



KUMMISSJONI TAL-KOMUNITAJIET EWROPEJ

Brussel 18.7.2007
KUMM(2007) 424 finali

**KOMUNIKAZZJONI MILL-KUMMISSJONI LILL-KUNSILL, LILL-PARLAMENT
EWROPEW, LILL-KUMITAT EKONOMIKU U SOĊJALI U LILL-KUMITAT TAR-
REĠJUNI**

Niggieldu kontra l-inugwaljanza fil-pagi bejn in-nisa u l-irġiel

KOMUNIKAZZJONI MILL-KUMMISSJONI LILL-KUNSILL, LILL-PARLAMENT EWROPEW, LILL-KUMITAT EKONOMIKU U SOĊJALI U LILL-KUMITAT TAR-REĠJUNI

Niggieldu kontra l-inugwaljanza fil-pagi bejn in-nisa u l-irġiel

1. DAHLA

Il-prinċipju fundamentali tat-trattament ugwali għan-nisa u għall-irġiel jidher fit-Trattat ta' Ruma mill-1957. It-tnaqqis tad-diskrepanza fil-paga jagħmel parti mill-għanijiet ta' l-istrateġija Ewropea għat-tkabbir u l-impjiegi. Madankollu, il-pjan ta' azzjoni għall-ugwaljanza bejn in-nisa u l-irġiel¹ jenfasizza li d-diskrepanza fil-pagi tippersisti minkejja l-azzjonijiet meħuda u l-mezzi implimentati biex jiġi miġġieled dan. Skond l-indikatur tad-diskrepanza (mhux ikkoreġut) tal-paga qabel ma titnaqqas it-taxxa għal kull siegħa bejn l-irġiel u n-nisa, fl-2005, in-nisa qalgħu fil-medja 15% inqas mill-irġiel fl-Unjoni Ewropea. Xejn ma jindika li din id-diskrepanza sejra tonqos mhux hażin.

It-tort tal-biċċa l-kbira minn din id-diskrepanza ma jistax jingħata lill-kriterji oġġettivi, li hu sinjal ta' l-inugwaljanza fit-trattament tan-nisa fis-suq tax-xogħol. In-nisa juru rata ta' suċċess edukattiv oghla mill-irġiel fl-Istati Membri kollha u jirrappreżentaw il-biċċa l-kbira tad-diplomi ta' tagħlim superjuri. Għalhekk, kif nistgħu nispjegaw li ladarba jkunu haġu mis-sistema edukattiva, is-suq tax-xogħol jagħtihom kundizzjonijiet inqas favorevoli mill-irġiel u ma jivvalorizzax bis-sħiħ il-potenzjal produttiv tagħhom? Ekonomija moderna u kompetittiva ma tistax tippermetti qagħda tali, b'mod partikolari quddiem l-isfidi ta' bidliet demografiċi u t-tnaqqis mistenni tal-popolazzjoni attiva.

Dan id-dokument tfassal f'dan il-kuntest u l-għan tiegħu hu li janalizza l-kawżi tad-diskrepanza fil-pagi u li jippreżenta l-mezzi possibbli sabiex din titnaqqas. Il-Kummissjoni ma jirnexxilhiex tegħleb waħedha din l-isfida peress li, f'bosta oqsma, iċ-ċentru ta' gravità jinsab fl-Istati Membri u l-azzjonijiet li għandhom jittiehdu jmorru lil hin mill-kompetenzi tagħha. Għalhekk, il-ġlieda kontra d-diskrepanza fil-pagi se teħtieġ il-mobilizzazzjoni tal-partijiet interessati kollha, b'mod partikolari l-Istati Membri u l-imsieħba soċjali, sabiex isir programm dwar l-ugwaljanza bejn l-irġiel u n-nisa fis-suq tax-xogħol.

¹ COM(2006)92. Ir-risoluzzjoni tal-Parlament Ewropew tat-13 ta' Marzu 2007 fuq il-Pjan ta' azzjoni (P6_TA(2007)0063) isejjaħ lill-Kummissjoni taġixxi biex tiġġieled kontra d-diskrepanza fil-pagi.

2. ID-DISKREPANZA FIL-PAGI BEJN IN-NISA U L-IRĠIEL: FENOMENU KUMPLESS U PERSISTENTI

2.1. X'nifmu b'diskrepanza fil-pagi?

Id-diskrepanza fil-pagi tkejjel id-differenza marbuta mal-pagi medji qabel ma titnaqqas it-taxxa għal kull siegħa tan-nisa u ta' l-irġiel għall-ekonomija kollha. Hi waħda mill-indikaturi strutturali ta' segwitu ta' l-Istrateġija Ewropea għat-tkabbir u l-impjiegi².

Il-fatturi li jnisslu din id-diskrepanza fil-pagi huma kumpleksi. Dokument ta' hidma tad-dipartimenti tal-Kummissjoni ta' l-2003 jagħti dettalji dwar id-daqs, l-analiżi u l-implikazzjonijiet politiċi tad-diskrepanza fil-pagi bejn in-nisa u l-irġiel³. Jenfasizza d-diffikultà li jinfirdu l-fatturi oġġettivi ta' spjegazzjoni tad-diskrepanza mill-effetti kkaġunati minhabba d-diskriminazzjoni diretta jew indiretta jew minhabba fatturi oħrajn.

Id-differenzi fil-pagi bejn in-nisa u l-irġiel jistgħu parzjalment jirriflettu d-differenzi oġġettivi fuq livell tal-*karatteristiċi individwali* (età, livell ta' edukazzjoni, esperjenza miksuba), *ta' l-impjieg* (professjoni, tip ta' kuntratt jew kondizzjonijiet ta' xogħol) jew *ta' l-impriza* (settur ta' attività jew daqs). Pereżempju, l-esperjenza hi ġeneralment ta' benefiċċju fis-suq tax-xogħol. Jekk fil-medja l-irġiel għandhom aktar esperjenza min-nisa, il-livell ta' paga se tkun, fil-medja, ogħla wkoll. Minkejja dan, prassi *diskriminatorji* jistgħu jippersistu u jolqtu lill-haddiema minhabba s-sess tagħhom. Ġieli jiġri li bl-istess livell ta' esperjenza, ċerti nisa jithallsu inqas mill-irġiel għall-istess tip ta' xogħol b'mod deliberatament diskriminatorju.

Madankollu, id-differenzi oġġettivi u l-prassi pubblikament diskriminatorji mhumix biżżejjed biex jispjegaw il-persistenza tad-diskrepanza fil-pagi⁴. Din hija marbuta wkoll ma' għadd ta' elementi ta' tip kemm ġuridiku kif ukoll soċjali jew ekonomiku, li jmorru lil hinn sew mis-sempliċi kwistjoni ta' paga indaqs għall-istess xogħol.

B'konformità mat-Trattat (l-Artikolu 141), għandha tiġi assicurata paga indaqs għal xogħol ta' *valur ugwali*. Dan iqajjem il-kwistjoni tal-valorizzazzjoni tax-xogħol ta' kull wieħed u waħda minna, b'mod partikolari, tal-valutazzjoni tal-funzjonijiet. Il-persistenza tad-diskrepanza fil-pagi għalhekk tirrifletti wkoll valorizzazzjoni inqas fis-sistema tal-professjonijiet u l-funzjonijiet magħmula fil-biċċa l-kbira min-nisa meta mqabbel ma' daww magħmula fil-biċċa l-kbira mill-irġiel, mingħajr ma' dan ikun iġġustifikat bilfors minn kriterji oġġettivi⁵. Pereżempju, fuq livell ta' kwalifiki uguali, il-forza fiżika tista' tiġi valorizzata aħjar milli l-kompetenzi rigward ir-relazzjonijiet umani, jew ir-responsabbiltà tal-kapital aktar mir-responsabbiltà tal-persuni. Pereżempju, mhux ilu impriza wettqet valutazzjoni mill-ġdid tal-livelli tal-pagi tagħha u qegħdet il-kaxxiera tas-supermarkit fuq l-istess livell bħall-kollegi tagħhom li jaħdmu fl-imhażen.

Min-naħa l-oħra, id-diskrepanza fil-pagi tista' tirrifletti l-inugwaljanzi li, fil-fatt, jaffettwaw prinċipalment lin-nisa fis-sehem tagħhom fis-suq tax-xogħol.

² Diskrepanza (mhix ikkoreġuta) ta' paga medja gross kull siegħa bejn l-irġiel u n-nisa bħala persentaġġ ta' dik ta' l-irġiel.

³ SEC(2003)937.

⁴ "The Gender Pay Gap – Origins and Policy Responses", http://bookshop.europa.eu/eubookshop/FileCache/PUBPDF/KE7606200ENC/KE7606200ENC_002.pdf

⁵ COM(94)6.

Dan jikkonċerna pereżempju *s-segregazzjoni* tas-suq tax-xogħol. Jidher li n-nisa huma kkonċentrate f'għadd aktar limitat ta' setturi u professjonijiet milli l-irġiel. Issa, dawn għandhom il-ħabta jkunu inqas valorizzati u inqas mħallsa minn dawk il-professjonijiet fejn jaħdmu fil-biċċa l-kbira l-irġiel. Daqs 40% tan-nisa jaħdmu fis-setturi tas-saħħa, ta' l-edukazzjoni jew ta' l-amministrazzjoni pubblika, meta mqabbel ma' 20% biss ta' l-irġiel. Barra minn hekk, in-nisa huma prinċipalment impjegati bħala assistenti amministrattivi, bejjiegħa, jew haddiema f'tit jew xejn kwalifikati. Dawn il-professjonijiet jirrappreżentaw nofs l-impjegi tan-nisa. Min-naħa l-oħra, huma biss terz min-nisa li għandhom postijiet manġerjali fl-imprezzi ta' l-UE.

Is-segregazzjoni hi msahħa mit-*tradizzjonijiet u l-isterjotipi* li jinfluwenzaw, pereżempju, l-għażliet ta' l-oqsma ta' edukazzjoni, il-valutazzjoni u l-klassifikazzjoni tal-professjonijiet, iżda wkoll is-sehem fl-impjieg. B'mod partikolari, in-nisa jissoktaw isofru aktar mill-irġiel id-diffikultajiet marbuta mal-*konċiljazzjoni tal-ħajja professjonali u tal-ħajja privata*. Dan jinfluwenza l-għażla tal-karriera u jwassal għal użu akbar ta' *part time* u waqfiet fil-karriera aktar spissi. Dawn għandhom effetti negattivi fuq l-iżvilupp professjonali. Kważi terz min-nisa jaħdmu *part time* meta mqabbel ma' 8% biss ta' l-irġiel. Għalkemm l-użu ta' xogħol *part-time* jista' jirrifletti preferenzi personali u jiffavorixxi s-sehem tan-nisa fis-suq tax-xogħol, id-diskrepanza bejn l-irġiel u n-nisa tenfasizza li m'għandhomx l-istess użu ta' hin u li r-responsabbiltà tal-membri tal-familja dipendenti hi fil-biċċa l-kbira meħuda min-nisa. In-nuqqas ta' servizzi ta' kura tat-tfal aċċessibbli, bi prezz raġjonevoli u ta' kwalità jsahħa dan l-iżbilanċ. Kif ukoll il-lif tal-ġenituri li fil-biċċa kbira jibqa' użat l-aktar min-nisa⁶. Ir-rata ta' impjieg tan-nisa tonqos għal żmien twil meta dawn isiru ġenituri, iżda lanqas xejn meta l-irġiel isiru ġenituri. Għaldaqstant, il-karriera tan-nisa hi mwaqqfa aktar ta' spiss, hi aktar bil-mod u iqsar u, b'hekk, imħallsa inqas.

L-interpretazzjoni ta' l-indikatur tad-diskrepanza fil-pagi għandha tqis il-fatt li ma jippermettix li ssir distinzjoni bejn il-fatturi oġġettivi ta' spjegazzjoni u dawk li jirriżultaw mid-diskriminazzjonijiet jew minn fatturi oħrajn.

2.2. Karatteristiċi tad-diskrepanza fil-pagi fl-UE

Fl-2005, id-diskrepanza fil-pagi bejn in-nisa u l-irġiel kienet stmata għal 15% fl-UE-27, jiġifieri żewġ punti inqas mil-livell tagħha fl-1995 (ara l-Anness). Din l-istabbiltà relattiva hi ta' kuntrast ma' l-iżvilupp, min-naħa l-oħra, tassew pożittiv tar-rata ta' impjieg tan-nisa, li l-progress tagħhom jissokta.

Fuq livell ta' l-Istati Membri, il-varjazzjonijiet huma importanti ħafna, peress li d-diskrepanza tvajra minn 4% (MT) għal 25% (EE, CY). Madankollu, id-diskrepanza fil-pagi mhix indikatur ġenerali ta' l-ugwaljanza bejn in-nisa u l-irġiel peress li tikkonċerna biss il-persuni impjegati u għandha tiġi interpretata fir-rigward ta' indikaturi oħra li għandhom x'jaqsmu mas-suq tax-xogħol. Hi tirrifletti wkoll id-differenzi fir-ritmi ta' xogħol tan-nisa. B'hekk, il-biċċa l-kbira tal-pajjiżi li r-rata ta' impjieg tan-nisa hi baxxa (pereżempju MT, IT, EL, PL) għandhom ukoll diskrepanza inferjuri għall-medja li jirrifletti s-sehem baxx tan-nisa f'tit jew xejn kwalifikati fis-suq tax-xogħol. Diskrepanza għolja tmur id f'id ma' segregazzjoni tax-xogħol għolja (pereżempju CY, EE, SK, FI) jew użu akbar tal-*part time* min-nisa (pereżempju DE, UK, NL, AT, SE). Barra minn hekk, is-sistemi u l-mekkaniżmi istituzzjonali għall-fissazzjoni tal-pagi jistgħu jinfluwenzaw ukoll id-diskrepanza fil-pagi.

⁶ Ewrobarometru 189 / 59.1

Id-diskrepanza fil-pagi tidher ukoll akbar mill-medja fl-imprizi tas-settur privat⁷ (25%), fejn tvarja bil-kbir skond il-karatteristiċi individwali, ta' l-impriza u ta' l-impjeg (ara l-Anness statistiku). Pereżempju, nikkonstataw li d-diskrepanza tiżdied mad-daqs ta' l-impriza, l-età u l-livell ta' edukazzjoni u kwalifiki. Fi kliem ieħor, il-kwalifiki u l-esperjenza miksuba min-nisa huma mħallsa inqas minn dawk ta' l-irġiel. Barra minn hekk, is-setturi l-aktar milquta mid-diskrepanza fil-pagi jidhru li huma l-industrija, is-servizzi ta' l-imprizi u l-attivitajiet finanzjarji.

3. NIĠĠIELDU KONTRA L-INGWALJANZA FIL-PAGI BEJN IN-NISA U L-IRĠIEL

Il-ġlieda kontra d-diskrepanza fil-pagi bejn in-nisa u l-irġiel hi prijorità politika għall-Kummissjoni Ewropea, ikkonfermata fil-Pjan ta' azzjoni tagħha għall-ugwaljanza adottat għall-perjodu 2006-2010.

Id-diskrepanza fil-pagi għandha konsegwenzi sinifikattivi fuq il-pożizzjoni tan-nisa fil-ħajja ekonomika u soċjali tul il-ħajja attiva u wara. Hu xkiel għall-indipendenza ekonomika indaqs għan-nisa u għall-irġiel. Huwa ta' piż inevitabbli fuq l-għażliet individwali, bħal pereżempju r-ritmu u t-tul tax-xogħol, waqfien fil-karriera jew it-tqassim tar-responsabbiltajiet domestiċi u familjali. Jiggrava l-espożizzjoni akbar tan-nisa għar-riskju ta' faqar, b'mod partikolari għall-familji b'genitur wiehed. L-effetti tiegħu jinhassu wkoll wara l-ħajja attiva, meta d-diskrepanza fil-pagi tinbidel f'diskrepanza fil-pensjoni. Dan huwa xhieda ta' hela ta' riżorsi inaċċetabbli għall-ekonomija u s-soċjetà li jwaqqaf il-potenzjal produttiv tan-nisa milli jitwettag bis-shiħ.

It-twegibiet politiċi implimentati dejjem fittxew li jiġġieldu kontra l-aspetti kollha kkaġunati mid-diskrepanza fil-pagi. Minn naħa, kisba importanti giet żviluppata għall-ġlieda kontra d-diskriminazzjonijiet u għall-garanzija ta' trattament ugwali. Min-naħa l-oħra, għadd ta' miżuri u inizjattivi mhux legiżlattivi kkontribwixxew għall-promozzjoni ta' l-ugwaljanza bejn l-irġiel u n-nisa fl-aspetti tagħha kollha.

Il-persistenza tad-diskrepanza fil-pagi turi madankollu l-ħtieġa li ssir riflessjoni fuq mezzi speċifiċi biex jitnaqqsu l-ingwaljanzi mhux ġustifikati fil-pagi. Gew identifikati erba' oqsma prijoritarji u komplimentari. Mill-perspettiva legiżlattiva, il-Kummissjoni għandha tfittex li tikseb implimentazzjoni u applikazzjoni shiħa tal-qafas eżistenti, filwaqt li tidentifika l-possibbiltajiet ta' titjib. Fl-oqsma li jmorru lil hinn mill-kompetenzi tal-Kummissjoni waħeda, hi għandha tistrieħ fuq l-impenn attiv tal-partijiet ikkonċernati kollha, b'mod partikolari l-Istati Membri u l-imsieħba soċjali. Jeħtieġ li tintuża bis-shiħ l-Istrateġija Ewropea għat-tkabbir u l-impjegi u li tithegġeg l-ugwaljanza fil-pagi ma' min jimpjega. Huwa l-ewwelnett, min jimpjega li għandu japplika l-prinċipju ta' pagi ugwali għall-istess tip ta' xogħol u ta' l-istess valur. Fl-aħħar, l-iskambju ta' prassi tajbin fuq livell Komunitarju jippermetti t-titjib ta' l-għarfien tal-fenomeni u t-tixrid ta' soluzzjonijiet innovattivi biex dan jiġi miġġield.

⁷ Ara l-Anness, il-punt 3.

3.1. Analizi tal-possibbiltajiet ta' titjib tal-qafas leġislattiv u ta' implimentazzjoni tiegħu

Mill-1957, it-Trattat ta' Ruma, fl-Artikolu 119 tiegħu, fih il-prinċipju ta' l-ugwaljanza fil-pagi bejn il-ħaddiema rġiel u l-ħaddiema nisa għall-istess tip ta' xogħol. Dan l-Artikolu, li sar l-Artikolu 141 tat-Trattat, jistipula li l-Istati Membri għandhom jassiguraw l-applikazzjoni tal-prinċipju ta' l-ugwaljanza tal-paga bejn il-ħaddiema rġiel u l-ħaddiema nisa għall-istess tip ta' xogħol jew għal xogħol bl-istess valur (ara l-Anness).

L-Artikolu 141 jimmira għal aktar minn ugwaljanza *de jure* stretta, hu jagħraf ukoll il-bżonn ta' ugwaljanza *de facto*. Huwa għalhekk li, fil-paragrafu 4 tiegħu, jippermetti lill-Istati Membri, *sabiex jassiguraw konkretament ugwaljanza shiħa bejn l-irġiel u n-nisa fil-ħajja professjonali*, li jżommu jew li jadottaw azzjonijiet pożittivi maħsuba biex *ihaffu l-eżerċizzju ta' attività professjonali mis-sess l-inqas rappreżentat*.

Fl-1975, il-Kunsill adotta d-Direttiva 75/117/KEE dwar l-approssimazzjoni tal-liġijiet ta' l-Istati Membri li għandhom x'jaqsmu ma' l-applikazzjoni tal-prinċipju ta' pagi ndaqs għall-ħaddiema irġiel u għall-ħaddiema nisa. Din tistipula b'mod partikolari li l-prinċipju ta' pagi indaqs bejn il-ħaddiema irġiel u l-ħaddiema nisa għall-istess xogħol jew xogħol bl-istess valur, jimplika t-tneħħija, għall-elementi u l-kondizzjonijiet ta' pagi kollha, ta' kull diskriminazzjoni msejsa fuq is-sess.

Il-Qorti tal-Ġustizzja sikwit kellha tiegħu deċizzjoni dwar dawn id-dispożizzjonijiet f'ġurisprudenza abundanti li mmarkat tassew il-liġi f'dan il-qasam⁸.

L-*acquis* Komunitarju f'dan il-każ nissel il-biċċa l-kbira tal-leġislazzjonijiet nazzjonali rigward il-prinċipju ta' l-ugwaljanza fil-paga u għalhekk kellu rwol kruċjali fl-iżvilupp tal-qagħda tan-nisa fis-suq tax-xogħol. Madankollu, dan l-*acquis* ma ppermettiex li timtela d-diskrepanza fil-pagi bejn in-nisa u l-irġiel.

Anke jekk din id-diskrepanza mhix ikkaġunata biss min-nuqqas jew l-applikazzjoni hażina tal-liġi, din għandha rwol importanti⁹ biex itejjeb il-qagħda.

Il-leġislazzjoni Komunitarja setgħet tkun effiċjenti f'dak li għandu x'jaqsam mat-tneħħija tad-diskriminazzjonijiet diretti, fejn mara għall-istess tip ta' xogħol, kienet tirċievi paga inqas minn dik ta' kollega raġel. Il-każijiet li għandhom jeżistu jistgħu jiġu trattati b'mod effiċjenti mill-mekkaniżmi ġuridiċi jew oħrajn fuq livell nazzjonali.

Madankollu, din il-leġislazzjoni kienet inqas effiċjenti biex tiżgura r-rispett tal-prinċipju ta' l-istess paga għal xogħol ta' valur ugwali. Jista' jkun il-każ, pereżempju, ta' valorizzazzjoni differenti ta' żewġ funzjonijiet ekwivalenti f'impriza, b'waħda li hi mwettqa fil-biċċa l-kbira min-nisa, u l-oħra mwettqa fil-biċċa l-kbira mill-irġiel. Fil-fatt, dan it-tip ta' diskriminazzjoni hu inqas suxxettibbli li jkun ikkontestat minn azzjonijiet individwali fil-qorti, peress li l-vittmi potenzjali probabbli mhumiex konxji minn dan, iżda wkoll peress li hu aktar diffiċli li jittejjja każ kontra d-diskriminazzjoni f'każi bħal dawn.

⁸

Ara l-Anness, il-punt 1.

⁹

"Report on Equal Pay", Network ta' esperti ġuridiċi indipendenti fl-oqsma ta' l-impjiegi, l-affarijiet soċjali u ta' l-ugwaljanza bejn l-irġiel u n-nisa,
http://ec.europa.eu/employment_social/gender_equality/legislation/report_equal_pay.pdf

Għaldaqstant, mingħajr ma jiġu preġudikati r-riżultati ta' l-analizi, jehtieg li jiġi eżaminat jekk il-bidliet tal-qafas Komunitarju leġislattiv humiex mixtieqa biex jassiguraw li d-diskriminazzjonijiet diretti jew indiretti huma esklużi b'mod partikolari mis-sistemi ta' fissazzjoni tal-pagi. Għal dan, nistgħu nikkunsidraw li nsahħu d-dispożizzjonijiet maħsuba jneħħu l-elementi diskriminatorji għal wiehed mis-sessi fis-sistemi tal-pagi.

Għandu jiġi analizzat ir-rwol tat-trasparenza fl-aspetti kollha tagħha u jiġu analizzati f'dan il-kuntest id-dispożizzjonijiet rigward it-tagħrif u l-konsultazzjoni mal-haddiema u mar-rappreżentanti tagħhom dwar il-qagħda u l-iżvilupp tal-pagi tan-nisa u ta' l-irġiel fl-impriza, diġà stipulati mid-Direttiva 2002/73/KE.

Sabiex jaffaċċjaw is-segregazzjoni tas-suq tax-xogħol, l-Istati Membri jistgħu jirrikorru wkoll għall-possibbiltà li jimplimentaw azzjonijiet pożittivi, filwaqt li jharsu l-gurisprudenza tal-Qorti tal-Ġustizzja.

Il-Kummissjoni se tissokta teżerċita r-rwol tagħha ta' Gwardjan tat-Trattati u tiżgura li l-ligi Komunitarja kkonċernata hi trasposta u applikata kif suppost. Meta twettaq din il-ħidma, se tkun tista' tistrieħ fuq l-entitajiet nazzjonali responsabbli li jippromwovu t-trattament ugwali bejn l-irġiel u n-nisa¹⁰.

L-implimentazzjoni tal-ligi tista' tibbenefika wkoll minn tixtrid aħjar tat-tagħrif u minn tqajjim ta' l-għarfien dwar id-dispożizzjonijiet leġislattivi eżistenti. L-istharriġ juri n-nuqqas ta' tagħrif tal-ligi Ewropea rigward pagi ugwali, trattament ugwali u mezzi ta' rikors possibbli. Fil-medja, huwa biss terz taċ-ċittadini li jikkonfermaw li jafu l-jeddijiet tagħhom f'każ ta' diskriminazzjoni¹¹. Għalhekk, jehtieg li ċ-ċittadini b'mod ġenerali, kif ukoll ir-rappreżentanti tal-haddiema u ta' minn jimpjega, u saħansitra l-professjonisti tas-settur tal-ġustizzja, jkomplu jiġu infurmati.

Fl-aħħar, il-possibbiltà li jingħaqdu l-hajja professjonali mal-hajja privata tiffavorixxi bilanċ aħjar fit-tqassim tar-responsabbiltajiet domestiċi u familjali bejn l-irġiel u n-nisa u għalhekk tappoġġja sehem aktar kontinwu tan-nisa fis-suq tax-xogħol, u dan jikkontribwixxi għat-tnaqqis tad-diskrepanza fil-pagi. Il-Kummissjoni kkonsultat l-imsieħba soċjali Ewropej rigward il-kwistjoni tal-konċiljazzjoni¹², peress li tistma li aġġornament tar-regolamentazzjoni Komunitarja jkun utli.

Il-Kummissjoni:

- se tkompli tikkontrolla mill-qrib it-traspożizzjoni u l-applikazzjoni tal-leġislazzjoni Komunitarja fl-Istati Membri u se tistrieħ fuq in-netwerk ta' l-entitajiet nazzjonali responsabbli mill-ugwaljanza bejn in-nisa u l-irġiel sabiex jikkontribwixxi għal interpretazzjoni u applikazzjoni uniformi tal-ligi rigward pagi indaqs;
- se twettaq analizi, fl-2008, tad-dispożizzjonijiet attwali skond l-aspett tar-rilevanza ta' l-istrumenti ġuridiċi li għandhom x'jaqsmu mal-kawzi identifikati tad-diskrepanza fil-pagi u se tippromwovi fejn mehtieg, addattament tal-qafas Komunitarju leġislattiv;

¹⁰ L-Artikolu 8a tad-Direttiva 76/207/KEE, kif emendat mid-Direttiva 2002/73/KE.

¹¹ Ewrobarometru 263 / 65.4

¹² SEC(2007)571

- tistieden lill-Istati Membri li jimplimentaw bis-shih id-dispożizzjonijiet li jeżistu rigward it-tagħrif tal-haddiema minn min jimpjega għal dak li għandu x'jaqsam mat-trattament ugwali fl-imprizi;
- se teżamina jekk humiex mehtieġa orjentazzjonijiet jew kjarifiki għal dak li għandu x'jaqsam ma' l-implimentazzjoni ta' azzjonijiet pożittivi fil-ġlieda kontra s-segregazzjoni tas-suq tax-xogħol;
- se tintensifika l-azzjonijiet ta' tagħrif u ta' tqajjim ta' għarfien rigward il-liġi eżistenti u appell f'każ ta' diskriminazzjoni, kif ukoll rigward il-partecipanti kkonċernati tas-sistema ġudizzjarja;
- jekk mehtieġ, se tipproponi wara l-konsultazzjoni ma' l-imsieħba soċjali fuq livell Komunitarja, miżuri għat-titjib tal-konċiljazzjoni tax-xogħol u tal-ħajja privata u familjali, b'mod li jippermetti lin-nisa u lill-irġiel li jkollhom aċċess għas-suq tax-xogħol u li jinżammu f'kondizzjonijiet ugwali.

3.2. Użu shih ta' l-Istrateġija Ewropea għat-tkabbir u l-impjiegi

L-Istrateġija Ewropea għat-tkabbir u l-impjiegi tikkostitwixxi strument essenzjali għall-appoġġ ta' l-ugwaljanza bejn in-nisa u l-irġiel fuq is-suq tax-xogħol, bis-sostenn attiv tal-Fondi Strutturali. Marbuta ma' din l-Istrateġija, il-metodu miftuh ta' koordinazzjoni għall-harsien soċjali u l-inklużjoni soċjali jagħraf ukoll li l-promozzjoni ta' l-opportunitajiet indaqs tagħmel parti integrali mill-isforzi mwettqa mill-Istati Membri sabiex isahhu l-koeżjoni soċjali fl-UE.

Fil-qafas attwali ta' l-Istrateġija Ewropea għat-tkabbir u l-impjiegi, it-tnaqqis tad-diskrepanza fil-pagi tissemma' f'zewġ linji direttriċi integrati¹³. Dawn iheggu wkoll lill-Istati Membri sabiex jiddefinixxu l-impenji u l-għanijiet tagħhom għall-prioritajiet stabbiliti. Il-“Patt Ewropew għall-ugwaljanza bejn l-irġiel u n-nisa” adottat fil-Kunsill Ewropew tal-Ħarifa ta' Marzu 2006 jirrifletti b'qawwa l-impenn ta' l-Istati Membri li tittiehed azzjoni f'dan il-qasam.

Il-ġlieda kontra d-diskrepanza fil-pagi tehtieġ approċċ immirat fuq il-fatturi kollha li jikkagunawha. Bosta Stati Membri wettqu azzjonijiet favur it-tnehhija tas-segregrazzjoni tas-suq tax-xogħol, ta' l-edukazzjoni u tat-taħriġ jew tal-konċiljazzjoni tal-ħajja professjonali u tal-ħajja privata. Madankollu, ir-rapport annwali tal-Kummissjoni dwar it-tkabbir u l-impjiegi ta' l-2006¹⁴ u r-rapport kongunt dwar l-impjiegi 2006-2007¹⁵ ilmentaw dwar il-persistenza tad-diskrepanza. Dan l-aħħar dokument enfasizza li *“kienu biss zewġ pajjiżi li ffissaw għanijiet rigward dan is-suġġett (EE u FI), filwaqt li l-biċċa l-kbira ta' l-Istati Membri ma jagħtux każ il-kwistjoni”*.

¹³ Id-Deciżjoni tal-Kunsill 2005/600/KE, linji direttriċi 18 u 22.

¹⁴ COM(2006)816.

¹⁵ Dokument 6706/07 tal-Kunsill

Ir-rapport tal-Kummissjoni dwar l-ugwaljanza bejn in-nisa u l-irġiel moghti lill-Kunsill Ewropew jenfasizza kull sena l-persistenza ta' diskrepanza għolja fil-pagi u stieden lill-Istati Membri sabiex jimplimentaw kollox sabiex jiġġieldu kontra l-kawżi kollha li jikkawgunaw dan. Għalhekk huwa mixtieq li l-Istati Membri jirraportaw, fil-programmi nazzjonali ta' riforma tagħhom, dwar l-inizjattivi speċifiċi li wettqu biex jiġġieldu kontra d-diskrepanza fil-pagi, kif ukoll f'dak li għandu x'jaqsam mas-segregazzjoni fis-suq rax-xogħol u l-konċiljazzjoni tal-ħajja professjonali u tal-ħajja privata. Il-Kummissjoni se tissokta tagħti rendikont ta' l-iżvilupp tad-diskrepanza fil-pagi u tat-tweġibiet politiċi adottati fil-qafas tal-mekkaniżmi stabbiliti għall-Istrateġija Ewropea għat-tkabbir u l-impjiegi, b'mod partikolari r-rapport tal-progress annwali u tar-rapport kongunt dwar l-impjiegi. Jehtieg ukoll li jiġu ggarantiti segwitu tal-politiki permezz ta' statistika koerenti, komparabbli, shiħa u disponibbli f'waqtha. Jehtieg b'mod partikolari li tiġi żviluppata l-ħila li jiġu analizzati u mifhuma d-determinanti ewlenin tad-diskrepanza sabiex jiġi identifikati l-mezzi possibbli sabiex tiġi ttrattata din id-diskrepanza b'mod immirat. Għal dan il-għan, fl-2007, Eurostat stabbilixxa grupp ta' hidma ma' l-Istati Membri rigward l-indikatur strutturali li jeżisti sabiex titjeb il-kwalità u l-komparabbiltà.

Il-Kummissjoni:

- se ttejjeb l-offerta u l-kwalità ta' l-istatistika rigward l-indikatur strutturali dwar id-diskrepanza fil-pagi, kif ukoll it-tqassim mehtieg u l-ghodda li jippermettu l-identifikazzjoni u l-analiżi tad-determinanti tad-diskrepanza, u se tassigura tixrid xieraq;
- se tivvaluta l-aħjar mezz biex tiġġieled kontra d-diskrepanza fil-pagi bejn in-nisa u l-irġiel fil-qafas tal-linji diretttriċi integrati li jmiss ta' l-2008-10 ta' l-Istrateġija għat-tkabbir u l-impjiegi;
- tistieden lill-Istati Membri li jiffissaw għanijiet u skedi nazzjonali ta' tnaqqis tad-diskrepanza fil-pagi bejn in-nisa u l-irġiel, fuq il-bażi ta' l-istatistika koerenti, komparabbli u shiħa;
- tistieden lill-Istati Membri li jużaw bis-shiħ il-potenzjal offrut mill-Fond Soċjali Ewropew, b'mod partikolari biex tiġġieled kontra l-kawżi, diretti jew indiretti, tad-diskrepanza fil-pagi bejn l-irġiel u n-nisa, ittejjeb l-aċċess għall-impjieg tan-nisa u tnaqqas is-segregazzjoni msejsa fuq is-sess fuq is-suq tax-xogħol.

3.3. Promozzjoni ta' pagi ugwali ma' min iħaddem

Dawk li jimpjegaw huma parteċipanti importanti għat-tneħħija ta' l-inugwaljanzi ingustifikati fil-pagi. Huma responsabbli li jħarsu l-leġiżlazzjoni dwar dan. Madankollu, hu fl-interess tagħhom li jaġixxu b'mod responsabbli sabiex jippromwovu l-ugwaljanza bejn in-nisa u l-irġiel fi hdan l-organizzazzjonijiet tagħhom. Dan japplika kemm għall-impriżi privati kif ukoll għal dawk pubbliċi. Il-Kummissjoni timplimenta programm ta' azzjoni għall-opportunitajiet indaqs għall-persunal tagħha. F'dan ir-rigward, għandna nenfasizzaw il-persistenza ta' diskrepanza fil-pagi wkoll fi hdan l-amministrazzjonijiet pubbliċi, prinċipalment minħabba s-segregazzjoni professjonali u l-preżenza minima tan-nisa f'xogħlijiet ta' tmexxija u ta' tehid ta' deċiżjonijiet.

Il-promozzjoni ta' l-ugwaljanza mhix biss kwistjoni etika, iżda għib vantaġġ kompetittiv lill-imprizi billi tippermetti lill-persunal tagħhom li jwettqu bis-shiħ il-potenzjal produttiv tagħhom. Barra minn hekk, l-ugwaljanza bejn in-nisa u l-irġiel tidher fost l-oqsma ta' azzjoni prijoritarji identifikati mill-Alleanza Ewropea għar-responsabbiltà soċjali ta' l-imprizi¹⁶ (CSR). F'dan il-qafas, il-Kummissjoni tistieden l-Alleanza sabiex tipproponi inizjattivi biex tivvalorizza l-prassi tajbin rigward il-ġlieda kontra d-diskrepanza fil-pagi.

Ċerti Stati Membri jsostnu l-isforzi ta' min jimpjega speċjalment bil-promozzjoni tat-tikketti mogħtija lill-imprizi li l-prassi tagħhom rigward l-ugwaljanza professjonali u ta' tmexxija tar-riżorsi umani jivvalorizzaw l-ugwaljanza bejn in-nisa u l-irġiel. Il-Kummissjoni tista' tiffavorixxi l-iskambju ta' prassi tajbin f'dan il-qasam. Minn issa 'l quddiem, hi tappoġġja azzjonijiet ta' tqajjim ta' l-għarfien sabiex tiġġieled kontra l-isterjotipi tas-sessi fl-imprizi, b'mod partikolari bl-appoġġ tal-programm PROGRESS.

Barra minn hekk, l-amministrazzjonijiet pubbliċi għandhom piż sinifikanti fl-ekonomiji nazzjonali, is-swieq pubbliċi jirrappreżentaw 16% tal-GDP Komunitarju. Għalhekk, għandhom il-hila li jheggu lill-fornituri li jadottaw imġiba soċjalment responsabbli. Għal dan il-ghan, id-Direttivi 2004/17/KE¹⁷ u 2004/18/KE¹⁸ jistipulaw li *“l-awtoritajiet kontraenti jistgħu jirrikjedu kondizzjonijiet partikolari rigward it-twettiq tas-suq (...) [li] jistgħu b'mod partikolari jikkonċernaw konsiderazzjonijiet soċjali u ambjentali”*.

Il-Kummissjoni:

- tistieden lill-amministrazzjonijiet nazzjonali li jagħmlu li jistgħu sabiex inaqqsu d-diskrepanza fil-pagi fi hdanhom u li jippromwovu pagi indaqs fost il-fornituri tagħhom permezz ta' proċeduri ta' għoti ta' kuntratti pubbliċi;
- se tintegra d-dimensjonijiet ta' trattament ugwali u pagi ugwali fil-gwida li qiegħda thejji għall-2008 dwar l-integrazzjoni tal-kriterji soċjali fl-għoti ta' kuntratti pubbliċi.

3.4. L-appoġġ ta' l-iskambju ta' prassi tajbin fuq livell Komunitarju

Bosta Stati Membri dahhlu inizjattivi nazzjonali għall-ġlieda kontra d-diskrepanza fil-pagi. Dawn ikkonċernaw prinċipalment: azzjonijiet leġislattivi favur pagi ugwali, pereżempju biex imprizi jitheggu jew jiġu obbligati janalizzaw jew jirrangaw id-diskrepanzi ingustifikati fil-pagi tagħhom; politiki attivi ta' ugwaljanza bejn is-sessi, li għandhom l-ghan b'mod partikolari li jnehhu l-inugwaljanzi strutturali fis-suq tax-xogħol; politiki fil-pagi maħsuba jivvalutaw mill-ġdid il-professjonijiet imħallsa fit.

Wahda mill-prijoritajiet tal-qafas ta' azzjonijiet għall-ugwaljanza bejn in-nisa u l-irġiel adottata f'Marzu 2005 mill-imsieħba soċjali Ewropej hi t-naqqis tad-diskrepanza fil-pagi. Skond l-ewwel rapport ta' segwitu ta' l-implimentazzjoni approvata fil-bidu ta' l-2007, il-qafas ta' azzjonijiet stimula għadd importanti ta' inizjattivi fuq livell nazzjonali, bl-użu ta' firxa varjata ta' strumenti b'mod partikolari azzjonijiet ta' tqajjim ta' l-għarfien u ta' tahriġ, l-iżvilupp ta' l-ghodda ta' tqabbil tal-pagi jew id-definizzjoni ta' l-istrategiji ta' tnaqqis tad-diskrepanza.

¹⁶ COM(2006)136.

¹⁷ Id-Deciżjoni 2004/17/KE tal-Parlament Ewropew u tal-Kunsill tal-31 ta' Marzu 2004.

¹⁸ Id-Deciżjoni 2004/18/KE tal-Parlament Ewropew u tal-Kunsill tal-31 ta' Marzu 2004.

Id-diversità ta' l-approċċi adottati tenfasizza l-komplessità tal-fenomeni. L-ugwaljanza fil-pagi tista' tkun biss il-frott ta' azzjoni fuq il-livelli kollha, li tassoċja l-partijiet interessati kollha u tagħxi fuq il-fatturi kollha li jnissu din id-diskrepanza. F'dan ir-rigward, l-għarfien tajjeb tal-kwistjonijiet marbuta mad-diskrepanza fil-pagi u t-tixrid tal-prassi tajbin implimentati mill-partecipanti differenti għat-tnaqqis ta' din id-diskrepanza huma elementi essenzjali. Il-Kummissjoni tappoġġja l-iskambju ta' prassi tajbin f'dan il-qasam.

L-Istitut Ewropew għall-ugwaljanza bejn l-irġiel u n-nisa¹⁹ jista' jintalab jipprovdi għajjnuna teknika għall-ġlieda kontra d-diskrepanza fil-pagi.

- Il-Kummissjoni tistieden lill-imsieħba soċjali sabiex isegwu l-implimentazzjoni tal-qafas ta' azzjonijiet tagħhom għall-ugwaljanza bejn in-nisa u l-irġiel, b'mod partikolari għal dak li għandu x'jaqsam mal-prijorità mogħtija għat-tnaqqis tad-diskrepanza fil-pagi.

4. KONKLUŻJONIJIET

L-ugwaljanza bejn in-nisa u l-irġiel u n-nuqqas ta' diskriminazzjoni jagħmlu parti mill-prinċipji fundamentali ta' l-Unjoni Ewropea. Il-persistenza tad-diskrepanza fil-pagi bejn in-nisa u l-irġiel hi sinjal li n-nisa jkomplu jgarrbu diskriminazzjonijiet diretti u indiretti u ingwaljanzi fuq is-suq tax-xogħol, u xxejjel ukoll li jitwettaq bis-sħiħ il-potenzjal produttiv tan-nisa u li jintlaħqu l-għanijiet ta' l-Istrateġija Ewropea għat-tkabbir u l-impjiegi.

Qabel kollox, jidher meħtieġ li jiġu żviluppati l-kapaċitajiet ta' analiżi tal-fenomeni, li għadu kumpless u mhux mifhum tajjeb. Dan jippermetti li jinfethu l-mezzi ffokati u li jiġu identifikati t-titjibiet possibbli fil-qafas leġislativ eżistenti u suxxettibbli li jwassal għal tnaqqis sinifikanti tad-diskrepanza fil-pagi.

Din il-komunikazzjoni għandha l-għan li tagħti spinta għal fil-ġlieda kontra d-diskrepanza fil-pagi. Hi tagħti xhieda ta' l-impenn sħiħ tal-Kummissjoni sabiex tagħmel minn kollox biex tneħhi l-ingwaljanzi ingustifikati fil-pagi bejn in-nisa u l-irġiel. Għal dan il-għan, se teħtieġ il-mobilizzazzjoni attiva tal-partijiet ikkonċernati kollha, b'mod partikolari l-Istati Membri u l-imsieħba soċjali.

¹⁹ Ir-Regolament KE 1922/2006.

ANNEXE

1. LEGAL FRAMEWORK

The principle of equal pay for equal work between male and female workers was embedded in the Treaty of Rome. In its current wording, article 141 EC (ex-article 119) foresees that Member States shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. For the purpose of this article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer. Article 141 EC foresees also that "with a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers" (positive actions).

On 10 February 1975, the Council adopted Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women. The Directive notably foresees that the principle of equal pay means, for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration. In particular, where a job classification system is used for determining pay, it must be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.

The Court of Justice developed a significant case law related to article 141 of the Treaty (ex article 119) and to Directive 75/117/EEC. In particular, the Court very soon underlined that the principle of equal pay numbered amongst the fundamental principles of the Community and could be invoked by any citizen in front of national jurisdictions (direct effect).

The Court of Justice was asked to interpret the concept of "pay" and has by this way considerably broadened its scope. The Court held that constitutes "pay" within the meaning of Article 141 EC, notably, a contribution to a retirement benefits scheme which is paid by an employer in the name of employees by means of an addition to the gross salary (case 69/80, Worringham), benefits paid by an employer to a worker in connection with the latter's compulsory redundancy (case C-262/88, Barber), a *pension paid under a contracted-out private occupational scheme* (case C-262/88, Barber), a survivor's pension provided for by an occupational pension scheme (case C-109/91, Ten Over), benefits granted under a pension scheme, including survivors' benefits (case C-147/95, Ilektrismou), compensation received for losses of earnings due to attendance at training courses imparting the information necessary for performing staff council functions. (case C-457/93, Lewark), a monthly salary supplement (case C-381/99, Brunnhofer), a Christmas bonus (case C-333/97 Aboulaye). According to case C-400/93 (Royal Copenhagen), it also applies to piece-work pay schemes.

The case law of the Court has also interpreted extensively the notion of "equal work". In case 129/79, Macarthys), the Court held that the principal should not be restricted by the introduction of a requirement of contemporaneity. In case 61/81 (Commission v. UK), the Court said that it is the responsibility of the Member States to guarantee the right to receive equal pay for work of equal value even in the absence of a system of job classification. It follows that where there is disagreement as to the application of the concept of "work to which equal value is attributed", the worker must be entitled to claim before an appropriate

authority that his work has the same value as other work and, if that is found to be the case, to have his rights under the treaty and the directive acknowledged by a binding decision. In case 157/86 (Murphy), the court held that the principle covers the case where a worker is engaged in work of higher value than that of the person with whom a comparison was to be made.

A number of judgements of the Court deal with the indirect discrimination in situations of part-time work. In case 96/80 (Jenkins), the Court held that the principle applies to the payment of lower hourly rates of remuneration for part-time work than for full-time work. In case 170/84 (Bilka), the Court found that Article 119 (now 141) was infringed when an employer excludes part-time employees from its occupational pension scheme, where the exclusion affects a far greater number of women, unless the undertaking shows that the exclusion is based on objectively justified factors unrelated to any discrimination on grounds of sex. In case 171/88 (Rinner-Kühn), the Court held that this Article precluded a legislation which permits employers to exclude certain part-time employees from the continued payment of wages in the event of illness. In case C-33/89 (Kowalska), the Court ruled that a clause in a collective agreement under which employers may exclude part-time employees from the payment of a severance grant was contrary to Article 119 when in fact a considerably lower percentage of men work part-time. In case C-184/89 (Nimz), the Court declared contrary to Article 119 a collective agreement that provides for the seniority of workers performing at least three quarters of normal working time to be fully taken into account for reclassification in a higher salary grade, where only one half of such seniority was taken into account in the case of workers whose working time was inferior, where the latter group comprises a considerably smaller percentage of men than women. On the other hand, in case joint cases C-399/92, C-409/92, C-495/92, C-34/93, C-50/93 and C-78/93 (Helmig), the Court ruled that this Article did not prevent a collective agreement from restricting payment of overtime supplements to cases where the normal working hours for full-time employees were exceeded. In case, C-1/95, the Court found that it was contrary to Community law to require that, for the purpose of calculating the length of service, periods of part-time employment of one-half and two-thirds of normal working time were counted only as two thirds of normal hours, except if justified by objective criteria unrelated to any discrimination on grounds of sex. In case 281/97 (Krüger), the Court decided that an exclusion by a collective agreement from entitlement to a special annual bonus of persons in employment which involves a normal working week of less than 15 hours and normal pay not exceeding a fraction of the monthly baseline and is, on that basis, exempt from compulsory social insurance constitutes indirect discrimination based on sex, where that exclusion applies independently of the sex of the worker but actually affects a considerably higher percentage of women than men.

On the other hand, the court has admitted that a classification system use the criterion of muscular effort of the work. Nevertheless, in order for a classification system not to be discriminatory as a whole, it must take into account criteria for which workers of each sex may show particular aptitude. In case 109/88 (Danfoss), the Court ruled that when an undertaking applies a non transparent system of pay, it is up for the employer to prove that it is not discriminatory in practice. On the other hand, the Court held also that the employer had to justify the recourse to the criteria of mobility and training, but not the recourse to the criterion of length of service. In case C-127/92 (Enderby), the Court held that where significant statistics disclose an appreciable difference in pay between two jobs of equal value, one of which carried out almost exclusively by women, Article 119 requires the employer to show that the difference is based on objectively justified factors unrelated to any discrimination on grounds of sex. The fact that the pay rates were agreed by collective bargaining is not sufficient objective justification for the difference in pay. In case C-17/05

(Cadman), the Court confirmed its previous case law (Danfoss) and held that since, as a general rule, recourse to the criterion of length of service is appropriate to attain the legitimate objective of rewarding experience acquired which enables the worker to perform his duties better, the employer does not have to establish specifically that recourse to that criterion is appropriate to attain that objective as regards a particular job, unless the worker provides evidence capable of raising serious doubts in that regard.

There are other Directives in the field of equality between men and women which are relevant as far as the gender pay gap is concerned.

It is the case, notably, of Directive 76/207/EEC, as amended by Directive 2002/73/EC, which aims at implementing the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, which states that "the application of the principle of equal treatment means that there shall be no direct or indirect discrimination on the grounds of sex in the public or private sectors, including public bodies, in relation to (...) employment and working conditions, including dismissals, as well as pay as provided for in Directive 75/117/EEC".

It has also to be noted that Directive 97/80/EC on the burden of proof in cases of discrimination based on sex applies to the situations covered by Article 141 EC and Directive 75/117/EEC. This Directive lays down that "Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment".

Extracts from the Treaty establishing the European Community

Article 2

The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing common policies or activities referred to in Articles 3 and 4, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, **equality between men and women (...).**

Article 141

- (1) Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.
- (2) For the purpose of this article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

- (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;
- (b) that pay for work at time rates shall be the same for the same job.

- (3) The Council, acting in accordance with the procedure referred to in Article 251, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.
- (4) With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

2. INDICATOR "GENDER PAY GAP IN UNADJUSTED FORM"

The Lisbon strategy has stressed the need to address gender inequality in the EU labour markets, including the gender pay gap, and put forward an employment rate target for women. Structural indicators measuring the female employment rate and the gender pay gap were included. The gender pay gap (in unadjusted form) - measuring the difference in average gross hourly earnings between men and women across the whole economy and all establishments – is one of the structural indicators to monitor progress in the framework of the Lisbon Strategy.

In 2003, the Commission realised a Staff Working Paper "Gender pay gaps in European labour markets - Measurement, analysis and policy implications" (SEC(2003)937) with the purpose to review the definition of the structural indicator to monitor the overall size and evolution of the gender pay gap; to summarise recent work analysing factors related to the gender pay gap; and to discuss the implications of the results of these analyses for measuring both the gender pay gap and progress to reduce it, for data provision and for policies to tackle gender pay gaps. Excerpts from this document are provided hereafter as background information on the indicator.

2.1. Definition

The definition currently used by Eurostat is as follows:

The gender pay gap is given as the difference between average gross hourly earnings of male paid employees and of female paid employees as a percentage of average gross hourly earnings of male paid employees. The gender pay gap is based on several data sources, including the European Community Household Panel (ECHP), the EU Survey on Income and Living Conditions (EU-SILC) and national sources. The target population consists of all paid employees aged 16-64 that are 'at work 15+ hours per week'.

Hourly earnings are obtained by dividing gross monthly normal earnings from the main job by four times the number of worked hours per week in the main job, including normal overtime, but excluding bonuses, irregular overtime, any 13th month payments and the like. EU estimates are population-weighted averages of the latest available national data, adjusted, where possible, to take into account a change in the data source. Countries without any previous gender pay gap data for a specific year are excluded from the EU estimates. Where data have been provided by the National Statistical Offices based on national sources, the indicators for these countries cannot be considered to be fully comparable.

It should also be noted that measures of the gender pay gap are sensitive to the data source, the sample restrictions and the choice of the dependent variable (hourly or monthly earnings; net or gross earnings; inclusion of bonus payments; etc.).

2.2. Explanatory factors

The gender pay gap varies considerably by individual, job and firm characteristics. While these findings provide important information on the nature of gender imbalances in the labour market, they do not allow conclusions as to the relative impact of the various factors on the overall gender pay gap. Further analyses are needed to identify the factors related to the gender pay gap. The observed gender pay gaps could be due to a whole range of factors, including:

- *personal characteristics* such as age, educational background, family background, presence of children, experience in the labour market, previous career interruptions and tenure on the job;
- *job characteristics* such as occupation, working time, contract type, job status, career prospects and working conditions;
- *firm characteristics* such as sector, firm size, work organisation, recruitment behaviour and the firm's compensation and human resources policies;
- *gender segregation* by occupation or sector;
- *institutional characteristics* including education and training systems, wage bargaining, wage formation and tax and benefit systems, industrial relations, parental leave arrangements and the provision of childcare facilities before and during compulsory school years; as well as
- *social norms and traditions regarding* education, labour market participation, job choice, career patterns and the evaluation of male- and female-dominated occupations.

The above personal, job and firm characteristics reflect systematic differences in the composition of the male and female workforce. They can reflect objective differences in productivity - which in turn would lead to differences in wages - as well as differences in incentives, opportunity costs and preferences for job and firms characteristics – which would explain systematic differences in labour market participation, job access and career progression.

Many of these labour market characteristics, however, could themselves be the outcome of discriminatory processes, including institutional settings, pay policies and social norms and traditions. It is obvious that, in the presence of such ‘indirect discrimination’, gender pay gaps do not just reflect systematic pay differences due to differences in choice behaviour, productivity or labour market characteristics. Moreover, women or men could also be subject to ‘direct discrimination’ by receiving lower pay than workers with the same characteristics and job performance.

It is therefore one of the main challenges to distinguish pay differences resulting from different labour market characteristics, on the one hand, and differences due to indirect or direct discrimination, on the other, including the societal differences in the evaluation of work in male and female dominated sectors or occupations.

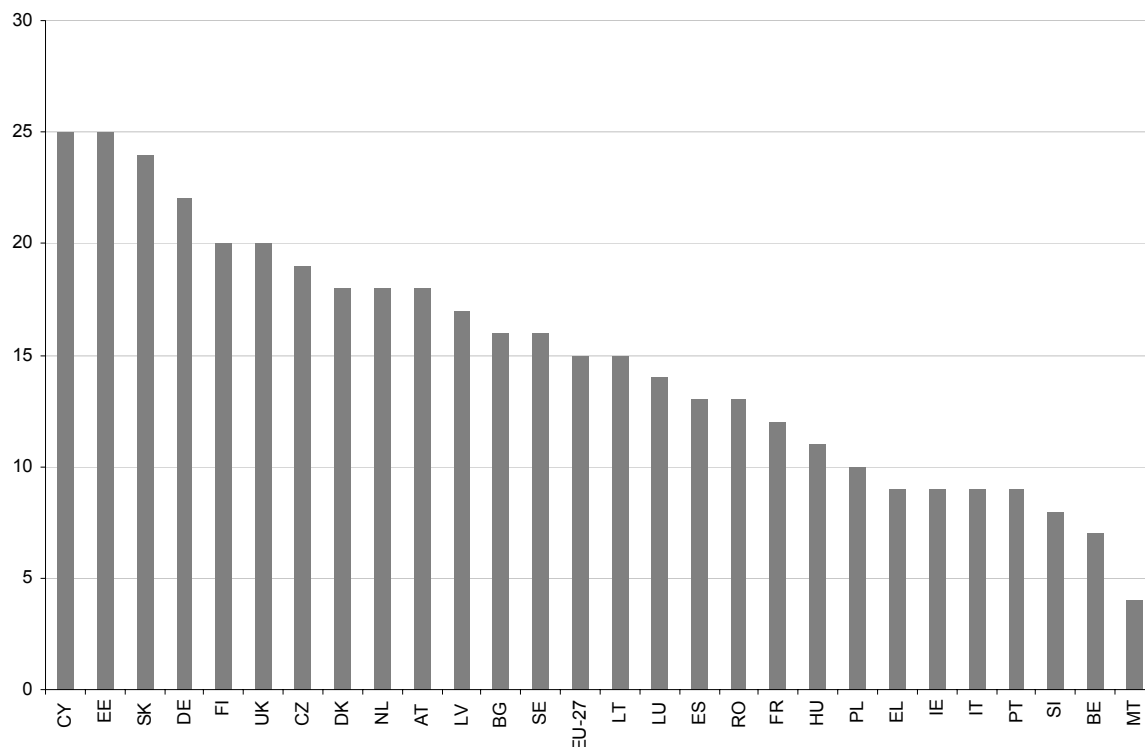
2.3. Implications for the gender pay gap indicator

The above analysis on the determinants of gender pay gaps in the European labour markets show to what extent these factors and their impact on gender gaps vary across Member States. They also highlight the role of both direct and indirect discrimination for the gender pay gap and the related statistical problems due to e.g. (endogenous) educational or occupational choice and (selective) labour market participation in measuring and analysing the gender pay gap, thus clarifying the difficulties encountered when adjusting gender pay gaps and interpreting the results.

The results summarised above confirm in particular the complex nature of gender equality and gender gaps in labour markets as multi-faceted social and economic phenomena, including the working of education and training, job classification and wage formation systems as well as social norms and traditions. In particular no clear borders exist between composition effects and remuneration effects. Furthermore, selection effects might complicate the analysis. The gender pay gap (in unadjusted form) gives an overall picture of gender pay equality and has therefore so far been chosen as structural indicator to measure gender inequalities in earnings and express the related challenges.

3. STATISTICS ON THE PAY GAP AND THE SITUATION OF WOMEN ON THE LABOUR MARKET

Figure 1 – Gender pay gap in the EU, 2005 (%) (1)



Source: Eurostat.

Administrative data are used for LU, Labour Force Survey for FR and MT. Provisional results of EU-SILC (Statistics on Income and Living Conditions) are used for BE, EL, ES, IE, IT, AT, PT, and UK. All other sources are national surveys. EU27 estimates are population weighted-averages of the latest available values.

(1) The gender pay gap in unadjusted form is a structural indicator adopted for the follow-up of the European Strategy for growth and employment. It is defined as the difference between average gross hourly earnings of male paid employees and of female paid employees as a percentage of average gross hourly earnings of male paid employees. The population consists of all paid employees aged 16-64 that are at work 15+ hours per week.

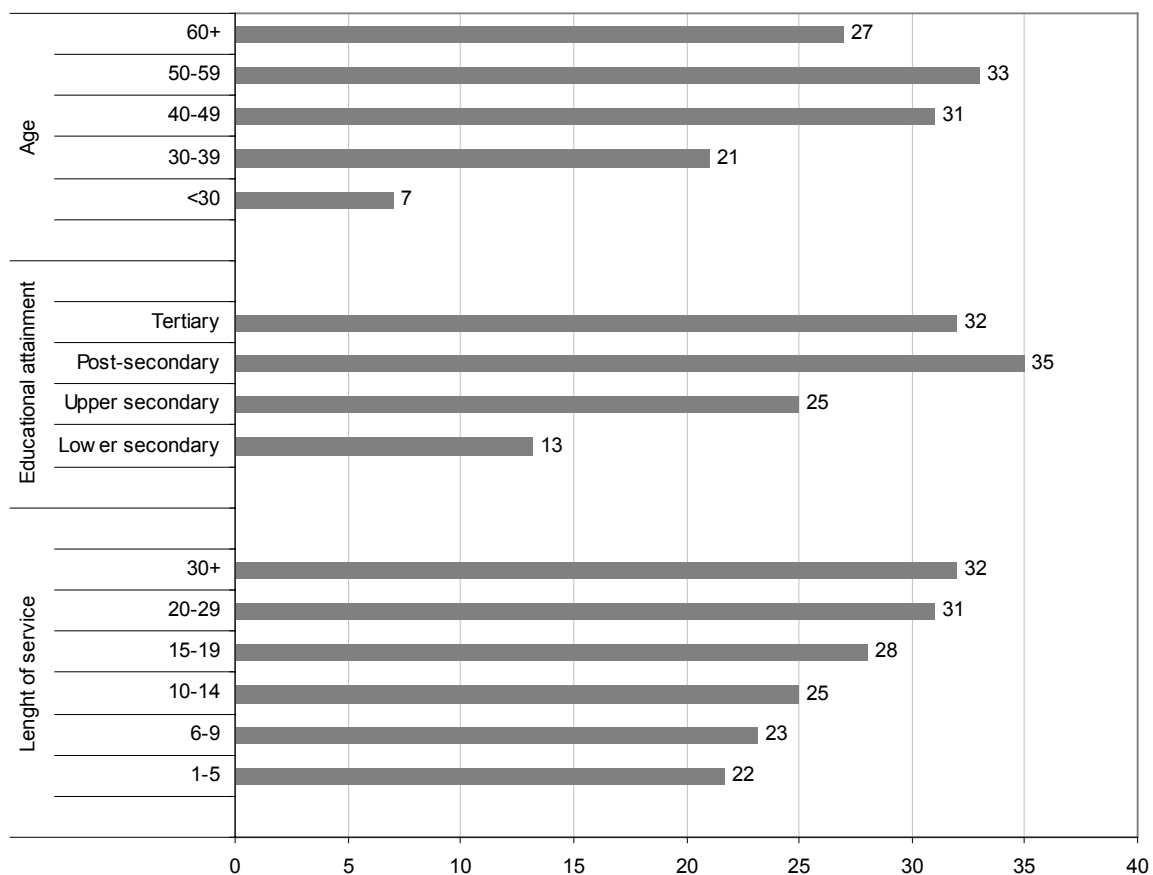
Table 1 – Gender pay gap (%) in the EU

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
EU-27 (1)	17	17	16	17	16	16	16	16	15	15	15
BE	12	10	10	9	11	13	12	:	:	6 (2)	7
BG	:	:	:	:	:	:	22	21	18	16	16
CZ	:	21	21	25	22	22	20	19	19	19	19
DK	15	15	13	12	14	15	15	18 (2)	18	17	18
DE	21	21	21	22	19	21	21	22 (2)	23	23	22
EE	27	27	28	26	26	25	24	24	24	24	25
EL	17	15	13	12	13	15	18	17	11 (2)	10	9 (3)
ES	13	14	14	16	14	15	17	21 (2)	18	15	13 (3)
FR	13	13	12	12	12	13	14	13	12 (2)	12	12
IE	20	21	19	20	22	19	17	:	14 (2)	11(3)	9 (3)
IT	8	8	7	7	8	6	6	:	:	7 (3)	9
CY	29	28	27	26	27	26	26	25	25	25	25
LV	:	:	:	20	20	20	16	16	16	15	17
LT	27	22	23	22	16	16	16	16	17	16	15
LU	19	19	19	18	17	15	16	17	15	14	14
HU	22	23	24	23	21	21	20	16	12	14	11
MT	:	:	:	:	:	11	9	6 (2)	4	4	4
NL	23	23	22	21	21	21	19	19	18	19	18
AT	22	20	22	21	21	20	20	:	17 (2)	18	18 (3)
PL	:	:	:	:	15	:	12	11	11	10	10
PT	5	6	7	6	5	8	10	8	9	5 (2)	9
RO	21	24	24	20	17	17	18	17	18	14 (2)	13
SI	14	15	14	11	14	12	11	9	:	8 (3)	8 (3)
SK	:	:	:	:	23	22	23	27	23	24	24
FI	:	17	18	19	19	17	17	20 (2)	20	20	20
SE	15	17	17	18	17	18	18	17	16	17	16
UK	26	24	21	24	22	21	21	23 (2)	22	22	20 (3)

Source: Eurostat, Structural Indicators.

(1) Estimate. (2) Break in series (3) Provisional value.

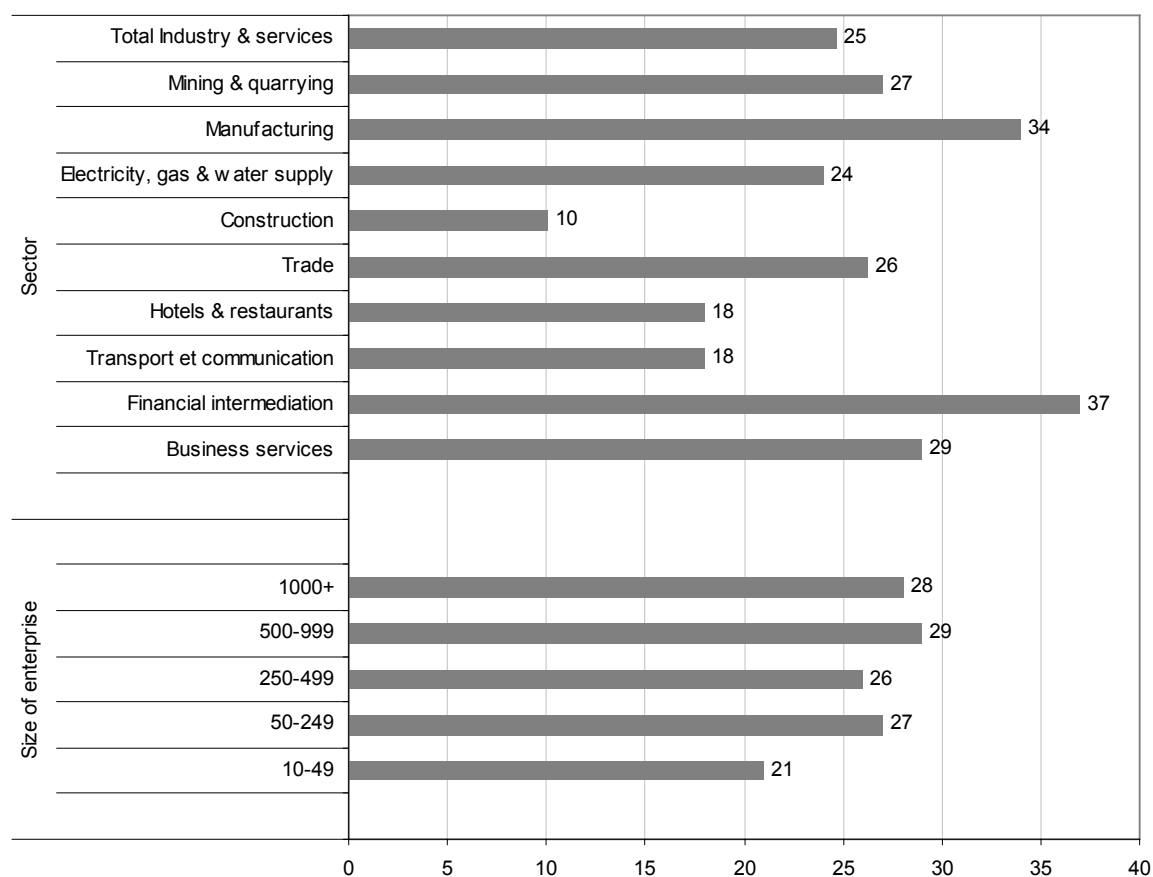
Figure 2 - Gender pay gap, breakdown by personal characteristics (1) (%)



Source: Eurostat: Structure of Earnings Survey 2002.

(1) The unadjusted gender pay gap (GPG) is defined as the difference between men's and women's average gross hourly earnings as a percentage of men's average gross hourly earnings. The data presented above (EU-27) covers enterprises, with 10 or more employees, in the sectors of industry and services excluding public administration (NACE Rev.1.1 C to K).

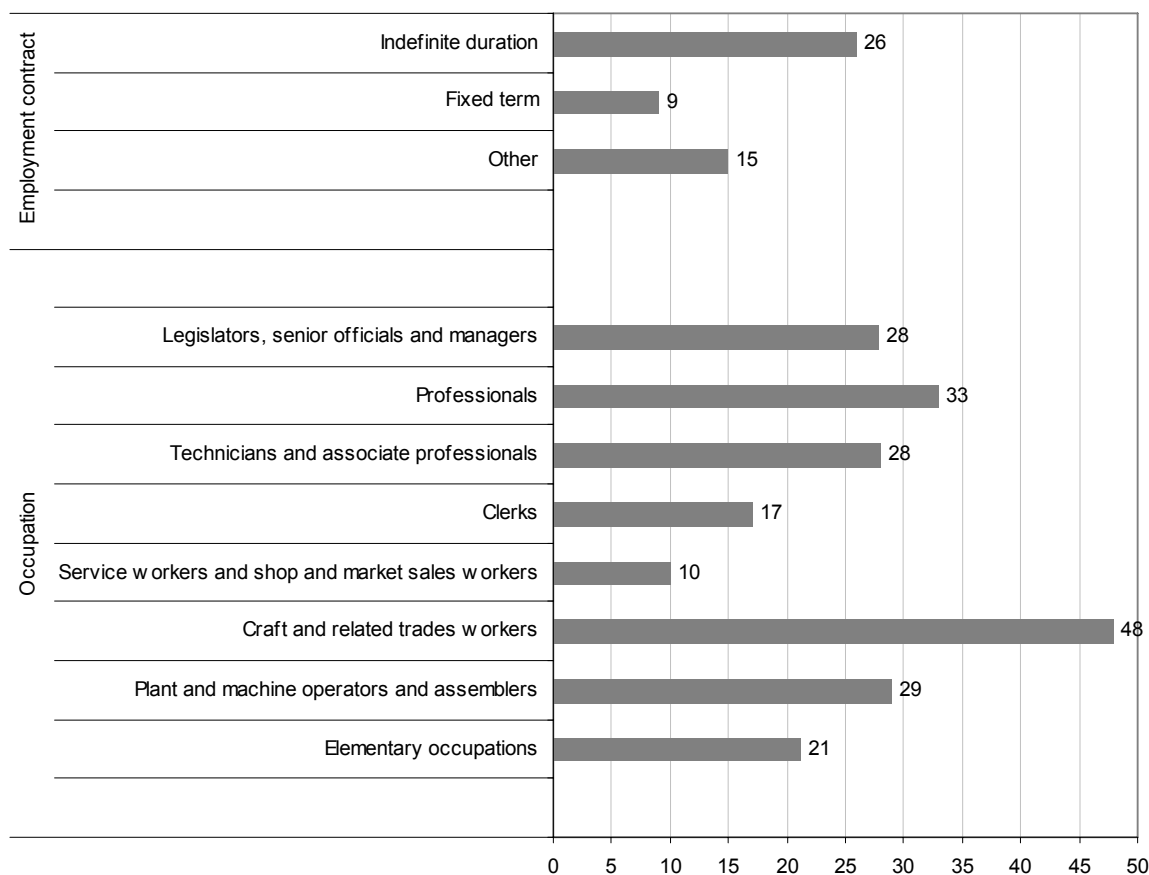
Figure 3 - Gender pay gap, breakdown by enterprise characteristics (1) (%)



Source: Eurostat: Structure of Earnings Survey 2002.

(1) The unadjusted gender pay gap (GPG) is defined as the difference between men's and women's average gross hourly earnings as a percentage of men's average gross hourly earnings. The data presented above (EU-27) covers enterprises, with 10 or more employees, in the sectors of industry and services excluding public administration (NACE Rev.1.1 C to K).

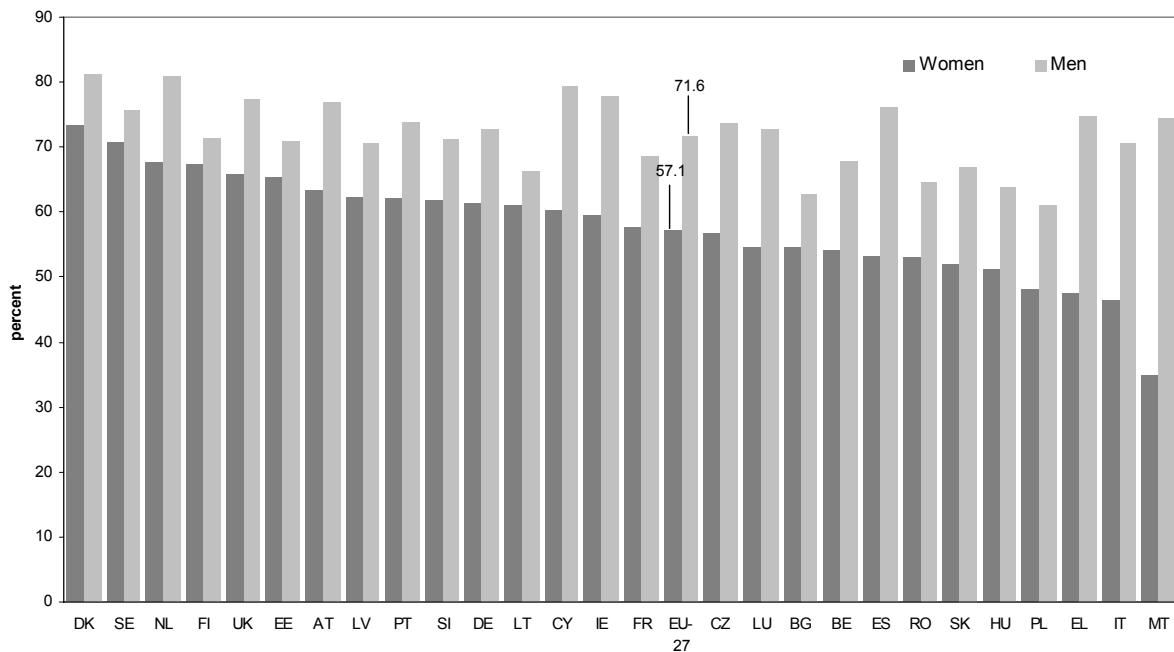
Figure 4 - Gender pay gap, breakdown by job characteristics (1) (%)



Source: Eurostat: Structure of Earnings Survey 2002.

(1) The unadjusted gender pay gap (GPG) is defined as the difference between men's and women's average gross hourly earnings as a percentage of men's average gross hourly earnings. The data presented above (EU-27) covers enterprises, with 10 or more employees, in the sectors of industry and services excluding public administration (NACE Rev.1.1 C to K).

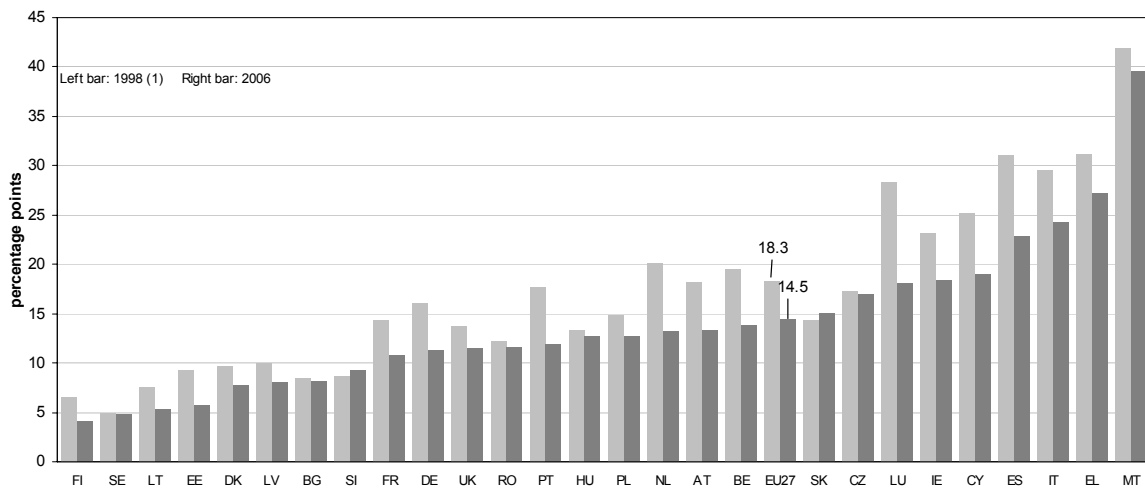
Figure 5 - Employment rates in the EU - 2006



Source: Eurostat, Labour Force Survey (LFS), annual averages.

Provisional data for FR and EU-27

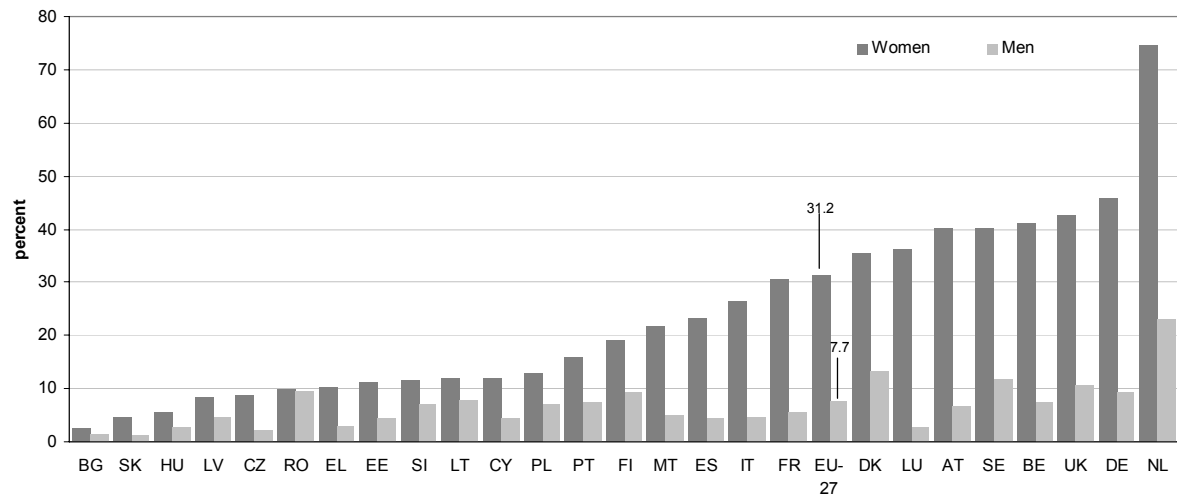
**Figure 6 - Absolute gender gap in employment rates in the EU - 1998 and 2006
(Difference between men's and women's employment rates)**



Source: Eurostat, Labour Force Survey (LFS), annual averages.

Exception to the reference year : (1) 2000 : BG, CY and MT. FR, EU27: provisional data.

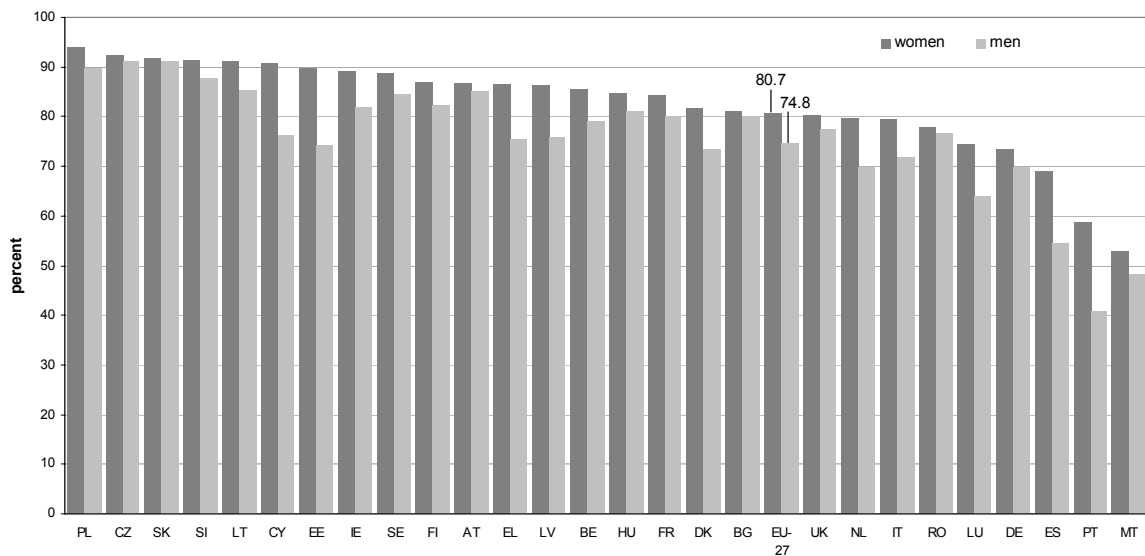
Figure 7 - Share of part-time workers in total employment - 2006



Source: Eurostat, Labour Force Survey (LFS), Annual results

IE: no data available, FR and EU-27 provisional data

Figure 8 - Educational attainment (at least upper secondary school) of women and men aged 20-24 in the EU – 2006

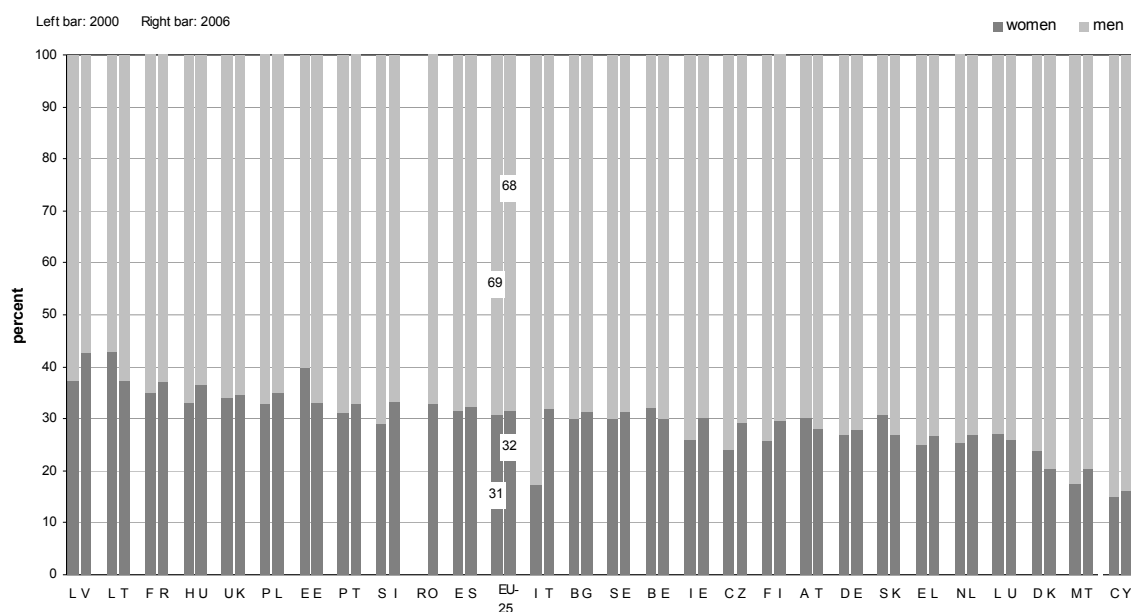


Source: Eurostat, Labour Force Survey (LFS), annual averages.

NB: BG, EL, IT, CY, MT, RO, FI : Provisional value.

Students living abroad for one year or more and conscripts on compulsory military service are not covered by the EU Labour Force Survey, which may imply lower rates than those available at national level. This is especially relevant for CY.

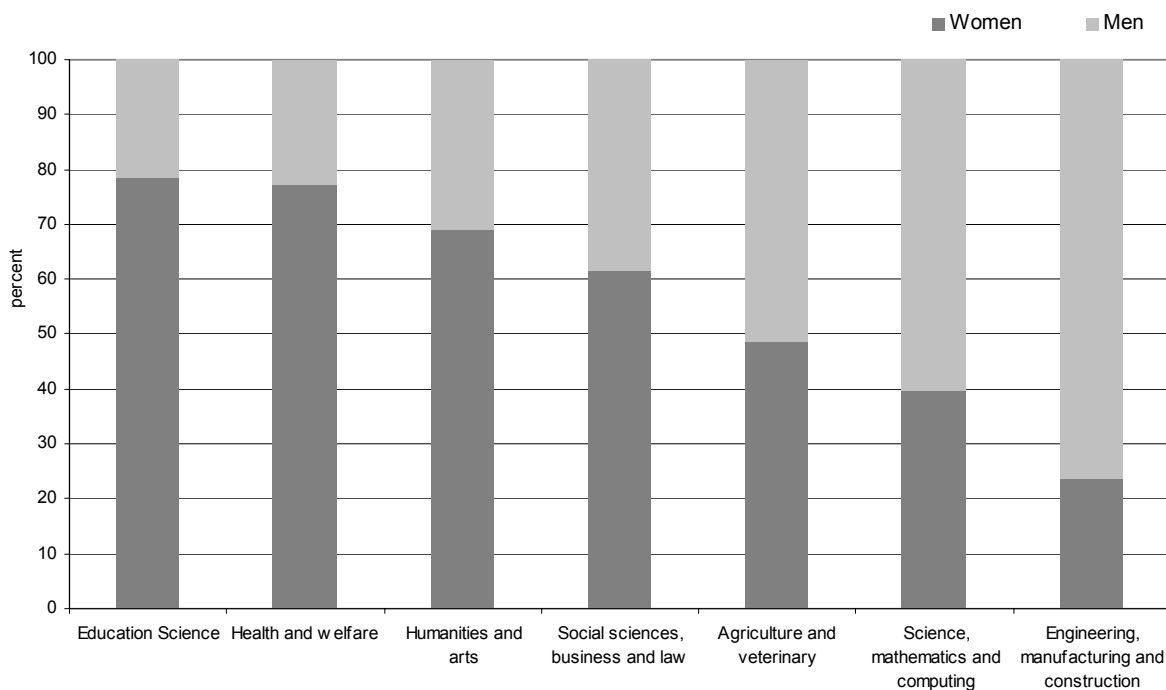
Figure 9 - Managers in the EU - Distribution by sex 2000 and 2006



Source: Eurostat, Labour Force Survey (LFS), spring results.

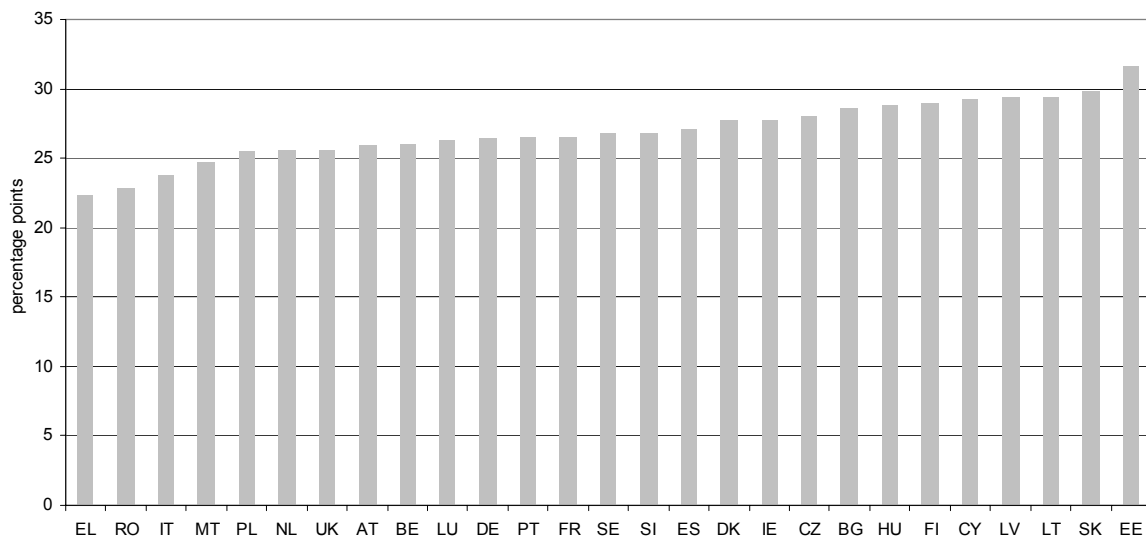
Managers are persons classified in ISCO 12 and 13. FR 2006: provisional data. MT and CY: data lack reliability due to small sample size. IT: Change of data collection method. No data for RO in 2000

Figure 10 - Tertiary education graduates sex and by field of study EU 25- 2004



Source: Eurostat Tertiary education graduates include all graduates of levels ISCED 5 and 6.

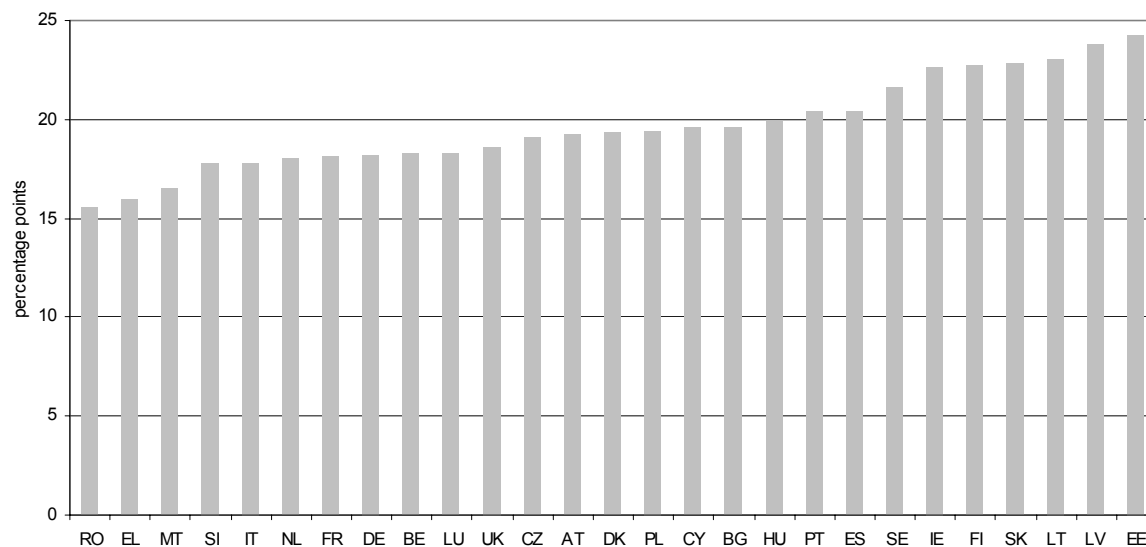
Figure 11 - Gender segregation in occupations in the EU - 2006



Source: Eurostat - LFS

Gender segregation in occupations is calculated as the average national share of employment for women and men applied to each occupation; differences are added up to produce the total amount of gender imbalance expressed as a proportion of total employment (ISCO classification).

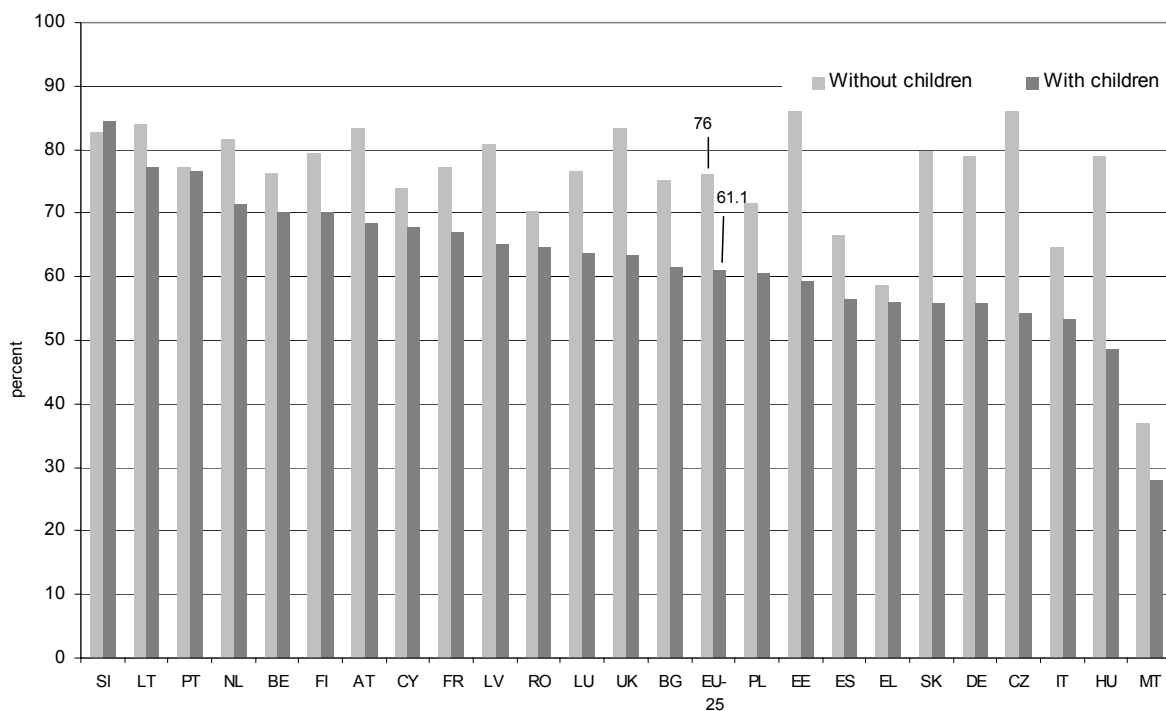
Figure 12 - Gender segregation in economic sectors in the EU - 2006



Source: Eurostat - LFS

Gender segregation in sectors is calculated as the average national share of employment for women and men applied to each sector; differences are added up to produce the total amount of gender imbalance expressed as a proportion of total employment (NACE classification).

Figure 13 - Employment rates of women aged 20-49, depending on whether they have children (under 12) – 2005



Source: Eurostat, European Labour Force Survey, annual averages.

No data available for DK, IE and SE.

4. EXAMPLES OF NATIONAL INITIATIVES TO FIGHT THE GENDER PAY GAP

BE	Guidebook on job classification available for employers and trade unions to avoid and eliminate gender bias in pay systems (2006) Equal Pay Day established, with the aim of raising awareness of the public about the persistence of gender wage inequality. 2006 decision by the federal government to establish an annual report monitoring progress in reducing the gender pay gap. First report published in March 2007.
EL	Guide for the integration of gender equality in firms, including equal pay for work of equal value, with recommendations to public administration and social partners.
ES	Spain adopted in March 2007 a new gender equality law that notably includes provisions on fighting discrimination, allowing positive action measures in collective agreements, encouraging reconciliation of work and family life, promoting equality plans and fostering good practices (1)
FR	Law on equality of remuneration between men and women (March 2006) strengthening women's rights in respect of maternity leave; obligation for enterprises to take steps to close the gender pay gap by 31 December 2010 and to provide for catch up salary payments to be made following maternity or adoption leave. Obligation of gender pay bargaining in companies and sectors.
HU	Law aimed at promoting voluntary regulation on equal opportunities; Equal Opportunity Plan (EOP) to be adopted by public employers and private employers with State-owned share over 50% for each year.
IT	Obligation for public and private firms employing more than 100 employees to provide statistical information on the employment conditions of their employees broken down by gender every two years (1991 Law on Positive Actions; Article 9, Act 125/1991). Companies to give the report to local equality advisors and trade unions.
LU	Obligation for social partners to bargain on equal pay (law of June 2004). Collective bargaining has to include a provision concerning the implementation of the principle of equal pay between men and women.
NL	Equal pay working group (2005) established, bringing together organisations relevant to equal pay – employees and employers organisations, the Equal Treatment Commission, the Dutch Human Resources Policy Association and the Dutch Association for Employee Participation.
PT	Obligation for all employers to display in November in a visible place for a period of at least 30 days, the list of their staff indicating each employee's earnings (Law N° 35/2004, of 29 July, Articles 452 to 457 and 490), with the exception of central, regional and local administrations, public institutes and other collective public entities, as well as employers of domestic service workers Training on gender equality for judges and other agents involved in the process of

	justice administration, promoted by the Commission for Equality in Labour and Employment
SE	Equal Opportunities Act provides that all employers with a minimum of ten employees are required to prepare an annual equal opportunities plan as well as a plan of action for equal pay.
UK	Equality Act (2006) places a statutory duty on all public authorities to have due regard to the need to eliminate unlawful discrimination and harassment and promote equality of opportunity between men and women.

Source: "Gender Pay Gap – Origins and policy responses", Group of Experts on Gender, Social Inclusion and Employment, 2006

(1) Added after the completion of the report.