



# The EU Mutual Learning Programme in Gender Equality

## Tackling the gender pay gap

Belgium, 20-21 October 2016

Comments Paper - Czech Republic



*The information contained in this publication does not necessarily reflect the position or opinion of the European Commission.*

*This publication is supported by the European Union Rights, Equality and Citizenship Programme (2014-2020).*

*This programme is implemented by the European Commission and shall contribute to the further development of an area where equality and the rights of persons, as enshrined in the Treaty, the Charter and international human rights conventions, are promoted and protected.*

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# Tackling the gender pay gap in the Czech Republic

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## 1. Country context

### 1.1. General antidiscrimination background

The concept of equality as such is currently defined in the Art. 1 and 3 of the Czech Charter of Fundamental Rights and Basic Freedoms (Act No. 2/1993 Coll.), which is part of the Czech Constitution.

The main concepts of discrimination were defined in the Anti-Discrimination Act (Act No. 198/2009 Coll.), which was adopted very late, following great hesitation by the political representatives of that time. Discrimination is also outlawed under other pieces of legislation, especially the Labour Code (Act No. 262/2006 Coll.), the Employment Act (Act No. 435/2004 Coll.) and also through some special acts, such as the Acts on Professional Soldiers (Act No. 221/1999 Coll.), on the Service Relationship of Members of the Security Corps (Act No. 361/2003 Coll.), on the Service Relationship of Members of the Police of the Czech Republic (Act No. 186/1992 Coll.) and on Civil Service (Act No. 234/2014 Coll.).

The Czech Ombudsman (Public Defender of Rights) was made the equality body when the Anti-Discrimination Act entered into force, and this office works very well in this regard. The office publishes a large number of reports and issues its official opinions.<sup>1</sup> In December 2014, the Czech government supported a proposal from the Minister for Human Rights to extend the competences of the Ombudsman's office in the field of equal rights and enable it to present proposals to the Constitutional Court regarding those pieces of law which are contrary to the principle of equal treatment and also to present public claims before Czech courts. The proposal is still pending in the parliament process.<sup>2</sup>

The Anti-Discrimination Act makes it possible for legal entities which have been established in order to protect victims of discrimination to provide information and assistance in the drafting of claims for protection against discrimination. Such entities are also competent to propose checks on or the monitoring of a public authority overseeing equal treatment legislation. These private legal entities do not have a direct right of access to the courts, however. As regards social partners, these hardly play any real role in promoting gender equality in the Czech Republic. Not even collective agreements are used very often as a means to implement EU gender equality law.

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<sup>1</sup> See <http://www.ochrance.cz/en/discrimination/>

<sup>2</sup> See <http://www.psp.cz/sqw/historie.sqw?T=379&O=7>

## 1.2. Equal pay under the Czech legislation

Sec. 16 of the Labour Code states that “employers shall ensure equal treatment for all employees as regards employee working conditions, remuneration for work and other emoluments in cash and in kind (of monetary value), vocational (professional) training and opportunities for career advancement (promotion).” Sec. 110 of the Labour Code further envisages that all employees shall be remunerated equally if they perform equal work or work of equal value. The same work or work of equal value is taken to mean work of the same or comparable complexity, responsibility and strenuousness, which is performed under the same or comparable working conditions and which is of equal or comparable work efficiency and produces equal or comparable work results. The Labour Code covers almost all basic principles and elements of remuneration, including the principle of equal pay. However, the principle of equal pay for men and women is not explicitly mentioned.

The Anti-Discrimination Act does not further specify the equal pay principle, so that for purposes of equal pay, the Labour Code is the more relevant Act in Czech legislation. Sec. 5 par. 1 of the Anti-Discrimination Act defines pay using the term remuneration, which ‘shall mean any performance, whether monetary or non-monetary, recurring or one-off, which is directly or indirectly provided to a person in paid employment.’ In the Labour Code pay is defined as a wage, salary or remuneration, which is a monetary consideration and an in-kind consideration provided to an employee for work done.

The labour inspectorate can be informed by the victim of pay discrimination about the wrong behavior of the employer. According to the Act No. 251/2005 Coll., on Labour Inspection, the labour inspectorate imposes a fine on an employer, who breaches the principle of equal treatment in labour relationships.

In the Czech legislation, there is no legislative or other measure encouraging employers to report internally or to state authorities on (equal) pay. In fact, the cases of pay discrimination are almost always discovered by labour inspectorates when they make a routine check. The absence of any measures leading to pay transparency is an important drawback of the Czech legislation, which as a consequence hinders closing the pay gap.

## 1.3. Gender pay gap in the Czech Republic

Even though the legislation provides accurate rules for equality in remuneration and is in line with the EU law, in practice, still a long way has to be gone.

The gender pay gap in the Czech Republic remains one of the highest in Europe. While the EU average is approx. 16 %, in the Czech Republic it is 22 %.<sup>3</sup> The highest differences are among employees with a university degree and employees having a secondary school education without completing a “maturity” exam.<sup>4</sup>

The problem of equal pay is rather complex in the Czech Republic. Even though there are apparent differences in earnings, there is almost no relevant case law. Employees are in general quite timid and hesitant to sue their employers; moreover it is rather difficult to obtain proof of pay discrimination, as employees normally

<sup>3</sup> [http://ec.europa.eu/justice/gender-equality/gender-pay-gap/situation-europe/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/gender-pay-gap/situation-europe/index_en.htm)

<sup>4</sup> [http://www.czso.cz/csu/2014edicniplan.nsf/t/AA003F8D11/\\$File/30000414k05.pdf](http://www.czso.cz/csu/2014edicniplan.nsf/t/AA003F8D11/$File/30000414k05.pdf)

refrain from informing their colleagues about the amount of their salary, as it is a social habit not to speak about one's own earnings (sometimes not even within the family or among close friends).<sup>5</sup>

The Czech Republic is not an exception among EU Member States. As the authors of the recent report on pay discrimination observe, the lack of transparency and accessibility of data and statistics, especially in pay issues, is a common phenomenon in all European countries. Low transparency goes also hand in hand with a low level of litigation in gender discrimination cases, including pay discrimination.<sup>6</sup>

## 2. Policy debate

In the Czech Republic, every year, when the statistical data are published, a debate on gender pay gap is raised, but it usually does not have any concrete legislative consequences. Currently, the gender pay gap in the Czech Republic is 22 %, which is far above the EU average. A part of the gap might be for sure ascribed to pay discrimination, which takes place even though there are clear legislative rules prohibiting this type of discrimination – see the previous chapter.

The Ministry of Labour and Social Affairs launched in March 2016 a big project called “22 % TO EQUALITY”, which aims at changing the attitudes of general public, especially of employers and also of employees and at raising awareness on antidiscrimination legislation and on promoting equality at labour market. In order to assure better awareness and also a possibility to identify gender pay discrimination, the Ministry will launch a website with all relevant data and also web calculator, which may be able to identify possible pay discrimination. A manual for employers will be open to public and also an instrument for employers will be open to public in order to identify possible unequal treatment in pay policy and calculate the real pay gap, followed by assistance to employers in order to help them to tackle the pay gap effectively and ensure equal remuneration to all employees.<sup>7</sup>

This project may further help to raise awareness and support any debate on gender pay gap and possible way in closing it in the Czech Republic.

## 3. Transferability aspects

For the above mentioned reasons, the Belgian discussion paper on the Gender Pay Gap Law adopted in 2012 is of high interest for the Czech Republic, which has almost the same gender pay gap (Belgium reports 21 % or 22 %) and is also a small country, with however totally different legal and social history. The Gender Pay Gap law can still be of inspiration for the Czech Republic, especially in following aspects:

- The general idea of the Law to enforce the use of gender-neutral job evaluation methods and to promote the gender issues during wage negotiations between

<sup>5</sup> Havelková, B. (2007), *Rovnost v odměňování žen a mužů*, Auditorium, Prague.

<sup>6</sup> Timmer, A., Senden L. (2015) *A comparative analysis of gender equality law in Europe 2015*, available at <http://www.equalitylaw.eu/downloads/3823-a-comparative-analysis-of-gender-equality-law-in-europe-2015-pdf-1-03-mb>, p. 83

<sup>7</sup> See <http://www.mpsv.cz/cs/25032>, accessed 29. September 2016

social partners might be useful. Indeed, the Czech practice needs to implement some efficient instruments which would help social partners to play a more active role in guaranteeing equal treatment for men and women. The aim of closing the pay gap seems to be a very important issue, which could help thinking about more active role of social partners.

- The obligation of social partners to negotiate on and to lay down in writing measures they will take to narrow gender pay disparities, is very interesting for the Czech practice, at the same time, there could be a danger, that this obligation was fulfilled only in a formal way. Similar obligation should be introduced with great precaution and after having well thought about it so that it would be politically accepted and well working in practice.
- According to the Gender Pay Gap Law, each employer with more than 50 employees needs to produce a biannual report on the pay structure of the company. This report does not include any personalised data and has to be submitted internally to members of the works council or to representatives of the trade unions, if the works council is not present in the company. In the Czech Republic, similar obligation is completely lacking and if a similar measure was adopted, it could help to raise awareness about gender equality in pay and also enhance the pay transparency, which is a great problem in the Czech Republic. Also this aspect should be well discussed and well thought, as any similar attempt is highly probable to cause hostile reaction especially from employers, but probably also from some employees.
- What seems to me non-transferable into the Czech reality is the fact that the law settles a punishment of six months to three years in jail to any person who denies the mediator (an employee designated by the employer at the suggestion of works council, who shall contribute to the development of an action plan to narrow gender pay disparities and a progress report as a result of consultation at the company level) access to social data needed to carry out its assignment.

## 4. Recommendations

At national and European level there are several big challenges that should be faced, which are connected with enforcement of equality law, including equal pay:

- Transparency and accessibility of data;
- Gender pay audits;
- Low litigation and inconsistent interpretation by the courts;
- Lack of specific knowledge and expertise at various stakeholders, including potential victims of gender discrimination.

All these shall be faced especially at the national level, the EU might help a lot in raising awareness, helping with projects which would conceptualise pay discrimination audits and also with providing and financing training for experts, especially for judges and social partners.