Norwegian Report, 2008). Furthermore, unions play a major role in ensuring that gender equality issues are on the bargaining agenda. Having the right to access information on transparent pay data by gender, is one way of tackling the issue of unequal pay, and such right to information is ensured through the collective agreement. Furthermore, the law mandates companies to keep statistics on the earnings of each employee, and every employer is obliged to submit the statistics to the national statistics bureau. To date statistics on some 300 different occupations have been published, and trade unions have access to such statistics which they utilise when bargaining for equal pay.

Norway's State General Collective Agreement includes a chapter on local agreements, which states that, "where documented salary differences cannot be explained other than by sex, the employer shall, in consultation with the unions, fix wage differences according to the Equality Act" (Pillinger & Wintour, 2019, p. 53).

<sup>12</sup> European Trade Union Institute

In Norway's collective bargaining system, mediation also plays a very important role. Whenever an agreement is not reached, the argument is referred to a mediator who has the power to delay industrial actions for up to 14 days. In Norway, the equality bodies are actively involved in working groups related to equal pay, while the Norwegian Government also has the power to intervene in disputes (ETUI, 2016).

### 5.11.2 The Situation in Belgium

In Belgium, equal pay has been on the agenda of trade unions since the 19<sup>th</sup> century and trade unions' female members have always advocated to put equal pay on the Government's agenda. To increase the representation of women in trade unions, in 2002 it was mandated by law that, at least, one-third of all advisory committee members in trade unions must be female. The introduction of such gender quota was a very important step for women to be more involved in the decision-making process at trade unions. There has also been significant effort to encourage women to become trade union members, and in 2020, 46% of trade union members are female.

In 2012, a screening of all job classifications was mandated by law, and every 20 years the job classification system must be re-evaluated. Furthermore, companies have been conducting pay audits since the late 1990s, and in 2012 these were also mandated by law. Companies are obliged to keep gender disaggregated data on salary levels, rank, position, education level and job tenure.

### 5.11.3 The Situation in Finland

Collective bargaining in Finland is very high, and it covers 89% of all employees. In Finland, legislation and collective agreements are the main factors on which working conditions are determined, and a tripartite system is in place. Such tripartite system first dictates that social partners negotiate the national framework on salary and employment conditions through dialogue with government, and then sectoral level bargaining based on national central level agreement takes place. As a

third and final step some issues may then be transferred for local negotiation in company-level collective agreements (Fulton & Sechi, 2019).

A Government equal pay programme was established in 2006, and this led to the introduction of comprehensive income policy agreements, that resulted in an equality allowance to execute equal pay (EU Commission, 2011). As of 2017, the Finnish government also introduced a gender equality prize which rewards the organisation that presents the best annual gender equality plan (EU Commission, 2011; Prime Minister's office Finland, 2018).

### 5.11.4 The Situation in Sweden

Sweden is one of the EU countries which has strong requirements for monitoring and resolving gender pay reporting and audits, while unions are actively involved in the analysis of gender pay issues and the structuring of action plans (Rubery & Johnson, 2019). In fact, the Swedish National Mediation office produces an annual detailed report on wage differences between women and men, and such report is considered as being very important for negotiations between Swedish LO<sup>13</sup> and the Confederation of Swedish Enterprises (Pillinger & Wintour, 2019).

The 2008 Discrimination Act (2008:567) obliges Swedish employers to carry out a pay survey every three years to detect, resolve and prevent unjustified differences in pay based on gender. On the basis of such pay survey, employers who employ more than 25 employees, are obliged to draw up an action plan indicating the pay adjustments and other measurements that are required to bring about equal pay for equal work and for work of equal value (Government Offices of Sweden, 2015). This Discrimination Act requires both employers and employees to attempt to equalise and prevent differences in pay, as well as other employment conditions

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13 The Swedish Trade Union Confederation

between women and men performing the same work or work of equal value (EU Commission, 2011).

### 5.12 Court Cases on Equal Pay

The EU Council Directive of 1975 (75/117/EEC) states that an employee can initiate a juridical case if such employee has a complaint on equal pay. Article 2 of this Directive states that...

*“Member States shall introduce into their national legal systems such measures as are necessary to enable all employees who consider themselves wronged by failure to apply the principle of equal pay to pursue their claims by judicial process after possible recourse to other competent authorities” (The Council of the European Communities, 1975)*

However, trade union representatives observed that despite such directive, the cases of unequal pay that are taken to court are very few and identified the difficulty to prove the existence of unequal pay as one main cause of this. Furthermore, they observed that there are certain risks for the complainant such as that of losing their job and gaining a bad reputation, and hence this discourages women from taking their equal pay case to court. In fact, European trade union representatives were unable to recall any particular court/industrial tribunal cases related to equal pay, and also observed that when there are such cases these are never reported in the media.

### 5.13 Malta’s Situation

*“In Malta, the illegality of pay discrimination was enshrined in the 1964 Constitution. It is included further in both employment and equality legislations.” (Dalli, 2020)*

#### 5.13.1 Equal Pay

In 1989 the office of the Prime Minister declared its policy towards the promotion of gender equality and the elimination of gender discrimination (Borg, 2007). In its accession process to the EU, in 2002 Malta introduced the Employment & Industrial Relations Act

which states that, “employees in the same class of employment are entitled to the same rate of remuneration for work of equal value” (Employment and Industrial Relations Act of 2002, p. 15).

In 2003, the National Commission for the Promotion of Equality (NCPE) was established by Chapter 456 of the Laws of Malta, Equality for Men and Women Act. This Act prohibits direct and indirect discrimination in the terms and conditions of employment. The NCPE, besides investigating alleged cases of discrimination, offers training to companies’ management and staff members to promote gender equality at the workplace.

In 2015, NCPE organised the first ever public event in Malta to discuss the effects and consequences of the gender pay gap, during which employers and NGOs shared their experiences on how they promote and safeguard the principle of equal pay for work of equal value (NCPE, 2015). Furthermore, NCPE also awards the Equality Mark certification to companies which make gender equality one of their values (NCPE, 2020). By 2020, almost 100 companies had received the award of the Equality Mark for fostering gender equality in their work policies and practices, many of which have maintained their commitment to gender equality and have therefore been re-certified.

#### 5.13.2 The Role of DIER<sup>14</sup>

Ever since its establishment, the Department of Industrial and Employment Relations (DIER) has assumed an important dimension in labour relations. This department deals with various aspects of the Industrial and Employment relations field, with its main activities relating to:

- conditions of employment
- industrial relations
- international relations.

The DIER strives “to protect the interests of workers holding employment contracts

<sup>14</sup> Department of Industrial and Employment Relations

while, in a spirit of social partnership, actively promoting a healthy relationship, and to contribute towards stable industrial relations” (DIER, 2018).

The DIER also plays a key role in dispute resolution related to relations between the employer and trade unions (e.g. issues relating to the Collective Agreement), while also being involved in disputes relating to trade union recognition. This department has a successful track record in its dispute resolution exercises, which avoids having disruptive forms of industrial action which contribute to an increasingly stable industrial climate (DIER, 2018).

### 5.13.3 Cases of Unequal Pay in Malta

In 1976 the Industrial Tribunal was established through the enactment of the Industrial Relations Act of 1976 (IRA). Among other roles, this tribunal offered the possibility of reinstatement for workers who were unfairly dismissed (DIER, 2018). Cases which involve discriminatory treatment or a breach of the principle of equal pay for work of equal value are heard in front of this Industrial Tribunal, and the employee, as a private individual, has the right to institute action before this Tribunal (DIER, 2020).

In 2015, the NCPE concluded an investigation on alleged gender discrimination and differential treatment on the grounds of sex in pay/wage and other work-related benefits.



In this case, a female employee alleged that she was receiving a lower wage than the male employees, who were in a similar or same rank and responsibilities. She stated that she was the only female manager and her colleagues, who are managers and who are in the same scale and have the same responsibilities, have a private office and a higher wage, even though she had seniority and more experience. She held that the above amounted to discrimination since the principle of equal pay for equal work was not being observed. Together with her complaint form, the complainant attached a number of references from clients, evidence supporting her statement that she had seniority and more experience, evidence of her work history, payslips and salary breakdown over the years, a number of performance appraisal forms and her curriculum vitae. The employer argued that the complainant’s job position and role were not comparable with those of the other two managers, who happen to be males, and thus there was no discrimination. The employer further stated that the company had treated the complainant fairly and favourably when it acceded to her request for flexi-time, even though the company was under no legal obligation to do so. After perusing all evidence collected, NCPE’s Commissioner noted that while all managers’ wages differed in amount, the gap between the male managers’ wages was smaller than the one between the average male manager’s wage and the complainant’s wage. Moreover, NCPE’s Commissioner deemed that the company’s arguments, that there is no set salary scale for managers, should not act as a detriment towards the company’s employees and that the company should strive for more transparency in the manner in which wages are set (NCPE, 2015, p.38). This investigation also led to a substantial increase in the salary of the complainant (Malta Independent, 2019).

### 5.13.4 Trade Unions and Collective Bargaining in Malta

The earliest Maltese trade unions date back to the late 19<sup>th</sup> century, while the first collective bargaining in Malta took place in the first quarter of the 20<sup>th</sup> century (DIER, 2018).

In Malta, to date (2020) there are 43 registered Trade Unions/Employers' Associations. At present the top posts of most unions in Malta are largely filled by men (Borg, 2016), with only 9% of Trade Union/Employers' Associations' Presidents being female (DIER, 2020). Trade Union membership is also male dominated, with 59% of all trade union members being male (Registrar of Trade Unions, 2019). Most collective bargaining in Malta is done on a one-to-one basis at company level and collective agreements tend to mostly focus on the bread and butter issues such as remuneration, working time, bonuses, and disciplinary procedures (Borg, 2016).

In January 2005, a seminar was organised by 'Jobsplus' (formerly known as the Employment and Training Corporation) with the aim of providing information and guidelines to trade unions on the promotion of gender equality at the work place, through gender sensitivity and collective bargaining (The Malta Independent, 2005).

Furthermore, a research study that was commissioned by the President's Office in 2018, found that there was less inequality at workplaces where employees form part of a union (Malta Today, 2019). In 2019, the Minister for Justice, Equality and Governance announced that the Government was exploring the possibility of making trade union membership mandatory for all employees (Malta Today, 2019). Later in February 2020, the Prime Minister also showed his support to the GWU<sup>15</sup>'s proposal for trade union membership to be mandatory, during a meeting with the GWU General Secretary (TVM, 2020).

## 6. Conclusion

As outlined in this research study, the lack of pay transparency and conducting inclusive job evaluations are two main challenges for attaining equal pay. Along with the Government and equality bodies, trade unions play a role in addressing equal pay through collective bargaining, by engaging in various activities such as organising their members on equal pay, developing pay equity strategies, raising awareness on equal pay, conducting pay audits and conducting inclusive job evaluations.

This research study included the development of a number of tools including a training programme/session, that was subsequently organised by NCPE, along with an information booklet for local trade union representatives, with the aim of raising more awareness on 'equal pay' within trade unions, while also equipping them with the necessary knowledge and tools to be in a better position to bargain for equal pay during collective agreement negotiations.



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Rights, Equality and Citizenship Programme 2014-2020  
Project part-financed by the European Union  
Co-financing rate: 80% EU funds; 20% National Funds

