



# The EU Mutual Learning Programme in Gender Equality


## Equal Pay

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### Discussion Paper - Iceland



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# Equal pay certification – How Iceland became the first country to require proof of equal pay

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## 1. Historical, legal, economic, social and political background

What does it take to create a fair workplace – where women and men get the same pay and enjoy equal terms for the same jobs or jobs of equal value? Failure to tackle discrimination and to provide equal opportunities hurts individuals and families, negatively impacts our society, and costs the economy.

The World Economic Forum has for the last ten years as part of its annual Global Gender Report ranked Iceland as being the country with the most gender equality in the world<sup>1</sup> – though crucially a gap still exists.<sup>2</sup> While the global pay gap has narrowed in the last decade, it has done so at a glacial pace and should that continue, it will take another 100 years for the world's women to be on an even footing with men.<sup>3</sup>

The focus of this paper is on the obligatory Equal Pay Certification – a remarkable step taken in Iceland to eliminate long-standing discriminatory practices of wage inequality based on gender. With amendments to the Gender Equality Act, that became effective on 1 January 2018 companies with 25 or more employees are now obliged to obtain equal pay certification which must meet the so-called Equal Pay Standard and prove that their wage decisions are relevant considerations and not on gender.<sup>4</sup>

This new tool is certainly a gender equality game changer and hence worthwhile to explore briefly its historical, social and legal background prior to focusing on its strengths and weaknesses.

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<sup>1</sup> Global Gender Gap Report 2018, see here: <https://www.weforum.org/reports/the-global-gender-gap-report-2018>. Iceland completed a full decade in the Global Gender Gap Index's top spot in 2018.

<sup>2</sup> [http://reports.weforum.org/global-gender-gap-report-2015/rankings/?doing\\_wp\\_cron=1555953679.2470889091491699218750](http://reports.weforum.org/global-gender-gap-report-2015/rankings/?doing_wp_cron=1555953679.2470889091491699218750)

<sup>3</sup> <https://www.telegraph.co.uk/travel/maps-and-graphics/mapped-the-best-and-worst-countries-for-gender-equality/>

<sup>4</sup> <https://www.government.is/topics/human-rights-and-equality/equal-pay-certification/>

## 1.1 A 1000-year history of strong women and people relying on law to solve problems

The legendary Icelandic Sagas from the 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> century - known the world over for their poetic beauty as well as literary merit, depict numerous examples of strong minded women who have become role models throughout the centuries – praised for their intellect apart from good looks. A woman called “Aud the deep-minded” was one of the four main settlers of Iceland. Women were also explorers, poets - managing finances of the household and could become wealthy landowners in widowhood although the medieval law book Grágás stipulated that women could not cut their hair short, wear men’s clothes or carry weapons. The sentence for raping a woman was severe: full outlawry, a man’s property was confiscated, he was banished from society, enjoyed no protection of the law and could rightfully be killed by anyone with impunity. Icelanders were great amateur lawyers during the medieval period (930-1262), the law codes were complex and they placed significant value in the practice of law.<sup>5</sup> Icelandic women gained equal inheritance rights in 1850.<sup>6</sup> Being a seafaring nation women have throughout the centuries taken on traditional male roles for the family. In October 1975, Icelandic women went on strike for the day to demonstrate the indispensable work of women for Iceland’s economy and society.<sup>7</sup> In 1980 Iceland became the first country to elect a woman the head of state in democratic elections. In 1983 the newly founded Women’s List ran for elections and won 3 seats in the Althing – the Icelandic parliament and the share of women MPs rose from 5% to 15%. In the 1987 elections the Women’s list got 10.1% of the vote.<sup>8</sup>

Given this heritage of strong-minded independent women and the emphasis on solving disputes with law rather than vengeance or force, it is not surprising that Icelanders have tried to find a way to correct the situation of gender-based pay discrimination, which impedes the economic independence of women. The pay gap adversely affects certain groups in particular such as single mothers (13%).<sup>9</sup> As of January 2018, Iceland has become the world’s first state to make it mandatory for companies and institutions with more than 25 employees to prove that they are paying women and men equal wages and offering them equal terms of employment for the same jobs or jobs of equal value.

<sup>5</sup> Richard A. Posner, *Overcoming Law*, Harvard University Press, 1995, ch. 14.

<sup>6</sup> <https://www.visindavefur.is/svar.php?id=66912>

<sup>7</sup> Björg Einarsdóttir, *tímaritið Húsfreyjan*, 1. tbl. 37. árg. 1986, s. 9-18.

<sup>8</sup> <https://kvennasogusafn.is/index.php?page=kveikja-ad-kvennafrii>

<sup>9</sup> [https://www.althingi.is/pdf/wip/Stepping\\_stones.pdf](https://www.althingi.is/pdf/wip/Stepping_stones.pdf)

<sup>9</sup> <http://hagstofan.s3.amazonaws.com/media/public/2019/bee89182-0ebe-4072-a164-cd7e13cee176.pdf>

## 1.2 The legal framework of human rights and equality

Iceland is party to most major UN human rights conventions including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention to Eliminate All Forms of Discrimination against Women (CEDAW). Iceland is a member of the Council of Europe and has ratified the European Convention on Human Rights (ECHR) and most of its protocols, as well as other Council of Europe human rights conventions.<sup>10</sup> The ECHR has been incorporated, as a whole, into Icelandic law.

In the context of equal pay Iceland ratified the 1951 ILO Convention on Equal Remuneration in 1958 and 1958 ILO Convention on Discrimination in Employment and Occupation (No. 111) in 1963.<sup>11</sup>

Iceland's relation to the EU is mainly based on the EEA Agreement, which came into effect in 1994. In essence, the EEA Agreement unites the EU Member States and the three EFTA EEA States (Iceland, Liechtenstein and Norway) into one single market governed by the same basic rules.<sup>12</sup>

The Constitution,<sup>13</sup> the highest-ranking legal instrument in the Icelandic legal order, has a non-discrimination provision in its Article 65, which further stipulates that men and women shall enjoy equal rights in all respects. It paves the way for special measures – like the equal pay certification – to ensure that everyone is equal before the law and entitled without any discrimination to equal protection of the law.

The Gender Equality Act No. 10/2008 (the GEA) protects wage equality for women and men working for the same employer doing the same job or jobs of equal value.<sup>14</sup> The first gender equality act was adopted in 1976 and before that, a law was adopted in 1961 on equal pay for men and women – on the basis of wage equality being a fundamental human right.<sup>15</sup> The 2008 GEA

<sup>10</sup> By ratifying the ECHR, Iceland has undertaken to comply with the judgments issued by the European Court of Human Rights in cases brought against Iceland. Judgments against Iceland have prompted the payment of compensation to applicants, and in some instances amendments to Icelandic legislation.

<sup>11</sup> [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C100](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100)

<sup>12</sup> <https://www.government.is/topics/foreign-affairs/iceland-in-europe/Health> and safety at work, equal treatment of men and women and labour law is in Annex XVIII to the EEA treaty. See also: [https://eeas.europa.eu/delegations/iceland\\_en/15864/Iceland%20and%20the%20EU](https://eeas.europa.eu/delegations/iceland_en/15864/Iceland%20and%20the%20EU)

<sup>13</sup> Constitution of the Republic of Iceland (No. 33, 17 June 1944, as amended 30 May 1984, 31 May 1991, 28 June 1995 and 24 June 1999)

<sup>14</sup> The first gender equality act was adopted in 1976

<sup>15</sup> Law No. 60/1961. <https://www.althingi.is/lagas/149a/1961060.html>

incorporates the provisions set forth in the EU Recast directive (2006/54/EC)<sup>16</sup> on equal opportunities and equal treatment of women and men in employment and occupation.

The aim of the Gender Equality Act is to establish and maintain equal status and equal opportunities for women and men – and hence to promote gender equality in all spheres of society – by working against wage discrimination and other forms of gender-based discrimination on the labour market. It imposes the obligation on all employers to take steps to avoid jobs being classified as specially women’s or men’s jobs (Art. 18) and stipulates wage equality where women and men working for the same employer shall be paid equal wages and enjoy equal terms for the same jobs or jobs of equal value (Art. 19). ‘Equal wages’ mean that wages shall be determined in the same way for women and men – involving no gender discrimination.

### **1.3 It is 2019 and it still does not pay off to be a woman**

Despite the considerable progress that has been made towards achieving gender equality on the job market it still does not pay off to be a woman - neither in Iceland nor anywhere else.<sup>17</sup> The gender pay gap prevails although a plethora of other factors that contribute to gender pay gaps beyond pure discrimination. For example, women engage in more part-time work as well as less well-paid professions and sectors. The unexplained difference can to a large extent be traced to the gender divide on the labour market.

Iceland is a small economy. The number of 16-74 year olds in the labour force in the fourth quarter of 2018 was 203.700 corresponding to an activity rate of 80.5%. In 2018, the labour force participation rate was 78% for women, the highest in OECD countries, and 85% for men. The unadjusted gender pay gap was 15% in 2017 for all employees, full and part time, but 14% for full-time employees.<sup>18</sup>

Recent statistics reveal that women and men with the same level of education have different annual incomes. Average annual income from work in 2017 for women with university education (1 out of 2 women as opposed to 1 out of 3 men) was 72% of men’s income on the same education level.<sup>19</sup> Average

<sup>16</sup> Recast Directive which brings together older directives.

<sup>17</sup> A few weeks ago – on the equal pay day in Germany, Berlin’s public transport offered all women a 21 per cent discount on public transport fares in a bid to highlight the country’s staggering gender pay gap (of 21%). <https://www.citylab.com/equity/2019/03/berlin-transit-fare-frauenticket-women-equal-pay-day/585064/>

<sup>18</sup> <https://www.statice.is/publications/news-archive/social-affairs/women-and-men-in-iceland-2019/>

<sup>19</sup> Tertiary education; university, colleges, trade schools. Women get 6.7 million ISK compared with 9.3 million ISK.

income from work for women with upper secondary education was 65% of men's income<sup>20</sup> and women with only basic education had 69% of men's income.<sup>21</sup>

Statistics also show that women are 38% of elected members of the Althing (the Icelandic Parliament) and their share in many other positions of influence is lower. There is, for instance, only one woman on the Supreme Court out of the eight judges. The proportion of women as managers of enterprises was 22% in 2017. At the same time their share was 24% of chairpersons on boards of directors of active enterprises and 26% of members of boards of directors.<sup>22</sup>

The gender pay gap is still firmly entrenched, as is women's unequal share of influential positions in society.

## 1.4 Looking back – setting the evolution in context

Fighting prejudice in a male dominated world has been an uphill struggle. The culture of gender stereotyping, strong misogyny, the glorification of youth and materialism has helped the male norm to prevail in Iceland as elsewhere. During the first decade of the 21<sup>st</sup> century, there was growing recognition of the patriarchal culture norms standing as the key barrier to women's empowerment. In 2003, the Feminist Association of Iceland was founded and just the name *per se* made a huge statement.<sup>23</sup>

### 1.4.1 Networking Women's Empowerment Conferences – and the Corporate Gender Equality Index

The origin of the equal pay certification system may be traced to exceptionally popular Networking Women's Empowerment conferences at the Faculty of Law of Bifrost University during the first decade of the 21<sup>st</sup> century<sup>24</sup> – they became popular forums to discuss gender equality matters and attracted a huge participation of women from all sectors of society, among them political

<sup>20</sup> Women get 4.1 million ISK compared with men's income of 6.4 million ISK. Around 27% of women and 41% of men had upper and post-secondary education and 20% of women.

<sup>21</sup> Women get 3.2 million ISK compared with men's income of 4.7 million ISK. 20% of women and 24% of men had compulsory education only.

<sup>22</sup> <https://www.staice.is/publications/news-archive/social-affairs/women-and-men-in-iceland-2019/>

<sup>23</sup> It was this author's idea in the beginning of 2003 to found what should bluntly be named: The Feminist Association of Iceland. It was formally founded on 14 March 2003 under the auspices of the University of Iceland. At the founding meeting being among the three key speakers with former President Ms Vigdís Finnbogadóttir attending – it was liberating feeling for most of us to declare: I am a feminist!

<sup>24</sup> Tengslanet: Völd til kvenna 2004-2010. The idea and initiative of the Networking Women Empowerment conferences and their organization was that of Professor Herdís Thorgeirsdóttir (who was later nominated for the gender equality price for this effort). <http://herdis.is/?p=2733>

<sup>24</sup> Act No. 13/2010.

leaders<sup>25</sup>, academics, lawyers, writers, journalists, artists, nurses and medical doctors. Preceding this initiative there had been growing enthusiasm among professional women to join hands in pushing for more effective equality. The conferences' resolutions called for special gender equality measures, increased pay transparency and female quotas in boardrooms. The idea of the equal pay certification has its roots in the introduction of a Corporate Gender Equality Index at the first Networking conference in 2004.<sup>26</sup> It was highlighted that the formal ban on pay discrimination was not enough – special measures were needed to create pressure on companies at the same time as giving them a tool – such as the index – to verify that they were performing in accordance with the objectives of gender equality laws.<sup>27</sup>

The Networking Women's Empowerment Conferences became a force of influence in the political arena paving the way for the feminist vision to be embraced across the political spectrum. Gender equality became totally mainstream; women politicians of all parties realised the added value of having feminist viewpoints on the agenda – and their male colleagues followed. Laws were amended; the new gender equality act in 2008 abolished pay secrecy within corporations; amendments were made to the laws on public and private limited companies on gender quotas on the boards and in management.<sup>28</sup> In 2007, the Corporate Gender Equality Index was developed to include the equal pay certification.

#### 1.4.2 The feminisation following the financial collapse in Iceland in 2008

The 2008 global financial crisis hit Iceland hard. Three major banks collapsed; people lost a great part of their savings and the Icelandic State was almost bankrupt. The general public was outraged and shocked discovering the corruption in business and politics lying behind this situation and protests took place outside the Parliament and public buildings. The World Economic Forum

<sup>25</sup> Ingibjörg Sólrún Gísladóttir, later director of ODHIR, became Foreign Minister in the government 2007 – a staunch feminist. The coalition agreement of the Social Democrats and the Independence Party included decisive measures in moving gender equality forward.

<sup>26</sup> This was the idea of Ingibjörg Thorsteinsdóttir, which she introduced in a presentation at the Networking Empowerment Congress held at Bifröst University in May 2004 conference, <https://www.mbl.is/greinasafn/grein/803100> [http://starfsmenn.bifrost.is/default.asp?sid\\_id=23844&tre\\_rod=001%7C010%7C&tld=1](http://starfsmenn.bifrost.is/default.asp?sid_id=23844&tre_rod=001%7C010%7C&tld=1) - [http://rvj.bifrost.is/default.asp?sid\\_id=25261&tre\\_rod=013%7C&tld=1](http://rvj.bifrost.is/default.asp?sid_id=25261&tre_rod=013%7C&tld=1) / <https://www.mbl.is/greinasafn/grein/1077001/>

<sup>27</sup> [https://skemman.is/bitstream/1946/10899/1/Elin\\_Blondal.pdf](https://skemman.is/bitstream/1946/10899/1/Elin_Blondal.pdf)

<sup>28</sup> Act No. 13/2010, which entered into force in 2013 pertaining to companies with 50 or more employees. The quota had an immediate impact. The share of women in the largest companies with 100-249 employees more than doubled from 17.5% in 2010 to 36.1% in 2015. The increase was more moderate in smaller companies with 50-99 employees. In recent years, the share of women on board of directors in companies with 50 or more employees has been around 33% while women's share in the 100 largest companies has reached the quota limit of 40% where 19% of the chairs are women. Still, only 10% of COEs and 22% of managers are women in the 100 largest companies. <https://www.fka.is/jafnvaegisvog-fka/maelabord/>



described the situation after a new government with the first woman Prime Minister came to power:<sup>29</sup>

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*It was an extraordinary phenomenon. It's as if an entire population rose up, unified, with a single objective: to flush the testosterone out of its system.*

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The government that took over after the crash was led by the first woman Prime Minister in the history of the Republic – in a move heralded by the UK Guardian: "After the Crash, Iceland's Women Lead the Rescue." The Prime Minister created a new arm of the finance department, devoted to "gender budgeting": analysing budgets from a gender perspective. A law banning striptease in Iceland and barring clubs from making profit from the nudity of employees took effect in 2010. Same sex marriage was made legal in June the same year and the Prime Minister was among the first to wed.

Almost nothing has been left untouched by the growing "feminisation" in the years since the financial crash.

## 2. A radical measure to end pay discrimination

It was a clever move of the new Regeneration Party (market-oriented and pro-EU), to use the gender card as a trump, when for the first time participating in elections in 2016.<sup>30</sup> It pledged to make the Equal Pay Certification mandatory if they became part of the new government and got 10% of the vote in the elections.

An equal pay standard had been in development since December 2008 after collective agreements between the main parties on the private labour market (contained a clause on the development of a certification scheme for gender pay equality and was followed by a provisional clause, on the same subject, in the Act on Gender Equality no. 10/2008). The Standard ÍST 85: 2012 - Equal Pay Management Systems – Requirements and guidance was published in 2012. This so-called Equal Pay Standard existed as a voluntary measure from 2012 mostly used by large companies as part of their marketing strategy promoted by the social partners.

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<sup>29</sup> <https://www.weforum.org/agenda/2018/02/how-icelands-reaction-to-the-2008-crash-made-it-the-best-place-in-the-world-to-be-a-woman>

<sup>30</sup> Political crisis and conflict in the wake of leaks of documents; the so-called Panama papers revealing that Icelandic people in powerful positions kept their wealth in tax havens – among them the PM who was forced to step down and the elections scheduled in 2017 were moved forward to 2016.

The right of center coalition formed in January 2017, headed by the Independence Party and its junior partners, Regeneration and Bright Future, holding a slim majority (32 seats out of 63) included the mandatory Equal Pay Certification in its agreement requiring that that companies and institutions with 25 or more employees would obtain an annual equal pay certification of their equal pay systems and the implementation thereof.

In April 2017, the new Minister of Welfare, Thorsteinn Víglundsson, introduced the bill of law amendments to the Gender Equality Act No. 10/2008 concerning the equal pay certification,<sup>31</sup> stating that it was time for something radical, and that this obligatory certification was a measure to enforce the current legislation prohibiting discriminatory practices based on gender - in order to meet the challenge of eradicating the gender pay gap by 2022.<sup>32</sup> The bill was passed as law by the Parliament on June 1<sup>st</sup> 2017 and came into force on January 1<sup>st</sup> 2018.<sup>33</sup>

This is how Iceland became the first country to require a proof of equal pay.

## 2.1 The obligatory equal pay certification

The new legislation obliges employers to obtain certification which must meet the requirements of the Equal Pay Standard ( ÍST 85:2012) designed to confirm that when decisions on wage are taken they are based only on relevant considerations – not on gender. The standard has several requirements but does not tell employers how to do the work. It is designed to fit all enterprises irrespective of their size or number of employees, business activity or role.

The obligatory equal pay certification applies to employers with 25 or more employees. There are roughly 1.180 employers with 25 or more employees; which covers on the whole 147 thousand employees,<sup>34</sup> the equivalent of 80% of the labour force in Iceland. The equal pay certification is voluntary for smaller companies. The grace period in which to acquire the certification depends on the size of the company. Stricter deadlines apply to publicly owned companies. The aim is to adopt an obligatory equal pay certification over a period of four years.

<sup>31</sup> Law No. 56/2017.

<sup>32</sup> <https://www.straitstimes.com/world/europe/law-in-iceland-to-ensure-equal-pay-for-men-women>

<sup>33</sup> A link to the GEA: <https://www.government.is/library/04-Legislation/Act%20on%20equal%20status%20and%20equal%20rights%20of%20women%20and%20men%20no%2010%202008%20as%20amended%20101%202018%20final.pdf>, accessed 8 November 2018. / Regulation 929 / 2014.

<sup>34</sup> Explanatory report with the draft law No.

## 2.2 How the Equal Pay Standard works

The standard specifies requirements of an equal wage system that enables an organization to ensure gender equality with reference to legal requirements while the standard itself does not lay down any criteria regarding performance in equal wage affairs.<sup>35</sup>

The prerequisites for using the standard are to have a comprehensive, documented wage policy – it must extend to all employees within the organisation; secondly; a gender equality programme and action plan in accordance with Art. 18 of the Gender Equality Act (enterprises with 25 or more employees) is required and wage analysis which shall be used in the formulation of an equal wage policy and in setting targets regarding gender wage equality. Consequently, the value of each job within the company is assessed and the pay determined on the basis of that.

The enterprise is obliged to document all decisions on wages which must be reasoned and traceable, so that the impartial, external party, the accredited auditor, can confirm it at the time of certification.

### 2.2.1 Classifying jobs of equal value?

One of the biggest challenges Icelandic enterprises face in the implementation of the Standard is classifying which jobs are of the same or equal value. Equal wage analysis requires that jobs are classified by evaluating them against each other and assigning them weight.

The Equal Pay Standard is intended to make pay, and any differences in pay for similar work, more transparent but it does not demand the same uniformed pay system for all companies and institutions. Instead, it requires each workplace to introduce the same 4-5 key criteria and sub-criteria under each. The Standard highlights four main criteria (IST 85: 2012, Annex B): expertise /competence, responsibility, strain and working conditions.

These are to be elaborated with specific content. Companies may have different (sub)criteria that make sense for each business – but the Standard obliges them to work out a more formalized system for their pay decisions; e.g. through carrying out wage analysis.

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<sup>35</sup> The Standard ÍST 85:2012 can be purchased at the Icelandic Standards (Staðlaráð Íslands) and costs around EUR 76.

These are then used as a uniformed measure to classify all jobs, so that the jobs within each workplace are comparable to each other on the basis of the uniformed classification and salary system.

### **2.2.2 Employer's discretion to pay some employees higher wages**

The Equal Pay Certification does not prevent a company from implementing a pay roll system that is 100 per cent performance based if the different wages are based on relevant considerations, the use of the criteria and sub-criteria and not irrelevant considerations including gender which would constitute discrimination. Employers have some discretion to take into consideration individual factors and particular personal skills but such considerations must be specified. Thus the implementation of the equal pay standards does not prevent a media company to pay whom it considers its *most talented* journalist higher wages than another journalist who has the same qualifications and credentials – as long as the employer documents how the difference is based on relevant considerations where gender is not an issue.

### **2.2.3 Accredited Auditors**

Accredited certification bodies (that have received accreditation from the Icelandic Patent's Office or a comparable authority in the EEA area) confirm that a company's or institution's equal pay system and its implementation thereof meet the requirements of ÍST 85: 2012 standard. This means, among other things, that wages paid by the company or institution in question are at all times determined in the same way for women and men and that the considerations about which decisions wages are based on do not involve discrimination on grounds of gender.

After the accredited auditor has conducted an audit, and if the company or institution fulfils the requirements, it will receive a certification when the Directorate for Gender Equality has received a copy of the certificate confirming that the equal pay system of the company or institution, and the way it is applied, meets the requirements of Equal Pay Standard. Subsequently, the Directorate for Gender Equality confers the equal pay symbol on the company or institution. The certification must be renewed every three years.

## 2.2.4 No personal information revealed

Even though the Standard ÍST 85 requires that the equal pay policy of each company or institution must be available, and that it must contain sufficient information so as to make it possible to assess how well it works, this does not mean that individual employees' wages will be revealed or that all figures on wages paid should be available. The Standard ÍST 85 states that the normal procedure should be that information on employees' wages are presented in the form of statistics in such a way that they cannot be traced to the individuals involved.

Nevertheless, employees shall at all times be permitted to state the wages and terms on which they are employed if they choose to do so, as provided for in Art. 19 (3) of the Gender Equality Act. This means that employers are not able to demand that their employees enter into wage agreements that include a provision to not reveal their contents. Such provisions are unlawful, and therefore have no validity.

## 2.3 Criticism of the equal pay certification

### 2.3.1 No consultation with Standard Iceland in preparing the law

During the legislative process of implementing the Equal Pay Standard, the Icelandic Standards (*Staðlaráð Íslands*) was critical in its opinion on the draft law.<sup>36</sup> In its view it would have been more sensible to use the Equal Pay Standard as a voluntary tool instead of making it legally mandatory.<sup>37</sup>

The Icelandic Standards contested the assertion in the explanatory report of the draft law No. 56/2017 where it says that the Ministry of Welfare consulted with the social partners as it did not mention Icelandic Standards, the publisher and copyright owner of the Standard ÍST 85:2012 which was excluded from the process of drafting the bill. It proclaimed that the Ministry of Welfare had never been in contact with Icelandic Standards to ask for comment, advice or information regarding the Ministry's intention to make the use of the equal pay standard mandatory for all companies with 25 or more employees. The Icelandic Standard harmed the improbability of the Ministry's conduct of no consultation. In its opinion it reiterated that compliance with standards should not be mandatory; standards should be voluntary tools of the market, referring

<sup>36</sup> See the opinion of Standard Iceland on the draft bill implementing the Standard, 5 May 2017: <https://www.althingi.is/altext/erindi/146/146-1156.pdf> / Umsögn Staðlaráðs Íslands um frumvarp til laga um breytingu á lögum um jafna stöðu og jafnan rétt kvenna og karla, nr. 10/2008, með síðari breytingum (jafnlaunavottun), Reykjavík 5. maí 2017. <https://kjarninn.is/frettir/2017-05-08-stadlarad-vill-ekki-logfesta-jafnlaunavottun/>

<sup>37</sup> <https://www.althingi.is/altext/erindi/146/146-1156.pdf>  
<https://kjarninn.is/frettir/2017-05-08-stadlarad-vill-ekki-logfesta-jafnlaunavottun/>

to the EU regulation no. 1025/2012 of the European Parliament and the Council on standardization which was transformed in the regulation no. 798/2014 and also referring to the Standard ÍST 85:2012 itself.<sup>38</sup>

### **2.3.2. The Directorate of Gender Equality: question of role in supervision?**

Some stakeholders have criticized that the supervision of the compliance by companies in complying with the equal pay certification process which is overseen by the social partners instead of a public institution like the Directorate of Gender Equality.<sup>39</sup>

It is already included in the mandate of the Directorate of Gender Equality to request copies of the the gender equality programmes and /or action plans from companies with more than 25 employees.<sup>40</sup> The Directorate of Gender Equality keeps a list of companies that provide it with their copy of a certificate confirming compliance with the equal pay system and subsequently confers the equal pay symbol to the company in question, with no additional cost to speak of. The Directorate of Gender Equality is hence in a passive position which it considers should be made more effective with increasing their role in supervising the adherence of companies and institutions in complying with the system.<sup>41</sup>

### **2.3.3 Deadline prolonged due to cumbersome process**

Within the business sector there has been criticism that the Equal Pay Certification imposes a burden on companies and that it should be kept voluntary; as it is expensive and cumbersome in practice.<sup>42</sup> The tight original deadline for companies with more than 250 employees to obtain certification by the end of 2018 has now been postponed until the end of 2019<sup>43</sup> (not meeting the deadline means they will be fined up to 50,000 ISK / approx. € 370 per day.) The process of obtaining the equal pay certification has proven to be more burdensome than expected.

<sup>38</sup> Reglugerð um gildistöku reglugerðar Evrópuþingsins og ráðsins nr. 1025/2012 frá 25. október 2012, um evrópska stöðlun

<sup>39</sup> See the opinion of BHM; the Icelandic Confederation of University Graduates' opinion on the draft law implementing the standard, 12 May 2017: <https://www.althingi.is/altext/erindi/146/146-1338.pdf>

<sup>40</sup> Art. 18 of the Gender Equality Act No.,. 10/2008.

<sup>41</sup> Opinion of the Directorate of Gender Equality on the Draft Law implementing the Standard, 10 May 2017, <https://www.althingi.is/altext/erindi/146/146-1156.pdf>

<sup>42</sup> <http://www.atvinnurekendur.is/frettir/kostnadur-vid-jafnlaunavottun-hleypur-a-milljonum/>

<sup>43</sup> A regulation issued by the Minister of Equality in Nov. 2018.

The postponement which applies to all companies – independent of their size will delay the aim of the Equal Pay Certification system to close the gender pay gap by 2022.

### 2.3.4. Too expensive for smaller companies

The cost of the implementation is paid by the employers themselves. There have been complaints about the system being too expensive in addition to being cumbersome, not least for smaller companies. The Employer's Association criticized the adoption of the law at the outset as being too hasty and not showing concern for smaller companies.<sup>44</sup> Half of the companies, that the law applies to, or 560 employers have 25 – 50 employees. Many do not have a special human resource department or a gender equality programme, the latter being mandatory according to the gender equality act from 2008. Relatively small firms with less than 50 employees claim that the effort means that one employee has to be on the payroll for a year to fulfil the obligation of implementation, which is an additional burden.<sup>45</sup> An advertisement agency's cost of implementation was ISK 4 million / EUR 29,320. This firm did not have a classified job system, many of their employees were without formal contracts and their view is that more guiding tools are needed to assist companies in going through the procedure on implementing the equal pay standard – which however they found on the whole to have benefitted their operation.<sup>46</sup> A government agency (the Directorate of Customs)<sup>47</sup> embarked on the procedure as an experiment before the law became effective and was the first one to achieve certification. Their cost amounted to having one employee on the payroll for six months.<sup>48</sup> The National Bank of Iceland estimates that the cost of obtaining the equal pay certification would be ISK 2-3 million / EUR 22000 paid to a consulting firm assisting them, ISK 800.000 /EUR 5830 for the certification process itself and having one employee on the payroll for a year. Apparently the cost makes less difference for large companies than small ones, although not all are in accord of that view.<sup>49</sup>

<sup>44</sup> <https://www.althingi.is/altext/erindi/146/146-1238.pdf>

<sup>45</sup> <https://skemman.is/bitstream/1946/30796/1/Jafnlaunavottun%20og%20m%C3%B6guleg%20%C3%A1hrif%20hennar%20%C3%A1%20%C3%ADslensk%20fyrirt%C3%A6ki%20x.pdf>; Reykjavík University BSc thesis in business on the impact of the equal pay certification on Icelandic companies (2018) in Icelandic:  
<https://skemman.is/bitstream/1946/30796/1/Jafnlaunavottun%20og%20möguleg%20áhrif%20hennar%20á%20íslensk%20fyrirtæki%20x.pdf>

<sup>46</sup> <http://www.atvinnurekendur.is/media/AKK-Mbl-100417.pdf>

<sup>47</sup> <https://www.tollur.is/English>

<sup>48</sup> <http://www.atvinnurekendur.is/media/AKK-Mbl-100417.pdf>

<sup>49</sup> Reykjavík University BSc thesis in business on the impact of the equal pay certification on Icelandic companies (2018) in Icelandic  
<https://skemman.is/bitstream/1946/30796/1/Jafnlaunavottun%20og%20m%C3%B6guleg%20%C3%A1hrif%20hennar%20%C3%A1%20%C3%ADslensk%20fyrirt%C3%A6ki%20x.pdf>

Employers that have been asked about paying fines instead of fulfilling the burdensome and costly operation of implementing the standard seemed to agree that such a choice would have a negative impact on the company's image.<sup>50</sup>

It is still argued by some that imposing the law on smaller companies should have been postponed. A point of reference is the Act on Annual Accounts which makes a distinction between micro undertakings, small undertakings, medium sized undertakings and large undertakings.<sup>51</sup>

## 2.4 The benefit when “right makes might”

As the law is still in its first phase of implementation, it is impossible to assess the overall benefits and shortcomings. It is however safe to assume that the implementation will highlight hidden pay inequalities; increase the quality of salary decisions and enhance employee satisfaction and confidence in how the management decides on pay - in the belief that gender equality is being respected and its practice seen as a value benefitting the whole of society. One of the first institutions to embark on the process, the Directorate of Customs, has eradicated the adjusted pay difference within the agency—although the jobs in the mail dominated sector (customs officers) are still higher paid than the secretaries (a female dominated sector).<sup>52</sup>

The transparency brought forth with the equal pay standard means from the perspective of the employer that it becomes easier to reject and / or justify rejections for pay raises; where men have throughout the years been more insistent in their claims. Although firms complain about the cost they still seem to agree that the requirement is fair and serves a worthwhile, legitimate aim. After all this is a matter of justice and basic human rights.<sup>53</sup>

Employers may complain about cumbersome technical implementation and accompanying costs while employees may worry that their jobs are not valued in accordance with education, experience and responsibility – leaving aside the discretion of employers to pay their employees on the basis of

<sup>50</sup> Reykjavík University BSc thesis in business on the impact of the equal pay certification on Icelandic companies (2018) in Icelandic

<sup>51</sup> Act on Annual Accounts No. 3/2006: <https://www.government.is/library/04-Legislation/L%C3%B6g%20nr.%203-2006%20um%20%C3%A1rsreikninga%20-%20ensk%20%C3%BE%C3%BD%C3%B0ing.pdf>

<sup>52</sup> Reykjavík University BSc thesis in business on the impact of the equal pay certification on Icelandic companies (2018) in Icelandic, p. 39.

<sup>53</sup> As pointed out by Mr. Viglundsson: <https://grapevine.is/news/2018/02/07/9981264/>, accessed 22 October 2018.



performance.<sup>54</sup> Yet, at the end of the day when the basic disadvantages and difficulties have been overcome – and the gender-based pay gap has been eradicated – employers will be able to say, with pride, that right makes might – as opposed to the more aggressive age-old phrase “might makes right”.<sup>55</sup>

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<sup>54</sup> As is the case with medical doctors employed with the National University Hospital – the biggest employer in Iceland who are currently discontent with the way their employer is implementing the EPC and the method of job evaluation.

<sup>55</sup> Abraham Lincoln, Speech at the Cooper Union, New York City, Feb. 27, 1860. “Let us have faith that right makes might, and in that faith, let us, to the end, dare to do our duty as we understand it”.