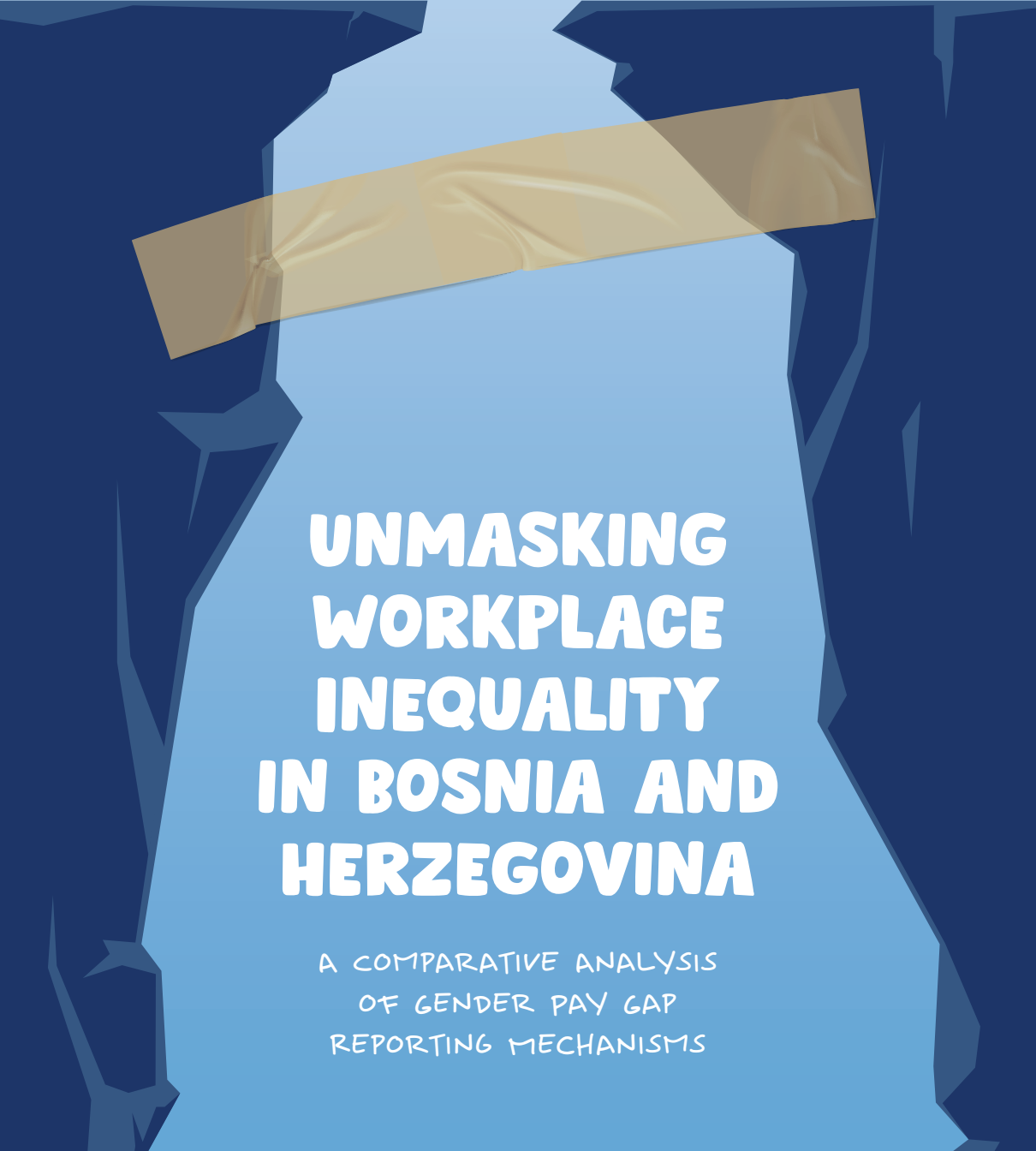




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UNMASKING WORKPLACE INEQUALITY IN BOSNIA AND HERZEGOVINA

A COMPARATIVE ANALYSIS
OF GENDER PAY GAP
REPORTING MECHANISMS

Unmasking Workplace Inequality in Bosnia and Herzegovina

A Comparative Analysis of Gender
Pay Gap Reporting Mechanisms

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2. Introduction

The gender pay gap (GPG) appears across the globe as a result of gender inequality and gender-based intersectional discrimination. The International Labour Organization (ILO) defines the gender pay gap as “structural gender discrimination stemming from the horizontal and vertical segmentation of labour forces” (ILO, 2020).

Gender equality is one of the main pillars of any society and one of the most important social values that enables any woman, man, and non-binary person to realise their full potential as a human being. Gender equality is not only a matter of respect for human rights and democracy, but also a prerequisite for sustainable development. Whilst the gender pay gap has been viewed by some as a result of choices that women freely make in the labour market, viewing the issue through the lens of human rights and sustainable development provides a different approach. This approach looks at the underlying causes of gender inequality which lead to the gender pay gap and advocates for women’s empowerment and the implementation of affirmative business transparency policies to prevent this type of gender-based discrimination.

There are several common features that lead to the gender pay gap at the global level. For example, uneven access to resources for women and men, insufficient legal protection against gender-based discrimination in the labour market, education and employment, and a lack of social support services. However, to understand the challenges posed within an individual country, it is necessary to look at the historical, geographical, and cultural contexts that shape relations among different genders in the country, including prevailing societal norms, gender stereotypes, prejudices, and gender roles, such as expectations for women to work longer in unpaid domestic work and to take on the majority share of child-care and care work for other family members. It is also necessary to analyse the relevant legislative and institutional frameworks for anti-discrimination, labour and social policies (for example, child and elderly care, health care, maternity benefits, etc.) and the ways they enable (or disable) equal and equitable access to natural, economic, and social resources for different

genders (for example, access to education and employment, occupational choice, participation in political and economic decision making, land ownership, access to credit and other financial and non-financial support, etc.).

It is equally important to seek to understand why the gender pay gap persists in some countries. Such analysis questions the extent to which gender equality represents a political priority in the country as well as the extent to which internalised sexist beliefs of decision-makers influence the institutional implementation of gender equality policies. In Western Balkans (WB) countries, for example, relevant legislation guarantees full equality, but the level of implementation remains low. Moreover, the WB transition economies suffer from the complexity of structural drawbacks, including the lack of gender-friendly internal policies, including obligations of employers to collect, report on and publish gender pay gap information.

On another level, properly informed analysis of the gender pay gap must also take account of factors related to the labour market that influence the gender pay gap. This includes the employment rate of women, sectoral and occupational gender segregation, the difference in average salaries between women and men, the presence of women in management positions, work hours in paid and unpaid jobs, the proportion of women engaged in part-time and/or temporary work and state policies regulating the conditions and pay for maternity leave.

Finally, global challenges, like the economic and climate crises and the threat of pandemics, also contribute to worsening the position of women, children and vulnerable groups and widen political, social, and economic gaps, including the gender pay gap, as we have experienced during the Coronavirus disease (COVID-19) crisis (UNDP, 2023).

It is important to underline that all of the above range of factors are interdependent, and that measures to close the gender pay gap should be planned, implemented, and monitored in a holistic manner, taking into account the whole spectrum of political, economic and social causes of gender inequalities in the country.

This report draws on research regarding the gender pay gap in Bosnia and Herzegovina (BiH) with the aim of better understanding the factors underlying the gender pay gap elaborated above, in the particular context of BiH. The research is primarily focused on the BiH legislative framework regulating gender equality, anti-discrimination, and labour legislation in different entities of the country, in order to spotlight the wider gender policy context underlying the gender pay gap in BiH.

The report begins by explaining the concept of the gender pay gap as well as elaborating on the reasons why it is imperative to take measures to address it. It then provides an overview of some of the key, relevant international instruments relating to equal pay and employment opportunities, as well as the key causes of the gender pay gap, methods of measuring the gender pay gap and recommended measures to close the gender pay gap, as identified by international organisations and experts. The focus of the report is then to examine the key relevant legislation in BiH, before providing a short comparative analysis of the implementation, enforcement, and impact of pay transparency measures in certain jurisdictions across Europe. The jurisdictions covered were selected because they have each adopted different pay transparency mechanisms, and so provide a range of perspectives to inform any conclusions and recommendations on how pay transparency can be further implemented and improved in BiH. The report concludes by identifying areas for improvement to address the underlying causes of the gender pay gap and by recommending measures to narrow the gap in BiH, including for example relating to wage transparency, gender sensitive human resources management, and the use of gender audits. More detailed analysis of the different possible methods of measuring the gender pay gap and a comprehensive overview of different legislative frameworks already in place to govern gender pay gap reporting obligations are Annexed to the report to further inform these conclusions and recommendations.

This report is also prepared based on the data from the database on business enterprises managed by the United Nations Development Programme (UNDP) in BiH, which has been established for the purpose of the selection of candidates for the annual Award for Business Leaders of Sustainable Development in

Bosnia and Herzegovina.^[1] The influence of COVID-19 on the gender pay gap was also considered. The comparative analysis and international perspectives in the report are a product of a desk-based review of relevant international, regional and domestic legislation, policies, guidance and papers and reports. The international instruments referenced represent a mixture of those which have been ratified by BiH and which should, therefore, inform policy and practice in this area, as well those which, whilst not directly applicable in BiH, are nonetheless in highlighting the importance of the issue, and in providing guidance on developing good practice in this area.

This report does not analyse issues related to policy implementation or institutional performance in BiH, nor does it deal with the societal and cultural influences and gender stereotypes which prevail in BiH. Its focus is instead on factors linked to the labour market, with particular attention to the gender pay gap in the private rather than the public sector, striving to identify prevalent business practices and business culture related to wage policies and inequality.

[1] The award is organised within the framework of the “Framework for the Implementation of the Sustainable Development Goals as a Foundation for Sustainable and Inclusive Growth in Bosnia and Herzegovina” (SDG2BiH) program, financed by Sweden, and implemented by the United Nations Development Program (UNDP) in BiH in partnership with UNICEF in BiH and UN Women BiH under the general support of the United Nations to the authorities in BiH for the implementation of the Framework for the realisation of the Sustainable Development Goals in BiH. The partner of the award for business leaders of sustainable development is the Chamber of Foreign Trade of Bosnia and Herzegovina.

3. What is the gender pay gap?

The gender pay gap is the difference between the average wages of working women and the average wages of working men (ILO, 2018, p.19). The gender pay gap globally stands at 20%, and in Organisation for Economic Co-operation and Development (OECD) and EU countries at around 13% (ILO, 2018; OECD, 2021; Council of the EU, 2023). In other words, the average working woman in the EU earns just 87 cents for every Euro earned by an average working man. Disparities in pay as well as employment rates are even more stark in BiH. According to the UNDP women's Gross National Income (GNI) per capita is around 19,457 Bosnia and Herzegovina convertible mark (BAM) or 10,709 USD, whereas men have a GNI per capita of around 36,189 BAM or 19,917 USD, resulting in women earning only 53.7% of men's income in this country (UNDP, 2021). Furthermore, only around 36.5% of women are active in the labour market in BiH, as the country still struggles to find systemic solutions for the unpaid labour mostly taken on by women, such as childcare, elderly care, and care of vulnerable people, all of which are often under-reported and often disregarded (UNDP, 2021).

What the gender pay gap figures show, is that in BiH and across the world, women are consistently lower earners than men, with purchasing power predominantly resting in the hands of men. The pandemic and the inflation have placed additional financial constraints on women. The Third Household Survey for the Social Impact Assessment of COVID-19 in BiH indicated that a significantly higher percentage of women (55.5) were experiencing a worsened financial situation (versus 44.9% of men) and that 13.5% of women reported reduced remittances, versus 8% of men (UNDP and UNICEF, 2022). Such statistics demonstrate that, whilst on paper women might have equal opportunities in employment and rights to equal pay, in practice women are not engaged in the labour market to the same level, or with the same benefits, as men.

Numerous international human rights bodies and worker organisations identify the gender pay gap as both a social and economic issue. The ILO, UNDP and UN Women identify the GPG as ‘one of today’s greatest social injustices’ affecting ‘half the world’s population’ (ILO, 2018, p.v.; UN Women, 2016, p.1; UNDP, 2021). Women hold less financial capital than men throughout their lives, meaning nearly every OECD country has higher poverty rates for women than men (OECD, 2021). The effect continues beyond women’s working lives, as rates for their poverty increase in old age when women also earn lower pensions (OECD, 2021; UK Government Equalities Office, 2019). UN Sustainable Development Goal 8.5 thus calls for, among other things, decent work, and economic growth for women, including closing the gender pay gap, as a prerequisite for achieving gender equality.

There is a clear economic incentive to take action to close the gender pay gap. Multiple studies demonstrate that having more women in the labour market is not only worthwhile in itself but that it is also good for business (ILO, 2019). Not only do women often make more productive and collaborative employees, but their increased earning also gives them increased purchasing power, the opportunity to make larger pension contributions and to spend pension incomes – all of which stimulates consumer spending and the economy (ILO, 2018, p.6). The ILO cites an estimation that closing the gender pay gap in OECD economies would lead to gains of US\$6 trillion to GDP (ILO, 2018, pp.10-11). Reducing the gap in work participation rates between men and women by 25% by 2025 could raise global GDP by 3.9%, or US\$5.8 trillion (ILO, 2017, p.18). The World Bank also argues that the persistence of income disparity between men and women negatively affects the growth of a country’s economy (The World Bank, 2023, p.26).

There has never been a more pressing moment to take action to eliminate the gender pay gap. The COVID-19 pandemic had a disproportionately negative impact on women’s employment and earnings, risking a widening of the gender pay gap and decades of progress being undone (ILO, 2022, pp. iv and 1). Additionally, UN Women argues that there is a need to prevent gender inequality emerging in new forms in new employment contexts, as our working world continues to change (UN Women, 2016, p.4). Furthermore, the UNDP has launched a global initiative called the Gender Equality Seal for Public and Private

Enterprises, in effort to enhance the improving the position of women at work and reduce the gender pay disparity. Both initiatives are implemented by UNDP in BiH to support structural changes and enable positive practices within public and private sectors. In addition, the Decent Work track of UNDPs Women Forum for Development identifies gender pay gap as a significant challenge in BiH, putting forth the way forward in its Roadmap for action.

4. Relevant International Instruments

Equal work for equal pay, regardless of gender, is a long-valued concept outlined in international conventions such as the ILO's Equal Remuneration Convention, 1951 (No. 100), one of the most highly ratified conventions in the world (ILO, no date(a)).^[2] The Convention requires States to ensure men and women workers are equally remunerated for work of equal value and to ensure that men and women workers have equal opportunities in employment (Article 2). The ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) additionally obliges States to guarantee equality of opportunity and treatment in employment and occupation (Article 2). While BiH has made steps in adopting international standards concerning work equality, as it has ratified 83 ILO conventions (ILO, no date(b)), including the aforementioned Conventions on Equal Remuneration and Discrimination, there are still grave challenges when it comes to their actual implementation (UN, 2022, p.19). Recent research conducted by the ILO has revealed that although employment has been on the rise in recent years, the gender gap in labour force participation and employment rates still remains an issue for BiH, as women still have lower employment rates compared to men (ILO and European Bank for Reconstruction and Development (EBRD), 2021).

Similarly, Article 11 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW treaty) provides that State Parties take all appropriate measures to ensure, inter alia, equal remuneration and equal treatment in respect of work of equal value. The Universal Declaration of Human Rights (UDHR) includes the provision that everybody has the right to equal pay for equal work without discrimination and just remuneration (Article 23), while the EU Charter of Fundamental Rights provides that equality between women and men must be ensured in all areas, including employment, work, and pay (Articles 21 and 23). Forty governments and organisations furthermore

[2] Ratified by 174 countries, as at 11 May 2023.

made pledges to eliminate or reduce the gender pay gap at a Conference of the Equal Pay Coalition (led by the ILO, UN Women, and the OECD) in 2018 (ILO, 2018, p.98).

Relevant ILO Conventions

- **Equal Remuneration Convention, 1951 (No 100)**
- **Discrimination (Employment and Occupation) Convention, 1958 (No 111)**
- **Violence and Harassment Convention, 2019 (No 190)**
- **Declaration on Fundamental Principles and Rights at Work, 1998**
– declared non-discrimination and equal pay for work of equal value to be fundamental principles to be promoted, respected, and realised by all ILO Member States.

5. Identifying drivers of the gender pay gap

This section outlines the drivers and methods to close the gender pay gap as identified and recommended by international organisations (UNDP, ILO, UN Women, the World Bank, and others). Multiple overlapping drivers have caused and continue to maintain the gender pay gap, including direct and indirect discrimination of numerous forms, as well as a divergence in work and career patterns. However, in some contexts, the extent and causes of the GPG remain unexplained.

► Direct discrimination

Despite the range of provisions in international law intended to eradicate direct discrimination (as described above), cases of direct discrimination continue to exist: where women and men are not paid equally for the same work. The EU Commission states that pay discrimination often goes undetected due to a lack of pay transparency, meaning that victims are prevented from bringing claims (Council of the EU, 2023). Direct discrimination can occur in hiring processes, including the starting salary given to employees or rate of promotion (OECD, 2021). Direct discrimination may also be somewhat disguised by giving the same job two different titles, depending on the gender of the person who performs them, and paying them differently. Occupations titled as ‘chef’, ‘information manager’ and ‘management assistant’ may be paid higher than the roles of ‘cook’, ‘librarian’, or ‘secretary’, with men populating the former and women the latter (ILO, 2018, p.95).

A key Issue is differentiating between **‘equal pay for equal work’**, which is mandated in the UDHR, and the wider principle of **‘equal pay for work of equal value’**, which is covered by CEDAW treaty, ILO Conventions, and the EU Charter (ILO, 2018, p.96). Only 40% of all countries have enacted legislation to address the latter principle, which recognises the injustice that occurs when women are paid less than men for work that may differ in respect of the tasks and

responsibilities involved, the knowledge and skills required, or the conditions under which work is carried out, and yet is of equal worth (ILO, 2018, pp.95-96). This concept calls on us to compare different jobs, especially those dominated by men versus those dominated by women and consider whether work of equal value is being remunerated equally.

▶ Indirect discrimination

Indirect discrimination by job under-evaluation does not just apply to individuals but can affect entire occupation categories or enterprises. There is a polarisation of gender by industry and economic sectors, with those associated with women suffering a pay penalty. Women will often be paid below men even if they complete work of equal value in traditionally male-occupied occupational categories and enterprises. However, they will suffer an even greater penalty if they work in traditionally female-occupied occupational ('feminised') categories and enterprises. National Human Development Report on Social Inclusion in BiH (UNDP, 2021) warns of gender based professional segregation in BiH and feminization of jobs in the sectors of education and social services, leading to systematic lowering of the salaries in given fields. The ILO states that a university graduate working in a male-dominated occupation where men account for around 95% of workers will earn US\$30 per hour; if she or he works in a female-dominated occupation, the average wage drops to about US\$20 per hour (ILO, 2018, p.69). Similarly, working in an enterprise where women make up the largest proportion of the workforce can bring a 14.7% wage penalty compared to working in an enterprise of equal productivity attributes but a different gender mix (ILO, 2018, p.vi). The higher the degree of 'feminization' in the workplace, the lower the average wage per hour paid in that enterprise – even if the jobs can be considered of equal value due to the equivalent educational, professional or training requirements, skills, effort, responsibility, work undertaken, or nature of tasks involved are equivalent (ILO, 2018, pp.74-75; European Commission, 2019, p. 3). UN Women observes that if a significant number of women begin to enter a highly paid male-dominated occupation, there tends to be an overall loss of pay and status of that occupation overall, or new divisions within that category that confine women to the lower rank (UN Women, 2016, p.4). More data is needed to investigate exactly why this occurs, but the ILO concludes that **'the primary driver of the gender pay gap in modern economies is the**

very undervaluation of women's work' (ILO, 2022, p.2). Women are not only paid less for the same jobs as men, but jobs that are disproportionately held by women are often valued less. Comparing the content of these jobs reveals that they are, if not equal work, then often work of equal value, and should be (but are not) remunerated equally.

Undervaluing women's work: key concepts

- **Virtual segregation**, or the **leaky pipeline** – the more senior the position within a company, the fewer women there are to be found (ILO, 2019, p.iii; OECD, 2021). The term **sticky floor** can be used to describe a discriminatory employment pattern that keeps a certain group of people at the bottom of the job scale (such as women working as secretaries, nurses, or waitresses). The **glass ceiling** meanwhile relates to barriers that prevent women rising to the top positions of power.
- **Horizontal segregation, occupational segregation, or glass walls** – at the same occupational level, women and men tend to have different job tasks (ILO, 2018, p.69). For example, within management functions, women are more likely to be concentrated in human resources, finance and administration, and marketing and sales; whilst men are more likely to hold positions in operations, research and development, and other more 'strategic' positions that can be a springboard to higher level positions (ILO, 2019, p. iii; OECD, 2021).
- **Feminised jobs** – job occupations or enterprises that are dominated or traditionally/stereotypically associated with women. These tend to attract lower wages, even if the work is comparatively of equal value (ILO, 2018, p.20). 'Feminization' can contribute to both virtual and horizontal segregation (e.g., low-paid jobs are often those which are feminised, and feminised roles within the same occupational category also suffer a wage penalty).

► Work patterns

In addition to direct or indirect discrimination through the undervaluation of women's work and/or employment of sexist stereotypes, the gender pay gap also reflects women's overall pattern of engagement with the labour market. Such engagement is, for the average woman, impacted by burdens that society, through stereotypes, usually places upon women. Explanations for the gender pay gap have traditionally focused on the behaviour and choices of women, with lower levels of education among women once considered a primary driver of the gender pay gap. However, UN Women points out that over recent decades, women's education levels have increased (sometimes overtaking that of men) and diversified (including in subjects such as medicine and law) – and yet the gender pay gap persists (UN Women, 2016, p.2). The ILO states that women employees across the world have as good if not better educational attainments than men, and that education explains only a small portion of the gender pay gap (ILO, 2018, pp.vi and 63). In high-income countries, the educational attainment of women is usually higher than men; in low-income countries, low-educated women tend to stay out of the labour market altogether (ILO, 2018, p.63). Therefore, the impact of women's education on the gender pay gap is often to reduce rather than increase it (ILO, 2018, p.63). Women are increasingly educated, and yet see lower returns from their education than men. The same is true for BiH, as while the gender balance in primary education is very close, girls begin to outnumber boys in secondary education. The gender difference becomes even more pronounced in tertiary education, as women make up the majority of university undergraduates post-graduate students in the country (UNDP, 2021, p. 50).

What is likely more impactful is that employment status is not evenly distributed between women and men. Women tend to earn less even as they enter the job market alongside men (for university-educated women, this is termed the 'Graduate Gender Pay Gap'), but the gap can widen further due to job patterns during the course of their working life. In high-income economies, many women participating in the labour market work part-time. Part-time jobs, in turn, are more likely to be low or lower-middle skilled work (UK Government Equalities Office, 2019, p.13). In middle- or low-income countries, many women seeking paid work are pushed into the informal economy or opt for home-based work (ILO, 2018,

p.20). A primary reason for this is the unequal distribution of hours of unpaid work in the household: women perform most of the household chores and most unpaid care work, both for the household in general and for elderly members and children in particular. Time-use surveys show that, when unpaid and paid work is accounted for, women work longer hours than men (ILO, 2018, p.19).

The World Economic Forum has analysed data from 2019 to show that men's share of time spent in unpaid work as a proportion spent in total work was 19%, while for women this was 55% (World Economic Forum, 2022, p.7). This disproportionate burden negatively impacts women's labour market participation, particularly in places where access to childcare or family-friendly workplace policies are lacking. Women are also more likely to take time out of the workplace – either in the form of maternity leave or breaks from work altogether – associated with parenthood. Motherhood has been described as a 'wage penalty' deriving from interruptions in or reductions to working time, employment in more family-friendly, lower-paying jobs, or stereotypical hiring and promotion decisions at enterprise level which penalise the careers of mothers (ILO, 2018, pp.vi and 77-78). Analysis by the UK government suggests that women may take jobs closer to home and reduce commuting times to accommodate caring responsibilities, limiting the pool of jobs available to them (UK Government Equalities Office, 2019, p.13). The motherhood gap in the EU can account for as much as a 30% penalty to wages (ILO, 2018, p.97).^[3] In contrast, fathers tend to earn a wage premium over non-fathers, as opposed to suffering a wage penalty (ILO, 2018, p.78). It is worth noting that even if women have no plans to have children or are not the primary carers or performers of unpaid labour, employers may still operate on sexist stereotypes and expect them to be, allowing this to influence their hiring or promoting practices. Such factors certainly resonate in BiH, where issues such as a lack of adequate childcare, care for the elderly and care for people with disabilities, the structure of family leave policies, and the lack of flexible or part-time employment contribute to the different rates of labour market participation for men and women, as the majority of unpaid labour in BiH is predominantly performed by women (UNDP, 2021, pp.85-86).

[3] The worst offender is Turkey.

The World Economic Forum suggests that this unequal burden of unpaid care is not improving: ‘the decade of austerity that followed the 2008 Global Financial Crisis constrained sectors that provide the core of social infrastructure, affecting outcomes for families and primary caregivers – often women – during the pandemic’ (World Economic Forum, 2022, p.6). For as long as women remain stereotyped into roles as the primary caregivers, the gender pay gap will persist.

▶ **Unexplained causes**

The ILO argues that in high-income countries, much of the gender pay gap remains unexplained (ILO, 2018, p.64). This is perhaps exactly why starting from the gender pay gap can be useful; it identifies the outcome of intersecting influences that, alone, would not be recognised. Additional data, obtained through reporting, may help to identify these as-yet-not-understood causes.

6. Solutions as recommended by international bodies

► GPG Reporting and Pay Transparency

Equal pay transparency legislation is a ‘recent’ and ‘innovative’ policy development to identify and tackle the gender pay gap (ILO, 2022, p.3). Pay transparency measures can include periodic pay disclosure, regular gender pay gap reports or audits, and workers’ right to access pay data (ILO, 2022, p. x). The aim is to identify and narrow the gender pay gap by enhancing access to information and tackling potential information asymmetries. Employers are then assisted in identifying and addressing direct or indirect discrimination; workers have the evidence they require to negotiate pay rates or challenge potential pay discrimination (ILO, 2022, p.5). The primary form of transparency measures is **obliging enterprises with a certain threshold of employees to publish information on gender and pay within their organisation**. Gender pay gap reporting, by exposing the size of the gender pay gap, helps point to the existence of possible instances of pay discrimination, thereby aiming to diminish the risk of an unequal pay claim (ILO, 2018, p.96). The World Bank, ILO, OECD, and European Commission all recommend that countries who do not have pay transparency policies in place to identify the gender pay gap should strongly consider implementing them (The World Bank, 2023, p.38; OECD, 2021; ILO, 2022, p.vi; ILO, 2021, p. 7).

Types of Pay Transparency Measures (ILO, 2022, p.5)

- **Pay transparency reports.** One of the most commonly-implemented measures at a domestic level, this involves publishing information on gender and pay within the organisation (ILO, 2022, p.10). The objective is to promote dialogue between workers and employees about existing compensation and business practices. Employers are usually required

to submit pay transparency reports to employee representatives, such as a work council, trade union, and/or government agency.

- **Equal pay audits.** These can be considered a step further than pay transparency reporting, as it entails an assessment of the data. Auditors analyse and understand identified pay gaps, analysing the proportion of women and men for each occupational category or position, and outline steps to address them (ILO, 2022, p.10).
- **Pay information rights.** This allows employees to request and access information on pay levels in their enterprise. The data is usually averaged and anonymised so it cannot be directly linked to another specific employee.
- **Collective bargaining.** A process used to negotiate terms and conditions of work and employment relations. An established policy can make discussion of equal pay and equal pay audits part of the discussion in collective bargaining negotiations.

Because most pay transparency policies are relatively new, research evaluating their effects on wage and employment outcomes is not extensive (OECD, 2021). However, the body of evidence indicates that on balance they do reduce the gender pay gap and generate economic benefits (ILO, 2022, p.6). A 2014 study for the European Commission found that regular mandatory reporting of enterprises on pay levels would generate an EU-wide annual net economic benefit of €18 billion (European Commission, 2014; ILO, 2022, p.6).

There have been concerns raised regarding pay transparency measures, especially gender pay gap reporting. Employers may see this as an administrative burden with significant compliance costs, with little or no known (or even negative) benefit (ILO, 2022, p.6). However, the aforementioned European Commission study identifies that the annual net economic benefit of reporting would generate €18 billion while incurring annual compliance costs of only €108 million (European Commission, 2014). The OECD also suggests that pay reporting is relatively low cost, particularly if governments provide an online pay gap calculator (OECD, 2021). States could mitigate the reporting by introducing digital tools to enhance pay transparency; Switzerland was the first country to

introduce the digital tool Logib to enable employers to self-conduct an equal pay analysis, reducing burdens for small employers and facilitating monitoring by introducing a uniform format and criteria (ILO, 2022, p.12). There have also been concerns regarding the right to privacy. As a result, some countries require enterprises to provide aggregated or averaged pay figures across a given professional category or to anonymise information. To ensure individuals are not directly identifiable, Germany requires a minimum of six employees before enforcing the right of an employee to request pay information (ILO, 2022, p.6). Finally, as identified in the next section of this paper, there are worries that the gender pay gap may be corrected through the lowering of men's wages, not the increase of women's labour market participation and equal valuing of women's work. Two existing studies find that the relative benefits to women's earnings come predominantly from slower wage growth among men (ILO, 2022, p.6). However, the ILO offers as comparison a 2021 study which found that among new hires at large enterprises, the gender pay gap declined as a result of a large boost in wages of women with no statistically significant effect on male wages (ILO, 2022, p.6).

Gender pay gap reporting can be used as merely an informative tool. A worker receiving information that they have been underpaid can choose to negotiate higher pay or initiate a pay equity claim. However, the onus of identifying, raising, and rectifying pay inequality rates here rests on the individual. The effectiveness largely relies upon workers having bargaining power to negotiate collectively or individually, and to negotiate without backlash. Furthermore, women tend to be less likely than men to negotiate for higher salaries, and face social penalties when they do (OECD, 2021). Therefore, most international bodies recommend that the information revealed in the gender pay gap is used as a starting point for concrete action.

Taking action in response to gender pay gap reports

- **Financial penalties for non-reporting:** In a number of countries, companies' failure to comply adequately with reporting requirements can be followed by financial sanctions.

- Name and shame:** The UK has adopted a ‘name and shame’ approach. No direct penalties are made for not reporting or for the gap reported, but a company’s overall gender pay gap or failure to report is published online for public consumption. This has likely contributed to 100% reporting compliance in the first two years of the programme. The data published on the UK government website has been put to use by the Gender Pay Gap App, an automated Twitter account which comments on companies’ International Women’s Day statements with their gender pay gaps.
- Action plans:** The OECD advises companies to create a ‘relevant, tailored plan’ to address gaps within a reasonable timeframe (OECD, 2021). This places the responsibility on businesses to drive change rather than leaving the onus of identifying and addressing gaps to workers and their representatives.

The 2014 report for the EU Commission has attempted to measure the impact of some of these transparency measures.

Measure	Estimated reduction to gender pay gap
Regular pay transparency reporting	0.66-1.5%
Equal pay audits	0.66-2.0%
Pay information rights	0.33-0.5%
Equal pay in collective bargaining	0.00-0.33%
Cumulatively	1.65-4.33%

It is important to remember that pay transparency measures can assist in prompting a re-evaluation of business practices, but essentially, they reveal existing problems caused by other factors, which cannot be entirely solved through transparency. Identifying a gender pay gap could therefore be the starting point to implement any one, or all, of the below policies. All have been recommended by international organisations.

► Re-evaluating pay

As outlined above, both direct and indirect wage discrimination can occur when two jobs are titled and paid differently but include the same responsibilities, or when two jobs are paid differently but comparatively include work of equal value. Countries should therefore introduce legislation encompassing the concept of equal pay for work of equal value, rather than the simpler concept of equal pay for equal work, which can help correct the ‘historical undervaluation’ of jobs and sectors typically considered ‘women’s work’ (OECD, 2021). Work should be objectively valued, with equal pay laws offering means to compare pay across organisations and sectors (UN Women, 2016, p.2). The OECD points to job classification systems as a straightforward means to compare (OECD, 2021). Jobs should be described in gender-neutral, objective terms that relate to a classification system. New EU legislation, covered in the following section of this paper, mandates that pay structures to compare pay levels should be based on gender-neutral criteria and include gender-neutral job evaluation and classification systems (Council of the EU, 2023). This allows jobs to more easily be compared to each other, revealing gender gaps and other forms of indirect discrimination.

► Wages

The gender pay gap can be reduced by a number of changes to wage packages and remuneration, for example, by **formalising work**. 61.2% of the world’s employed population are in informal employment, where women face the double penalty of lower wages than workers in the formal economy and lower wages than men in the informal economy. Measures to promote the formalisation of the informal economy can therefore greatly benefit women, bringing them under legal and effective protection and allowing for better collection of data (ILO, 2018, p.93). Raising the **minimum wage** is also effective at reducing gender pay gaps at the bottom of wage distribution, particularly when it serves as an effective wage floor. Women are over-represented in the lowest-paying jobs, making it important for minimum wage floors to set a decent standard (UN Women, 2016). The ILO specifies that states should not set lower wage levels in sectors or occupations where women predominate (ILO, 2018, p.92). For example, domestic work is in many countries excluded

from the coverage of labour law or not afforded treatment with other types of work, meaning domestic workers may not benefit from a suitable minimum wage. **Collective bargaining** (the negotiation of wages and other conditions of employment by an organised body of employees) can play a role. Collective agreements can be specifically aimed at reducing gender pay gaps. Overall, countries with greater collective bargaining coverage tend to have less wage inequality in general (ILO, 2018, p.92). Finally, employers should set wages based on objective job criteria, making equitable salary offers to men and women, and basing pay on the position itself rather than the previous pay of the employee (the latter perpetuates the gender pay gap) (ILO, 2020, p.8).

► **Cultural change**

Employers can consider, and States can fund, targeted schemes to catalyse a change in working practices and career paths. Creating avenues for women to formally progress and receive promotion as formal recognition for higher skills and experience is accompanied by higher pay (UN Women, 2016, p.2). Some countries have introduced programmes designed to attract more women into STEM fields (ILO, 2018, p.94). This intends to tackle the occupational segregation that comes from women less frequently entering the job market in well-paid STEM employment opportunities or remaining concentrated in less well-paid occupations (for example, ICT management rather than ICT software development). The same is true for BiH, as according to the survey conducted by UNDP regarding women's employment potential, 44.4% of respondents found that women are underrepresented in the STEM fields, suggesting that more opportunities must be created for women to be educated and engaged in professions such as informatics, technology, science, and engineering (UNDP Women's Forum for Development, 2022).

A second approach is to support all workers pursuing flexible or non-linear careers, which would disproportionately assist women. The motherhood penalty will only be fully reduced with more equitable sharing of family duties between men and women – but States and employers can adopt policies that reduce the burden of care as a whole and encourage its equal division. States can mandate that employers provide equal paid maternity and paternity leave, with a right to return to the same or similar job at the end of the leave (UN Women, 2016,

p.2). Men can be encouraged to take up parental responsibilities through use-it-or-lose-it quotas for fathers (used to great effect in Sweden and Iceland) (UN Women, 2016, p.2). If a portion of leave isn't specifically designated for fathers, few men will take it, reinforcing inequalities at home and at work; assigning paid leave as an individual entitlement for each parent promotes equity in paternity responsibilities and reduces the motherhood penalty for women (Shand, 2018, p.1). Fathers would also benefit from opportunities for more flexible work or working hours (UN Women, 2016, p.4). Finally, while all workers face a wage penalty after a period of absence from the labour market, the penalty is greater for women. There is a lack of programmes supporting women's return to work after childbirth, which States could recommend and finance (ILO, 2018, p.97). States could also invest in high-quality universal childcare, which offers returns by allowing both parents to return or take up work at an earlier stage and for longer hours (UN Women, 2016). For example, a recent study by the consultancy group PwC identified a lack of affordable childcare as one of the reasons for an increase in the gender pay gap in the UK (PWC, 2023).

As it was previously noted, UNDP has introduced the Gender Equality Seal which is designed for the private sector to embrace gender equality and enhance women's economic and social empowerment all with the aim to eliminate gender inequalities in the workplace, while at the same time improving the lives of all employees and their families. The Gender Equality Seal is based on internationally accepted principles, ideals, and agreements regarding human rights and gender equality, including the principles enshrined in the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the International Labour Organization Conventions and the UN Global Compact Ten Principles and the Women's Empowerment Principles (WEP) developed by the UN Women and the UN Global Compact.

To receive a Gender Equality Seal, companies must meet standards in seven working areas that include management systems, in-house capacities, enabling environment, communications and knowledge management, programs, partnerships, and gender impact/results. The Gender Equality Seal is implemented in four stages: self-assessment, development of the action plan, implementation, and certification. Based on the assessment a team of assessors recommends the final Gender Equality Seal certification level that can

be Bronze, Silver and Gold. Ending discriminatory practices in the workplace not only has multiple benefits for the companies, but it is essential to building stronger economies. According to the International Monetary Fund, achieving gender equity can lead to a rise in national GDP of up to 34%.

7. How to implement gender pay gap reporting obligations

As identified already in this paper, gender pay gap reporting is one of the most common and recommended measures for identifying and prompting action on closing the gender pay gap. This section will look further at the specificities of implementing gender pay gap reporting, based on recommendations from international bodies, with a focus on the recently-introduced EU Transparency Index. An in-depth review of these different measures can be found at Annex 1 of this report.

► Measuring the gender pay gap

The gender pay gap can vary depending on the data fed into it and the methodology used to calculate it. There are multiple ways of calculating the gender pay gap – for example, comparing the mean or median hourly, monthly, or annual gender pay. However, the factor-weighted method of measuring the gender pay-gap, pioneered by the ILO arguably provides the most reflective and informative way to measure the pay gap. This method splits men and women into more homogeneous sub-groups, using factors such as their level of education, and working-time status (part-time or full-time) to calculate the pay gap between these sub-groups and seek to better isolate gender as the key comparative factor, thereby aiming to remove the distortions that may occur when using the other aforementioned methods. Ultimately, a key factor to the success of any gender pay gap reporting mechanism is ensuring that accurate and detailed data is made publicly available, so that states, NGOs, and international organisations can subject such data to detailed review.

► EU Transparency Directive

Although equal pay for equal work is a core principle of the EU, the EU reports that ‘implementation has long been challenging’. The average gender pay gap across the EU27 in 2020 stood at 13% (EU Transparency Directive,

Recital (15)). Gender pay transparency is therefore included as a key priority in the EU Gender Equality Strategy 2020-2025, with a directive proposed in 2021 and adopted by the European Parliament in March 2023.

The directive requires companies to report annually (for 250+ employees) or once every three years (100+ employees) on their gender pay gap. This applies to all workers, including part-time and fixed-term workers. Pay includes all elements of remuneration. Employers must provide the mean gender pay gap, mean gender pay gap in complementary or variable components, median gender pay gap, and median gender pay gap in complementary or variable components. The information must be made public, but employers can accompany the published data with an explanation of any gender pay differences or gaps. The responsible company should take steps to remove inequalities where these are not justifiable; and pay structures must be reviewed and revised where there is a difference in the average pay level of at least 5%.

Additionally, the legislation introduces a number of legal measures to address pay discrimination. For example, in situations where no real-life comparator exists to determine whether work is of equal value, the use of a hypothetical comparator is allowed to enable workers to demonstrate that they have been treated differently to a hypothetical worker of another sex. In addition, unsuccessful claimants should not be required to pay the costs of proceedings if they had 'reasonable' grounds for bringing the claim (for example, if the respondent had not complied with pay transparency obligations).

8. The Implementation of Gender Pay Gap Reporting Obligations at a Domestic Level

Obligations under international instruments to counter the gender pay gap have been implemented differently across different jurisdictions. This section analyses the position across six European jurisdictions to provide an overview of the different methods by which gender pay gap reporting obligations may be implemented, including a review of their efficacy. France, the UK, Germany, and Iceland have all implemented gender pay gap reporting legislation, whilst Croatia and Slovenia have indirect wage transparency mechanisms. A more detailed analysis of the gender pay gap reporting obligations in the relevant jurisdictions and a deeper review of how they have been implemented can be found at Annex 2.

► Comparative analysis of relevant legal obligations

All six jurisdictions have national laws guaranteeing the principle of equal pay for equal work; however, in the last several years, Germany (2017), the UK (2017), France (2018) and Iceland (2018) have introduced legal obligations relating specifically to wage transparency. Croatia has an indirect pay transparency mechanism in that all statistical data and information collected by public sector organisations must be expressed by gender. Similarly, the Slovenian Statistical Office collects data across the private and public sectors regarding average pay, including by gender.

The gender pay gap reporting obligations across these jurisdictions vary in terms of the scope of employers they apply to and the extent of the requirements they impose. For example, whilst France and Germany impose more stringent obligations on the private sector, Croatia's indirect pay transparency mechanism only applies to the public sector. Further, whilst the Icelandic legislation applies

to employers with at least 25 employees; at the other end, the UK legislation targets only those employers with 250 or more employees. Countries usually further divide the organisations targeted based on their size, such that the requirements are more burdensome for bigger employers.

In terms of what is required by the obligations, in the UK and France, employers must collect and publish prescribed details about their workforce. In contrast, in Iceland, the focus is on a pay auditing process, which involves systematically determining the value of a job within an organisation and ensuring equal pay for jobs of equal value. German legislation is hybrid: individuals can request the provision of certain data and the largest employers must explain whether or not they have taken measures to promote equality, and additionally the largest employers may also voluntarily conduct pay audits. Reports on compliance with the relevant legislation are usually available to employees and the general public.

With respect to enforcement of the gender pay gap reporting obligations, France and Iceland provide for financial penalties for non-compliance. French private companies may be fined up to 1% of their total payroll for, amongst other things, failure to reach the required minimum Gender Equality Index score after three years. Icelandic employers may incur fines of up to 50,000 ISK (around €360) per day if they do not comply with their Centre for Gender Equality's request for data or other information or if they violate the requirement for the equal pay certification.

In contrast, the UK and Germany have no enforcement mechanisms specific to wage transparency obligations. Instead, in the UK, the Equality and Human Rights Commission has general powers under other equality legislation to carry out investigations and order employers to plan and take remedial action. In Germany, the information right granted to employees may be used by individuals pursuing private enforcement to assert that the employer has violated the principle of equal pay.

► The Impact of the GPG Reporting Obligations

In the last decade, the gender pay gap has, in general, been decreasing across the majority of jurisdictions discussed. The gender pay gap increased

in Croatia and Slovenia between 2010 and 2015/2016, however, both countries have since experienced a decrease.

Gender pay gap transparency legislation has been criticised for being too blunt a tool to deal with a complex issue as it does not take into account, for example, working arrangements and caring responsibilities. However, this criticism arguably misses the mark. Because the gender pay gap is such a complex issue, there is no one particular method that will eliminate it; rather the approach must be multifaceted and appropriate in the context of each country, with gender pay gap transparency one key aspect of that approach.

Given the diversity of gender pay gap legislation and the variety of responses to, and the duration of, said legislation across the jurisdictions, it is difficult to draw concrete conclusions as to the efficacy of the methods used. However, it does appear that publication to the general public of the statistics gained by implementing wage transparency legislation has positive impacts. For example, in the UK research has found a 14-16% reduction in the gender hourly pay gap attributable to the gender pay gap reporting obligations (Blundell, 2021, p.16; Duchini, Simion and Turrell, 2021, p.14).

The most notable impact of the gender pay gap reporting obligations across the jurisdictions covered is the fostering of discourse in organisations and the general public about equal pay and the factors influencing men and women in the job market. Further, wage transparency obligations have few negative effects: a reduction in labour productivity in the UK has been noted, but there has been no significant impact on profits as the decline in productivity has been offset by the lower salaries (Duchini, Simion and Turrell, 2021, p.4). However, one identified area for improvement across the jurisdictions (with the exception of Iceland) is to ensure gender pay gap reporting obligations apply to a wider range of employers. The wage transparency obligations in France and Germany, for example, cover, respectively, only 25% of private sector employees and a third of the workforce (Breda *et al*, 2023, p.6; Ahrens and Scheele, 2022, p.166).

From the perspective of employers, there has been some criticism of the administrative burden posed by the legislation. However, studies have found that there is generally contentment amongst employers in Iceland and France

with the wage transparency legislation. Research with regards to the UK and Germany is less clear, although it is noted that some employers in both jurisdictions have gone beyond the strict legislative requirements.

In respect of compliance and enforcement, compliance with legal obligations was higher where the obligations were mandatory and larger firms consistently have higher compliance rates than smaller firms. There have been few to no heavy penalties used in the countries which provide for sanctions, namely France and Iceland. In contrast, by increasing public scrutiny and permitting comparisons across firms, public disclosure of the relevant GPG figures magnifies the disciplinary effects of the legal obligation, and therefore is particularly effective.

► Indirect wage transparency in Croatia and Slovenia

Both Slovenia and Croatia have a lower gender pay gap than the average across the EU27. As discussed in the first section of this paper, the gender pay gap is a complex issue and its calculation is impacted by multiple factors, including the number of women in employment. The gender pay gap is also affected by the methodology used to calculate it: it has been noted that the Slovenian gender pay gap in 2010 differed depending on which methodology was used (Poje and Roksandic, 2014, p.8).

Nonetheless, data consistently has shown that Slovenia has one of the lowest gender pay gaps in the EU. This, in conjunction with its indirect wage transparency measures, highlights that gender pay gap reporting must only be (and must be perceived as) one element of a wider package of support to tackle gender inequality in the workplace and wider society.

9. Bosnia and Herzegovina

— Country Profile

Bosnia and Herzegovina consists of two entities, the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS), and Brčko District of Bosnia and Herzegovina (BD BiH), which has special status. In line with the 2013 Census Report, the total population of BiH was 3,531,159, of which 50.9% were women and 49.1% were men. According to this census report (Agency for Statistics of Bosnia and Herzegovina, 2013), the population of the FBiH was 2,219,220, RS 1,228,423, and BD 83,516. According to the RS Census Report, the population of RS was 1,170,342 (48.85% men and 51.15% women). The highest ratio of men to women in BiH was found in the age category of 0 to 19 years, where there were approximately 106 men for every 100 women. As age increased, the ratio gradually reversed, and by the time the population reached the age group of 80 and above, there were 57 men for every 100 women.

BiH applied for EU membership in February 2016 and became a candidate country in December 2022. The year before, in 2021, the European Commission noted that the country had made limited progress but was still at an early stage of establishing a functioning market economy. Between 2015 and 2019 a relatively favourable external environment helped the country to achieve average economic growth of 3.5%. However, economic output dropped by about 4.5% in 2020 and the COVID-19 crisis additionally deteriorated the situation (European Commission, 2022). “Both entities have constitutional mandates over labour and social policy legislation, and this effectively creates two labour markets, each with a relatively small labour force. The greater part of the formal labour force remains in public employment or state-owned enterprises, while private sector employment is poorly regulated, insecure, and subject to a range of non-standard practices due to a lack of legal oversight and enforcement. The majority of employees in the private sector are registered as working for the minimum salary.” (UNDP, 2021, p. 20)

The unemployment rate is very high, especially among women and the youth, due to a combination of several factors, ranging from a lack of adequate employment options and a mismatch of education curricula with labour market needs, all the way to high taxes that result in a prominent grey (informal) economy (UNDP, 2021, p. 20). In February 2023 the number of registered unemployed individuals in BiH was 355,211, with 206,245 of them being women. As compared to January 2023, the number of registered unemployed persons decreased by 0.2% (the number of men decreased by 0.2% and women by 0.3%). Furthermore, when comparing February 2023 to February 2022, there was a significant decrease of 5.5% in the overall number of registered unemployed individuals. The number of unemployed men experienced a larger decline, decreasing by 6.9%, while the number of unemployed women decreased by 4.4%. (Agency for Statistics of Bosnia and Herzegovina, 2023). “The formal labour market in Bosnia and Herzegovina has been unable to integrate large numbers of women, young, old, people with disabilities and disfavoured minorities. Despite measures to improve access to employment for people with disabilities their integration into the formal labour force remains low as is the case with members of other vulnerable groups and in particular Roma people, those with incomplete or only primary school education, older workers, and the lower income quintile of women with care responsibilities.” (UNDP, 2021, p. 21)

10. Gender Gaps in Bosnia and Herzegovina

Despite the legal equality between women and men, gender inequality persists across various aspects of life in BiH. Women have lower access to resources than men, except in education, and are underrepresented in political and economic decision-making. Culturally and traditionally assigned gender roles in society impose greater responsibility on women, especially working mothers, to take on more responsibility in respect of the family and to work longer hours in unpaid domestic work compared to men.

In fact, such an environment poses significant challenges to women's leadership in both business and politics in BiH. Women often face time poverty resulting from their dual responsibilities of family care and work. Insufficient availability of adequate childcare facilities and other social services further exacerbates this situation, hindering women's ability to fully engage and excel in leadership roles.

Women face particular challenges in accessing economic opportunities, often facing greater barriers than men, particularly in terms of accessing credit and land. Low access to credit and assets is in large part due to a lack of collateral. Despite the fact that women are legally entitled to own land, they rarely own property, mainly due to local customs and traditional gender role perceptions. This, in turn, affects women's access to credit, limiting their risk-taking and entrepreneurship in business in favour of more predictable, safer public sector jobs (Pozarny and Rohwerder, 2016).

Women are most often employed at lower paid jobs and have fewer opportunities for career advancement, which reflects on their financial standing, not only during employment, but also in later stages of life. Higher life expectancy and the gender wage gap contribute to a higher risk of poverty among women, especially single mothers. Particularly affected are also elderly women living alone in rural areas as some of them have low, or even no, pension or other

regular income (World Bank, 2003). Gender-based discrimination in employment and the labour market, as well as sexual harassment and bullying at work, remain the main challenges for women in accessing economic equality. Women still experience discrimination in hiring procedures, promotion, and termination of employment, and they are more likely to experience sexual harassment at work than men.

The UNDP's Gender Development Index, which measures gender gaps in human development achievements by accounting for disparities between women and men in three basic dimensions of human development – health, knowledge and living standard – is at 0.940 for BiH. Women spend an average of 14.1 years in education, while men spend 13.5 years (UNDP, no date). Of those who completed higher education in 2020, 60% were women and 40% were men. More than half of the women in higher education received their bachelor's, master's, and doctorate degrees in the fields of health and social care, education, and social sciences. A larger number of men completed their higher education in the fields of information and communication technologies, engineering, production, and construction (Agency for Statistics of Bosnia and Herzegovina, 2022a).

Representation of women in politics has remained low since 1995, despite legal obligations stipulating the introduction of a quota for women. Most political parties place gender equality as one of their key principles in party statutes and manifestos, however, their impact remains largely limited. It is difficult to conclude if political parties are gatekeepers to the equal participation of women despite the fact that side-lining policies have been identified. Their performance in this area needs to be contextualised as it is clear that in other areas political parties have a limited impact as well (UNDP, 2019).

In 1998, the Provisional Election Commission adopted a minimum 30% quota for women on every party list. In the 1998 elections, this resulted in a dramatic increase in women's representation at all legislative levels. In 2000, this rule was codified into the Election Law of Bosnia and Herzegovina and applied to all party lists in the 2000 national and municipal elections. However, the electoral law was reformed at the same time to provide an open-list proportional electoral system, which subsequently reduced the impact of legislated candidate quotas.

According to the IPU (Inter-Parliamentary Union, no date), the representation of women in Parliament in 2023 is as follows: after elections in October 2022, in the House of Representatives, out of 42 representatives, 8 were women (19.1%), while in the House of Peoples, out of 15 representatives, 2 were women (13.3%). This is below the European average of 26.4%, the 40% threshold of the Law on Gender Equality in BiH, the Council of Europe standards and even below the Beijing benchmark of 30% (UNDP and UN Women, 2020).

The United Nations Committee on the Elimination of Discrimination against Women (UN CEDAW Committee) in its reports on BiH keeps expressing concerns about the low level of representation of women in politics (UN CEDAW, 2019). The same goes for the low participation of women in the labour market, and in particular for the persistent gender pay gap and horizontal and vertical occupational segregation. The UN CEDAW Committee also expresses concerns about the absence of employment policies and strategies directly targeting women and strongly recommends BiH undertakes measures to address existing gaps, in particular the disproportionately high engagement of women in unpaid agricultural and domestic work, the disparity in maternity benefits in the entities in BiH, unpaid social contributions by employers which jeopardize the pension and health insurance benefits of women, as well as the high exposure of women to sexual harassment in the workplace.

11. Anti-discrimination and gender equality framework in Bosnia and Herzegovina

► Constitutional provisions for gender equality

Gender equality is stipulated in the Constitution of Bosnia and Herzegovina, the highest legal act in the country. Not only is equality mentioned in its Preamble, together with the Universal Declaration of Human Rights and two human rights covenants (International Covenant on Civil and Political Rights, 1966; and, International Covenant on Economic, Social and Cultural Rights, 1966), it also directly applies the European Convention on Human Rights which guarantees gender equality.^[4] Article II(4) contains a non-discrimination clause that guarantees enjoyment of all rights and freedoms under the Constitution to all individuals without discrimination on any ground, such as sex or other status (e.g. gender).

The Constitution of the Federation of BiH guarantees the highest level of internationally recognised rights and freedoms, such as equality before the law and the prohibition of discrimination based, among others, on sex.^[5]

The Constitution of Republika Srpska^[6] is based on the protection of human rights and freedoms, in accordance with international standards.^[7] It proclaims the equality of its citizens and equal protection irrespective of, among others,

[4] Article II 2 of the Constitution.

[5] Article 2, para. 1 c) and d) of the Constitution of the Federation BiH, "Official Gazette of *FBiH*", no. 1/1994, 13/1997, 16/2002, 22/2002, 52/2002, 60/2002, 18/2003, 63/2003, 9/2004, 71/2005, 72/2005, 88/2008, 79/2022, 80/2022, 31/2023.

[6] "Official Gazette of RS", 21/1992, et al., 73/2019.

[7] Article 5 of the Republika Srpska Constitution.

their sex,^[8] as well as equal protection of rights in proceedings before national courts and other State bodies and organisations.^[9]

The Statute of the Brčko District of BiH does not contain any non-discrimination provision, but in this area the Constitution of BiH and the relevant laws of BiH institutions are directly applicable throughout the territory of the Brčko District BiH.^[10]

► Prohibition of discrimination based on sex/gender

The constitutional equality clause is elaborated in the Law on the Prohibition of Discrimination (LPD)^[11] from 2009, which provides a framework for the implementation of equal rights and opportunities for all persons in BiH and introduces protection mechanisms. The Law on the Prohibition of Discrimination prohibits discrimination based, among others, on sex, gender identity, sexual orientation, sex characteristics, and other grounds.^[12] The LPD prescribes that the prohibition of discrimination applies to all bodies in the public and private sectors.^[13]

The specialised legal instrument on gender equality in BiH is the Law on Gender Equality (LGE),^[14] adopted in 2003 and amended in 2009. This law is based not only on Article II(4) of the Constitution, but also on the UN Convention on the Elimination of all Forms of Discrimination (CEDAW treaty), the main human rights catalogue of women's rights, and relevant EU directives. Gender equality is guaranteed in all spheres of life, including the economy, employment and labour.^[15] Gender discrimination is defined as “any disadvantageous position of

[8] Article 10 of the Republika Srpska Constitution.

[9] Article 16 of the Republika Srpska Constitution.

[10] Article 1, para. 4 of the Statute of the Brčko District of Bosnia and Herzegovina, no. 02-02-36/10, 14 January 2010.

[11] “Official Gazette of BiH”, no. 59/2009, 66/2016.

[12] Article 2, para. 1 of the LPD.

[13] Article 2, para. 2 of the LPD.

[14] “Official Gazette of BiH”, no. 16/2003, 102/2009, 32/2010.

[15] Article 2, para. 2 of the LGE.

any person or group of persons based on gender, due to which the recognition, enjoyment or realisation of human rights or freedoms is difficult or denied.”^[16] The significance of the LGE is that it introduces the term ‘gender’, which was not explicitly mentioned in the Constitution.

Difference between sex and gender

In its initial form in 2003, the term ‘gender’ was understood as “the significance society affords to the biological determination of gender”, while the term ‘sex’ presupposes “biological differences.”^[17]

Since 2009, the term ‘sex’ means biological and psychological characteristics by which men and women differ; whereas ‘gender’ refers to all roles and characteristics that are not conditioned or determined exclusively by natural or biological factors, but rather are the product of norms, practices, customs, and traditions and are changeable over time.^[18]

The 2009 amendments to the LGE give a much clearer definition of gender and represent one of the most comprehensive explanations in the region. The line between ‘sex’ and ‘gender’ should not be blurred as the terms represent two different grounds of discrimination. This distinction is very important as discrimination very often occurs due to social and cultural patterns and stereotyped roles for men and women.

[16] Article 3, para. 1 of the LGE. The definition of gender discrimination prior to the 2009 amendment was more aligned with Article 1 of the UN CEDAW treaty, where gender discrimination was defined as “distinction, exclusion, restriction or preference based on gender, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of human rights and freedoms in all spheres of society under equal terms.”

[17] Article 4, para. 1 e).

[18] Article 9, para. 1 a).

► The scope of prohibition of discrimination in the labour sphere

The BiH Law on the Prohibition of Discrimination applies to employment and working conditions, including access to employment, occupation and self-employment, remuneration, promotion, and dismissals,^[19] as well as to professional training, additional qualifications and requalification and gaining practical working experience.^[20] In other words, discrimination is prohibited in relation to very wide aspects of labour in BiH.

The BiH Law on Gender Equality further contains a special section on employment, labour and access to all forms of resources. It first guarantees equal employment opportunities, and prohibits discrimination in employment offers, public vacancy notices, job allocations, contracts, and their termination.^[21] Article 13, para. 1 enumerates more specifically what is prohibited in this area, including:

- failure to provide equal salary and other benefits for the same work or work of the same value;
- prevention of advancement in work under equal conditions;
- prevention of equal opportunities in education, training and further professional education;
- uneven suitability of work premises and auxiliary premises and equipment of the employment to biological-physiological needs of employees, including those with disabilities;
- different treatment due to pregnancy, childbirth and maternity leave, including failure to provide the same or equally paid employment of the same level upon return from maternity leave, and different treatment in relation to leave following childbirth;
- any unfavourable treatment of parents or guardians in the reconciliation of professional and family obligations;

[19] Article 6, para. 1 a) of the LPD.

[20] Article 6, para. 1 e) of the LPD.

[21] Article 7 of the LGE.

- organisation of work, distribution of tasks or any other form of setting the conditions of work in such a way as to place an employee into an unfavourable position in comparison with others based on gender and marital status; and
- any other action or activity amounting to any form of direct or indirect discrimination.

In this way, the LGE recognizes two main forms of discrimination - direct^[22] and indirect^[23]. It defines acts that can be considered discrimination in this area very widely, overlapping sex and gender with other grounds for discrimination, such as marital status and disability; and, thereby, acknowledging the impact of intersectionality,^[24] which can cause more aggravated forms of discrimination. In addition, it is possible to impose fines on legal entities for non-compliance with this obligation in the range of 1,000 to 30,000 BAM, and for responsible persons from 100 to 1,000 BAM.^[25]

Additionally, the Law on Work in BiH Institutions (LWI) encompasses the regulations governing employment and working conditions within the institutions of BiH.^[26] This legislative instrument contains a non-discrimination clause (Article 6) that prohibits direct and indirect discrimination based, among others, on sex,^[27] and applies this prohibition to the conditions for employment and selection of

[22] Direct discrimination is defined in Article 4, para. 1 of the LGE as “any situation wherein an individual has been or is or may be treated less favourably than another individual in a similar situation, on the basis of sex.”

[23] Indirect discrimination is defined in Article 4, para. 2 of the LGE as “any situation wherein an apparently neutral legal norm, criterion or practice, equal for all, puts persons of one sex at a particular disadvantage compared with persons of the other sex.”

[24] Intersectional discrimination occurs when two or more grounds of discrimination operate simultaneously and interact in an inseparable manner, which results in distinct and specific forms of discrimination. See Council of Europe (no date) ‘Intersectionality and Multiple Discrimination’, Gender Matters. Available at: <https://www.coe.int/en/web/gender-matters/intersectionality-and-multiple-discrimination> (Accessed: 28 May 2023).

[25] Article 30, para b) of the LGE.

[26] “Official Gazette of BiH”, no. 26/2004, 7/2005, 50/2008, 60/2010, 32/2013, 93/2017, 59/2022.

[27] Article 86 a) of the LWI.

candidates; working conditions and all rights that derive from the employment relationship; education, training, and promotions; and termination of the employment contract.^[28] All persons are equal in the process of employment based on their sex, except in situations where the aim of unequal treatment is legitimate and the measures adopted are proportionate to that aim, and in certain other special circumstances.^[29] The LWI also prohibits harassment and sexual harassment and violence.^[30] A section is dedicated to the protection of women and maternity (Article 34 to 43). The LWI applies to the following categories: a) employees in the institutions of BiH and its bodies who are not civil servants; b) employees in the institutions of BiH who are expressly exempted from the Law on Civil Service in the Institutions of Bosnia and Herzegovina; c) employees who are employed in BiH public enterprises, associations and foundations, legal entities established by the institutions of BiH, inter-entity corporations and other institutions; and d) civil servants, if its provisions are not contrary to the Law on Civil Services in the institutions of BiH (LCSI).^[31] The LCSI prescribes a non-discrimination clause which obliges the Agency for Civil Service to ensure, when organising a public competition, that no distinction or selection shall be undertaken on a discriminatory basis e.g. among others, on the basis of sex.^[32]

The Labour Law of FBiH regulates the labour sphere in a very comprehensive manner, containing some specific provisions that promote gender equality^[33],

[28] Article 86 c) of the LWI.

[29] Article 86 d) of the LWI.

[30] Article 86 e) of the LCWL.

[31] "Official Gazette of BiH", no. 12/2002, 19/2002, 8/2003, 35/22003, 4/2004, 17/2004, 26/2004, 37/2004, 48/2005, 50/2008, 43/2009, 8/2010, 40/2012, 93/2017.

[32] Article 23, in accordance with Article 15, para. 2 of the LCSI.

[33] "Official Gazette of FBiH", no. 26/2016, 89/2018. The Labour Law is supplemented by the Law on Work in Institutions for the following categories: a) employees in the institutions of Bosnia and Herzegovina and its bodies who are not civil servants; b) employees in the institutions of BiH who are expressly exempted from the Law on Civil Service in the Institutions of Bosnia and Herzegovina; c) employees who are employed in BiH public enterprises, associations and foundations, legal entities established by the institutions of BiH, inter-entity corporations and other institution; d) civil servants, if it does not conflict with the Law on Civil Service in the Institutions of BiH. "Official Gazette of BiH", no. 26/2004, 7/2005, 50/2008, 60/2010, 32/2013, 93/2017, 59/2022.

and guaranteeing equal representation of men and women.^[34] The Labour Law prohibits discrimination of employees and persons who are seeking a job based, among others, on sex, marital status, family duties and pregnancy.^[35] During the process of selection of a candidate (interview, testing, survey, etc.) and conclusion of a contract, the employer is not allowed to ask for information that is not directly linked to the employment,^[36] which must be understood as any information on family planning and marital and family status. Discrimination is prohibited in relation to all phases of work, such as conditions for employment and selection of candidates; working conditions and all rights that derive from the employment relationship; education, training, and promotion; and cancellation of the employment contract.^[37]

The Republika Srpska Labour Law^[38] also prohibits discrimination of employees and those seeking a job based, among others, on sex.^[39] The Law bars direct and indirect discrimination in all phases of work.^[40] It explicitly proclaims gender equality in employment and prohibits discrimination in the hiring process, the duration of the employment relationship, and the termination of a contract.^[41]

The Labour Law of Brčko District BiH^[42] explicitly prohibits discrimination based on, among others, sex, and contains similar provisions prohibiting discrimination in defined aspects of work, such as the conditions of employment, the working conditions, and training and professional development.^[43]

[34] Article 3 of the Labour Law of FBiH.

[35] Article 8, para. 1 of the Labour Law of FBiH.

[36] Article 29 of the LL. The sanction for the violation of this provision is stipulated in Article 171, para. 9 (fine ranges between 1.000, 00 and 3.000, 00 BAM).

[37] Article 10, para 1 of the LL.

[38] "Official Gazette of RS", no. 1/2016, 66/2018, 91/2021, 119/2021.

[39] Article 19 of the Labour Law of RS.

[40] Articles 20-22 of the Labour Law of RS).

[41] Article 23 of the Labour Law of RS.

[42] "Official Gazette of Brčko Distrikt BiH", no. 34/2019, 2/2021, 6/2021, 15/2022.

[43] Article 7, para. 1 of the Labour Law of Brčko District BiH.

► Special measures

The Law on Gender Equality (LGE) expressly allows special measures but simply prescribes that such measures are stipulated in other laws and regulations, acts, policies, strategies and plans that regulate certain areas of social life,^[44] without giving further guidelines on the type of measures envisaged.

Comparative Example: Serbia

In Serbia, for example, the Law on the Prohibition of Discrimination stipulates that when preparing a new regulation or public policy relevant to the exercise of the rights of socio-economically disadvantaged persons or groups of persons (including women), the public authority must undertake an impact assessment in relation to the regulation or policy in which it assesses their compliance with the principle of equality. The impact assessment will include in particular: 1) a comprehensive description of the situation in the area that is the subject of the regulation with special reference to socio-economically vulnerable persons; 2) an assessment of the necessity and proportionality of the intended amendments to the regulations from the perspective of respect for the principles of equality and the rights of socio-economically vulnerable persons; and 3) a risk assessment for the rights, obligations and law-based interests of these persons.^[45]

In addition, the Serbian Law on Gender Equality prescribes that positive action measures are determined and implemented by the public authority and the employer, including in the private sector.^[46] When determining special measures, the different interests, needs and priorities of women and men must be taken into account. Special measures include, among others: 1) measures that are determined and implemented in cases of

[44] Article 8 of the LGE.

[45] Article 14 of the Serbian LPD, "Official Gazette of RS", no. 22/2009, 52/2021.

[46] Article 10 of the Serbian GEA, "Official Gazette of RS", no. 52/2021.

significantly unbalanced gender representation; 2) incentive measures, which provide special benefits or introduce special incentives in order to improve the position and ensure equal opportunities for women and men in all areas of social life; and 3) special measures as part of programs for achieving and improving gender equality.^[47] It is important to define the type of special measures and to insist on mandatory assessment in order to ascertain which measures are most appropriate to tackle discrimination.

► **Maternity/parental leave and flexible arrangements**

As noted above, the Law on Work in BiH institutions contains a special section on the protection of women and maternity (Articles 34 to 43). It protects a pregnant woman from being denied employment and protects her health. It prescribes maternity leave for one year, which may be transferred with the mother's approval to the father upon expiry of the first 60 days of leave following childbirth.^[48] In addition, a mother that breastfeeds a baby for up to one year after returning to work is entitled to one break during working hours for breastfeeding.^[49]

The Labour Law of FBiH contains several provisions that protect maternity and allow flexible arrangements. The Labour Law prohibits discrimination against pregnant women (Articles 60-61) and prescribes that the employer may not ask for any information related to pregnancy unless an employee requests certain rights provided for by law or another regulation for the protection of pregnant women.^[50] It prescribes maternity leave for a minimum of 42 days following childbirth and a maximum of one year. Upon expiry of the first 42 days of leave, the mother may transfer her right to the father.^[51] The maternity benefit is 50 to 90% of a woman's salary for a period of one year (ILO, 2016, p. 6); however, the

[47] Article 11 of the Serbian GEA.

[48] Article 37 of the LWI.

[49] Article 39 of the LWI.

[50] Article 60, para. 3 of the Labour Law of FBiH.

[51] Article 62 of the Labour Law of FBiH.

amount is different in each canton (this is an area which should be harmonised). The same rules on maternity benefits apply to employees in the private sector as in the public sector (ILO, 2016, p. 62). If a mother returns to work earlier, she is entitled to two breaks during working hours for breastfeeding.^[52] There is also a possibility for a mother who returns to work after maternity leave to work part-time, and this right also belongs to a father of a child.^[53] The Labour Law of FBiH allows work outside of the employer's premises (for example, an employee's home or another area provided by the employer).^[54]

The Republika Srpska Labour Law also guarantees the protection of women workers during pregnancy and after delivery.^[55] However, the protection of women and the maternity provisions are slightly different than in the Labour Law of FBiH. For example, a mother has a minimum right to maternity leave for 60 days following delivery, at which point she may transfer her right to maternity leave to the father.^[56] For each child, a woman is deemed to have contributed one year's work towards her pension (albeit this protective measure can have a negative effect on women's rights in the labour force).^[57] During maternity leave, a woman has the right to compensation in the amount of the average salary that she earned during the last 12 months before she undertook maternity leave.^[58] The law provides more protective provisions concerning part-time work as it does not limit it in time, and also obliges employers to inform workers in a timely manner about the availability of full-time and part-time jobs.^[59] Further, the employer is required to consider the request of a part-time worker to switch to full-time work and vice versa; and

[52] Article 65 of the Labour Law of FBiH. The sanction for violation of this provision is stipulated in Article 171, para. 44 (the fine ranges between 1.000, 00 and 3.000 BAM).

[53] This right lasts up to one year of delivery and if a child requires special attention up to three years (Articles 63 and 64). The sanction for violation of this provision is stipulated in Article 171, para. 40 and 43 (the fine ranges between 1.000, 00 and 3.000 BAM).

[54] Article 26, para. 1 of the Labour Law of FBiH.

[55] Article 4, para. 2 of the Labour Law of RS.

[56] Article 107, paras. 2 and 3 of the Labour Law of RS.

[57] Article 107, paras. 4 of the Labour Law of RS).

[58] Article 112, para. 1 of the Labour Law of RS

[59] Article 42, para. 3 of the Labour Law of RS).

work outside of the employer's premises is permitted (for example, remote work and work from home).^[60]

The Labour Law of Brčko District BiH, as with the previous two acts, also protects women from questioning regarding pregnancy and imposes an obligation on an employer not to refuse to employ a pregnant woman and to terminate her employment contract during pregnancy or maternity or parental leave.^[61] The right to maternity and parental leave is arranged in the same manner as in the federal law.^[62] The law also provides protection of part-time workers as an employer must: provide the same working conditions to both full-time and part-time workers, where the latter works in the same or similar jobs with the same or similar qualifications and work experience as a full-time worker; timely inform workers about the availability of full-time and part-time jobs; enable education and training for part-time workers; and consider the request of a part-time worker to switch to full-time work and vice versa.^[63] It also allows work outside of the employer's premises.^[64]

► Equal pay for work of equal value

Article 77 of the Labor Law of FBiH introduces an equal pay clause and prescribes equal pay for work of equal value, regardless of, among others, gender. The law defines minimum wage,^[65] and explains that work of equal value means work that requires the same degree of professional education, the same ability to work, responsibility, physical and intellectual work, skills, working conditions, and work results.

[60] Article 44 of the Labour Law of RS).

[61] Article 76 of the Labour Law of Brčko District BiH.

[62] Articles 79-82 of the Labour Law of Brčko District BiH.

[63] Article 34 of the Labour Law of Brčko District BiH.

[64] Article 35 of the Labour Law of Brčko District BiH.

[65] Article 78 of the Labour Law of FBiH.

Comparative examples: Serbia, Montenegro and CJEU case law

Although payment based on physical effort is included in some other regional legislation, such as the Serbian Labour Law,^[66] it must be emphasised that this can be indirectly discriminatory towards women.

The Court of Justice of the European Union (CJEU) stated in *Rummler* that: “failure to take into consideration values corresponding to the average performance of female workers in establishing a progressive pay scale based on the degree of muscle demand and muscular effort may indeed have the effect of placing women workers, who cannot take jobs which are beyond their physical strength, at a disadvantage.”^[67]

The Serbian Gender Equality Law provides more guidance on the matter and prescribes that work of equal value means work that requires the same level of education, knowledge, and skills, in which the same work contribution has been achieved with equal responsibility.^[68]

Labour Law in Montenegro even further defines work performance, which is established on the basis of the quality and scope of the work performed, as well as the effort invested and the attitude of the employee towards duties at work.^[69]

However, the Labour Law of FBiH lacks a clear definition of equal pay, which should encompass not only wages but also all other forms of cash and non-monetary compensation, and does not prescribe fines for the violation of this provision.

[66] See Article 16, para. 3 of Serbian Labour Law, “*Official Gazette of the RS*”, no. 61/2005, et al. 95/2018.

[67] ECJ, Case 237/85, Gisela Rummler v. Dato – Druck GmbH, Judgment of 1 July 1986, para. 24.

[68] Article 34 of the Serbian Law on Gender Equality, “*Official Gazette of the RS*”, no. 52/2021.

[69] Article 97 of the Montenegrin Labour Law, “*Official Gazette of the Montenegro*”, no. 74/2019, 8/2021.

Comparative examples: Albania, Croatia, North Macedonia, and Serbia

The Albanian Labour Code defines “equal pay” as basic salary and permanent allowances, including any other payment in cash or kind which the employee receives directly or indirectly from the employer for his work.^[70]

Croatian labour law gives a more concrete definition, stating that ‘pay’ is considered to be a basic wage and any other consideration in cash or kind, which the worker receives directly or indirectly in respect of her employment from the employer, based on the employment contract, a collective agreement, employment rules or other regulations.^[71]

Serbian law goes even further and defines what is not considered to be ‘pay’,^[72] but the definition excludes bonus and travel costs from the concept of ‘pay’, which is contrary to the judgments of the CJEU.^[73]

Albanian law provides guidelines on measuring the same standardised work and the same rates of pay for the same work position. Equal work is based on all related criteria, particularly in the nature of the work, quality and quantity of work, work conditions, vocational training and work experience, physical and intellectual endeavours, experience, and responsibility.^[74] This is very important as a lack of parameters for establishing the equal value of the work performed leaves room for legal uncertainty and uneven practice.

[70] Article 109, para. 1 and Article 115 of the Albanian Labour Code, no. 7961/1995, amended in 1996, 2003, 2008, 2015.

[71] Article 91, para. 3 of the Labour Act, NN Nos. 93/2014, amended in 2017 and 2019.

[72] The exemptions are: travelling to and from work, a retirement gratuity and a refund for some expenses, the compensation damage, and employment anniversary bonus and solidarity assistance. See Arts. 118-120 of the Serbian Labour Law.

[73] See, e.g., ECJ, Case 12/81, Eileen Garland v British Rail Engineering Limited, Judgment of 9 February 1982; ECJ, Case 333/97, Susanne Lewen v Lothar Denda, Judgment of 21 October 1999.

[74] Article 115, para. 4 of the Labour Code.

When it comes to sanctions, North Macedonian law is interesting to mention as all provisions in a contract for employment or in a collective contract and general actions of the employer that deviate from the rule of equal pay for equal work are, prima facie, void.^[75]

► Wage transparency

Wage transparency is the practice of openly communicating information about pay between employers, employees and potential future employees (Dewar, 2023). It is important to require wage transparency as it can contribute to the closure of the gender pay gap. Under the new EU Pay Transparency Directive (Directive of the European Parliament and of the Council, 2023) an employer is obliged to inform job seekers about the initial salary or pay range for the post and to omit any question which relates to job seekers' pay history. Workers are also entitled to receive information concerning the individual and average pay level for colleagues performing similar work, broken down by sex, and the criteria which determine pay and professional advancement (Council of the European Union, 2023). While the public sector usually has a public pay scale, a large number of employees in the private sector are discouraged from learning about colleagues' pay or, even, are forbidden to discuss this issue (CPS HR Consulting, no date). However, despite its importance, wage transparency is not expressly prescribed in the existing legislative frameworks in the country.

Comparative examples: Albania, Croatia, North Macedonia, and Montenegro

Albanian law on the right to information prescribes wage transparency in public institutions but leaves out the private sector.^[76]

[75] The Law on Labour Relations, 2005, Article 108.

[76] Law No. 119/2014.

Wage transparency is very important from the perspective of securing equal pay, and in 2020, the European Committee of Social Rights found that Croatia had violated Article 1.c of the 1998 Additional Protocol of the European Social Charter as insufficient progress had been made in promoting equal opportunities between women and men in respect of equal pay, including a lack of effective remedies and pay transparency (European Committee of Social Rights, 2020). Some additional problems were identified, such as a lack of transparency regarding wage policies, a lack of assessment criteria for determining work of equal value, a lack of a job evaluation system and an indication of the number of non-neutral job classification systems, as well as the non-existence of a pay gap calculation method for firms (European Committee of Social Rights, 2020, paras. 37, 114).

Wage transparency does not exist in Serbia or North Macedonia, and in some cases, mostly in the private sector, pay is considered to be confidential. Thus, employers are using protection of privacy to treat wage levels as confidential data, while in some cases confidentiality clauses regarding wages are included in the employment contract.

However, it is interesting to note that in Montenegro, whilst labour law does not address wage transparency, an employer is obliged to keep monthly records of wages and wage compensations,^[77] and once a year, the employer must inform the trade union at an appropriate level of the total calculated gross and net salaries paid out, including contributions for mandatory social insurance and the amount of the average salary paid by the employer.^[78] In addition, an employer has an obligation to give to each employee a written pay slip with a calculation of their salary, which includes the following information: the employee's salary, made up of the starting salary increased by the product of accounting coefficient value and complexity coefficient; salary increases, per type, arising from the collective

[77] Article 107 of the Montenegrin Labour Law:

[78] Article 55 of the Montenegrin General Collective Agreement, available at <https://www.asistent.me/dw/zakoni/opstikolektivniugovor.pdf>.

agreement or contract of employment; salary based on the work results achieved (an incentive part); fringe benefits, per type; other remuneration above the amounts determined by the collective agreement; gross salary; the amount of tax on salary; the amounts of contributions paid, per type; salary retentions excluding taxes and contributions per type; the amount of net salary (excluding taxes and contributions); and the amount of net salary for payment.^[79] This long list of mandatory information provides, at least, clarification for each employee on the amount paid by the employer.

▶ Economic sphere

In the economic sphere, the BiH Law on Gender Equality guarantees equal access to any economic resources, privatisation, access and utilisation of loans, and other forms of financial assistance and conditions for obtaining them, business permits, registration, and conditions for obtaining them.^[80] In this area, particular attention is given to women in rural areas in order to ensure their economic subsistence and of their families.^[81] The particular importance of this piece of legislation is to introduce gender-desegregated data (vis-a-vis all statistical data and information collected, recorded, and processed), and this requirement is imposed on public institutions as well as on private companies and enterprises.^[82] Further, this data and information need to be part of statistical records and available to the public.^[83] In case of non-compliance, fines can be imposed.^[84] However, there is no established gender equality index that can monitor the impact of laws, policies and action plans at the national, entity, district and cantonal levels, and assess the situation of women and the progress made towards the realisation of

[79] Article 32 of the Montenegrin General Collective Agreement

[80] Article 15, para. 1 of the LGE.

[81] Article 15, para. 2 of the LGE.

[82] Article 22, para. 1 of the LGE.

[83] Article 22, para. 2 of the LGE.

[84] Article 30, para. d) of the LGE. The amount ranges for legal entities from 1.000 to 30.000 BAM, and for responsible persons from 100 to 1.000 BAM.

substantive equality between women and men (United Nations Committee on the Elimination of Discrimination against Women, 2019, para. 47).

► Public life

In public life, the BiH Law on Gender Equality requires that all public bodies on all levels, including local self-government units, branches of government, political parties, and delegations in international organisations and bodies, promote equal representation of both sexes (at least 40%) in management and decision-making processes and bodies.^[85] In order to attain equal representation, special measures should be adopted, but they are not defined by the Law. Despite this provision, the underrepresentation of women in parliaments and governments at the national and local levels is still a reality (United Nations Committee on the Elimination of Discrimination against Women, 2019, para. 29a).

Comparative example: Serbia

In Serbia, the Law on Gender Equality imposes a duty on public authorities to ensure balanced gender representation in management and supervisory bodies, as well as in senior positions. However, it also provides some specific criteria to be taken into account, such as the specifics arising from the nature of the work, service or activity, place and working conditions, prescribed criteria for selection and appointment, and other objective reasons.^[86] There is further the committee responsible for appointing persons to management and supervisory bodies that has oversight of achieving balanced gender representation. This committee is obliged to take special measures in the event that there is a significantly unbalanced gender representation. In this way, the provision guarantees that gender balance will be achieved. However, this duty applies only to public authorities, and there are no reports on whether this duty has been carried out in practice.

[85] Article 20 of the LGE.

[86] Article 30 of the Serbian GEA.

► Data collection and special records

The BiH Law on the Prohibition of Discrimination contains a provision on data collection and the requirements for the establishment of special records in legislative, executive and judicial bodies for the purpose of registering cases of discrimination in criminal, civil, non-litigation and enforcement proceedings.^[87] According to Article 7, the BiH Ombudsman collects and analyses statistical data on discrimination cases, while the Ministry of Human Rights and Refugees keeps the central database of acts of discrimination and is required to report on discrimination matters to the Parliamentary Assembly, through the Council of Ministers. Despite the fact that the report should be submitted once a year, the only report of the Ministry of Human Rights and Refugees available at the website is a consolidated version covering 2016 to 2020. This report illustrates that during the period 2018-2020, 285 judgments for discrimination in the labour sphere were delivered, which is the area in which the most reported discrimination occurs in BiH (Ministry for Human Rights and Refugees BiH, 2020, p. 8-9). The same is concluded in the annual reports of the Ombudsman (Human Rights Ombudsman of Bosnia and Herzegovina, 2022, p. 218).

Comparative example: Serbia

In Serbia, the Law on Gender Equality prescribes several requirements for data collection and reporting by public and private employers that have more than 50 employees, such as the inclusion of sex-disaggregated data, an annual report on the realisation of gender equality, an annual work plan that contains a Plan of measures for gender equality and reporting on the realisation of the Plan.^[88] This information is submitted to the Ministry of Human and Minority Rights. Although these obligations are very important and guarantee that the employer will prescribe and implement certain measures with the aim to achieve gender equality, some challenges remain, such as the lack of an electronic database

[87] Article 8 the LPD.

[88] Articles 16,18 of the Serbian GEA.

that can analyse the data, awareness raising on this obligation among employees and specialised training for the preparation of reports and plans.

12. Gender Pay Gap in Bosnia and Herzegovina

As noted in the introduction, according to UNDP the gross national income per capita of women in BiH is 10,709 USD, while for men it is 19,917 USD (UNDP, 2021). The same source states that women make only 53.7% of men's income^[89]. Paylab salary survey shows that women in the BiH capital Sarajevo are paid up to 25% less than men for the same job. This discrepancy is slightly smaller (17.6% on average) in other areas of the country. The survey data highlights that only 6% of women in BiH hold the highest-paid jobs. Men in the retail industry earn an average of 807.54 BAM a month while women in the same role earn 670.29 BAM on average. Another concerning fact is that a large proportion of women – as much as 15% of all employed women in the region – work minimum wage jobs, compared to just 7% of men (Sarajevo Times, 2021).

► Employment rate of women

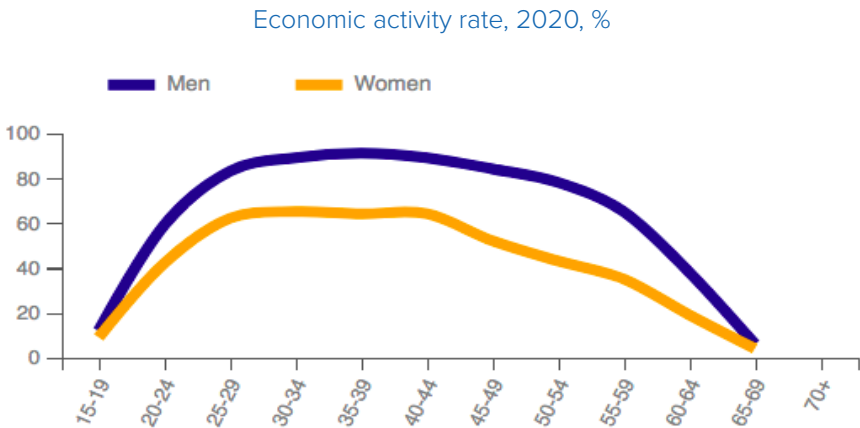
Women are significantly underrepresented in the labour market. The Labour Force Survey (Agency for Statistics BiH, 2022) shows that in the third quarter of 2022, men constituted 61.9% of the total labour force^[90], while women accounted for only 38.1%. In the same period, of the total number of persons outside the labour force, 37% were men and 63% were women. Women in the 19 to 29-year-old age group are less represented in the category of newcomers to the labour market. Given the fact that women make a majority among highly educated persons, this indicates that women make up a great deal among economic emigrants.

[89] The UN's SDG target 8.5, which sets out the aim to achieve by 2030 "equal pay for work of equal value", proposes as a main indicator to compare "average hourly earnings of female and male employees" (indicator 8.5.1)

[90] The labour force or active population consists of persons aged 15-89.

Regarding the activity rate of women and men in different age groups, the chart below (United Nations Economic Commission for Europe, 2021) shows an increase in the rate in the age group 15 to 25-year-old, and the stagnation and even decrease in the age group 25-40-year-old. A slight increase happens within the age group 40-44, and the rate drops again significantly within the age groups 45-69-year-old. Unpaid care work represents one of the reasons for women’s inactivity in the labour market. Although the exact data about unpaid work is not available, the decrease in economic activity in the fertile and child-care period of women’s lives (25-40-years-old) could be understood in this context.

Figure 1: Economic activity rate for women and men in BiH



The Gender Equality Index^[91] for Bosnia and Herzegovina was published in 2022 (Agency for Statistics of Bosnia and Herzegovina, Agency for Gender Equality of Bosnia and Herzegovina, European Institute for Gender Equality (EIGE), 2022). It measured only some of the domains and subdomains of

[91] The Gender Equality Index is an aggregate indicator developed by European Institute for Gender Equality (EIGE) that enables the measurement of the complex concept of gender equality. The index tracks achievement levels and gender equality in six key domains of gender equality policy: Work, Money, Knowledge, Time, Power, and Health. It also includes two additional domains: intersecting inequalities and violence against women. The report on BiH presents information for two complete domains, Knowledge, and Power, and two partial index domains, Work and Health, out of the total of six domains envisaged by the EIGE methodology.

gender equality that are regularly monitored in EU countries. Within the domain of Work, the subdomain of Participation was measured, referring to the level of employment and the gender gap in the employment of women and men, and indicating their opportunities to access the workplace or jobs^[92]. In the Participation subdomain, BiH achieved 62.8 points, while the EU average is 81.3. In respect of EU countries, BiH was 33.1 points lower than the best positioned Sweden with 95.9 points, and lower by 6.3 points than the lowest positioned Italy with 69.1 points. BiH places worse than EU countries and countries in the Western Balkans.

► Sectoral gender segregation

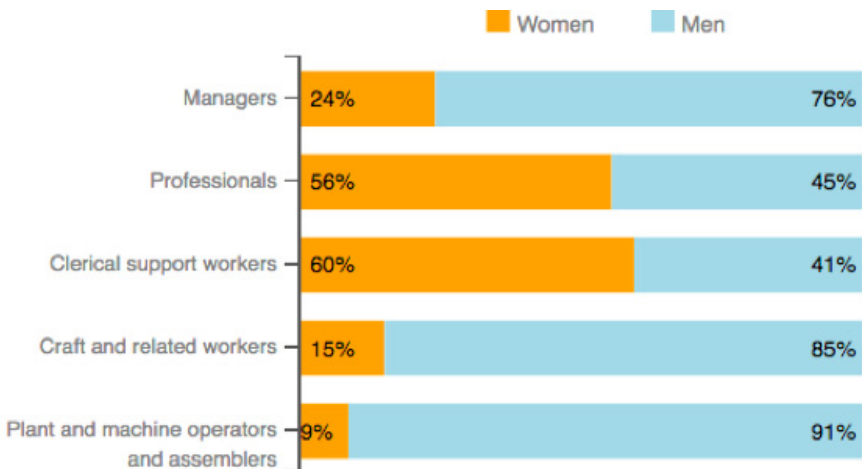
Employed women in BiH are concentrated in particular economic sectors, like services (comprised of 67.2% women and 46.9% men) and agriculture (14% women and 10.7% men), while in non-agricultural areas women make up a minority (18.8% in comparison with 42.9% of men) (Agency for Statistics of Bosnia and Herzegovina, 2022a). It is important to note that education, health, and social care, which are the usual areas containing a higher occupational concentration of women, belong to the category of services. In BiH, from the total number of health workers in public health in 2020, almost 3/4 were women. The majority of doctors were women, accounting for 63% compared to 37% of men, and similarly, in the case of nurse-technicians, there was a higher proportion of women, with 78% compared to their male counterparts (Agency for Statistics of Bosnia and Herzegovina, 2022a). In education, almost all educators in pre-school institutions are women (99%). With respect to the higher levels of education, the gender structure of teaching staff is changing such that women are more common in primary and secondary education, while more than a half of teachers and assistants in the institutions of higher education are men (Agency for Statistics of Bosnia and Herzegovina, 2022c).

[92] This subdomain combines two indicators: full time equivalent for the population aged 15 and above and length of working life for the population aged 15 and above.

► Occupational gender segregation

Women are still underrepresented as members of management structures in companies in Bosnia and Herzegovina, although they have surpassed men in terms of educational achievements. According to a survey conducted by the Agency for Gender Equality of BiH in 2014, in 70 out of the 100 most successful companies in the country, women occupied an average 15.1% of company boards in Bosnia and Herzegovina, of which 12.5% were board presidents. Over 50% of companies did not have women in their boards and women made up a minority among managers. Gender segregation is also present in occupations traditionally acclaimed to men, such as crafts and machine operators. The graph below shows the percentage of women and men in selected occupational groups (United Nations Economic Commission for Europe, 2019):

Figure 2: Percentage of women and men in selected occupational groups



According to the World Bank Gender Data Portal, women represented 20.2% of those employed in senior and middle management in 2021.

Data on companies from UNDP database

In the last five years, UNDP BiH have been collecting data about private companies that applied for the Award for Business Leaders of Sustainable Development in Bosnia and Herzegovina^[93]. At April 2023, 106 companies applied for the award - 25 micro companies, 25 small companies, 33 medium companies and 23 large companies.

According to the UNDP database, the total number of employees in the 106 companies is 21,273 and the total number of newly employed workers in the previous year is 4,095. The percentage of newly hired women in the last year in the 106 companies is 48%, while the percentage of women in management bodies is 46%.

► Difference in average salaries in sectors with higher concentration of women

In the area of services, women are paid less than men, while in agriculture, average salaries for both sexes are even. In the two highest paid business activities within the services - financial and insurance activities (K), and human health and social work (Q) - men have much higher salaries than women, as shown in the graph below. The graph shows the average salaries by main job by group areas of activity and by gender in 2020 (Agency for Statistics of Bosnia and Herzegovina, 2022a). Values for women are shown in orange, while for men in green.

[93] The award is organised within the "Framework for the Implementation of the Sustainable Development Goals as a Foundation for Sustainable and Inclusive Growth in Bosnia and Herzegovina" (SDG2BiH) program, financed by Sweden, and implemented by the UNDP in BiH in partnership with UNICEF in BiH and UN Women BiH. The partner of the award for business leaders of sustainable development is the Chamber of Foreign Trade of Bosnia and Herzegovina.

1. In agricultural jobs (category A), salaries for women and men are even.
2. In non-agricultural areas (categories B, C, D, F), the situation is as follows: men have higher salaries in the mining and manufacturing industries (B and C); in the area of production and distribution of electricity and gas, salaries for men are slightly higher, whereas in construction (F) women earn higher salaries.
3. In services (remaining categories), women earn more in areas of transportation and storage (H), water supply (E), expert, technical and scientific activities (M), administrative services (N), education (P) and other services (S).

Figure 3: The average salaries by main job by group areas of activity and by gender in 2020



As described in the chapter discussing the legislative framework, wage transparency is not explicitly prescribed in BiH..

► Work hours in paid jobs

In total, women work less hours in paid jobs than men. The average of the usual weekly hours of work at the main job by group areas of activity and by gender in 2020 (Agency for Statistics of Bosnia and Herzegovina, 2022) is presented below, but it is important to note that in all three areas, and especially in agriculture, women also work many unpaid hours which are not registered in Figure 4:

Figure 4: The average of the usual weekly hours of work at the main job by group areas of activity and by gender in 2020

	Women	Men
Total	39,6	41,5
Agricultural jobs	32,9	40,6
Non-agricultural areas	40,4	42,0
Services	40,8	41,2

When it comes to the proportion of time spent on unpaid domestic and care work by sex (% of a 24-hour day), data for Bosnia and Herzegovina is not available. However, there is evidence that unpaid care work increased during and following the pandemic: the UNDPs Intersectional Analysis (2023) confirms that 70% of women had to devote more time than usual to their children as a result of the pandemic, and 63.3% spent significantly more time doing household chores than compared with 55.1% of men. Nevertheless, the role of unpaid work undertaken by women in BiH in the gender pay gap could be understood in the context of data presented in the Report of the Secretary-General (December 2016), according to which “women carry out at least two and a half times more unpaid household and care work than men. As a result, they have less time to engage in paid labour, or work longer hours, combining paid and unpaid labour. Women’s unpaid work subsidises the cost of care that sustains families, supports economies, and often fills in for the lack of social services. Yet, it is rarely recognized as “work”. Unpaid care and domestic work is valued to be

between 10% and 39% of the Gross Domestic Product and can contribute more to the economy than the manufacturing, commerce or transportation sectors” (United Nations Secretary-General, 2016).

► **Maternity/parental leave pay**

As explained above, labour legislation provides different maternity/parental leave pay in different entities of the country, which results in unequal maternity benefits in different parts of the same country. It leads to discrimination among mothers on a geographical basis. In the Federation of BiH, these benefits are financed from cantonal budgets. In Republika Srpska, child and family benefits are financed through the RS Fund for Child Protection, which is part of the social insurance system. In Brčko District BiH, child and family benefits are financed from the budget. The UN CEDAW Committee keeps expressing serious concerns and recommending the harmonisation of legislation at the country level, in order to diminish the negative impact on the ability of women to participate in the labour force and the unequal division of family responsibilities between women and men.

The Special Report of the Human Rights Ombudsman Institution in Bosnia and Herzegovina confirmed discrimination against mothers in the Federation of BiH (Institution of the Human Rights Ombudsman of Bosnia and Herzegovina and OSCE Mission to Bosnia and Herzegovina, 2015) and noted the existence of discrimination against mothers in the business sector. —While in the public sector, maternity/parental leave pay equals one hundred percent of the regular salary, the pay in the business sector is decreased and it equals a certain percentage of wages, depending on the canton, and, moreover, the payment of salary differentials is left to the employer. After returning from maternity leave, there is no guarantee that women will keep the same position and salary. It means that women working in the private sector in some cases experience not only a significant drop in earnings but might also face setbacks in their careers after becoming mothers. It is especially challenging for single mothers, or for other types of families where women are the primary breadwinner.

BiH does not have precise statistical data on the number of women in labour who receive benefits. In the publication “Harmonization of Maternity Benefits

in BiH”, which was published in 2018 by the Forum of the Left Initiative, it is estimated that this right is enjoyed by approximately 35,000 women annually.

▶ **Part-time, flexible arrangements and temporary contracts for women**

The labour legislation of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District BiH require the employer to provide both full-time and part-time workers with the same working conditions, where the latter works in the same or similar jobs, with the same or similar qualifications and work experience as a full-time worker. It also allows work outside of the employer’s premises (for example, an employee’s home or another area provided by the employer); and that consideration be given to a request from a part-time worker to switch to full-time work and vice versa. There is also the possibility for a mother who returns to work after maternity leave to switch to part-time work, and this right also belongs to a father of a child.^[94] However, no data regarding the use of these arrangements for parents is available.

▶ **Business environment**

Bosnia and Herzegovina has the least favourable business environment in the Western Balkan region. According to the World Bank’s Ease of Doing Business index, Bosnia and Herzegovina has the lowest score in the region with a total score of 65, compared to the regional average of 73 and the OECD-EU average of 78 (OECD, 2020). According to the World Bank, the key economic challenge for Bosnia and Herzegovina is “to shift to a business environment conducive to private investment that supports both vibrant small and medium-sized enterprises and the growth of larger companies, facilitates export performance and productivity improvements, and generates much-needed private sector employment, and to ensure the sustainability and inclusiveness of future growth” (World Bank, no date).

[94] Article 26, para. 1 of the Labour Law of FBiH Article 44, para 2 of the Labour Law of RS; Article 35, para 1 of the Labour Law of Brčko District BiH.

The Registry of Business Entities contains information regarding businesses in BiH including, among others, the overall number of registered enterprises. In April 2023, this number was 41,353, counting both private and public enterprises. The number of private enterprises is not available but using the method of elimination of enterprises with the prefix “public” from the list, as well as those which undoubtedly belong to the public sector, the remaining enterprises that are assumed to be private companies make up approximately 90% of registered enterprises.

To understand the areas in which enterprises are active, data from the Agency for Statistics of BiH (Agency for Statistics of Bosnia and Herzegovina, 2022c) show that in 2021, the largest number of entrepreneurs, 72.7% of them, are distributed in the following five activity sections: 25.7% in Section G (wholesale and retail trade; repair of motor vehicles and motorcycles), 16.8% in I (accommodation and food service activities), 11.8% in C (manufacturing), 9.8% in S (other service activities) and 8.5% in H (transportation and storage).. As explained above, women are mainly concentrated in services (67.2% women and 46.9% men) and agriculture (14% women and 10.7% men).

Data about enterprise ownership by gender in Republika Srpska (RS) was published by the Regional Cooperation Centre in 2023, according to which women entrepreneurs ran about 36% of enterprises across RS as at the end of 2020. In 2020 in this entity, 50% of entrepreneur-owning enterprises of 250+ employees were women and 36% of them owned enterprises of up to 9 employees as compared to 64% of men. In 2020 in RS, 71% of active enterprises focused on “Other Services” were women-owned, followed by 50% of the total enterprises in the economic activity “Human Health and Social Work Services”, and 48% in “Real Estate Activities”. The sectors with the lowest representation of women were “Transport and Storage” and “Construction”, considered mainly as men-dominated sectors.

► **Influence of COVID-19 crisis on gender pay gap**

According to the BiH Gender Country Profile 2021, the key socio-demographic indicators, like demographic ageing and population decline driven by the increasing rate of emigration, were generally concerning even before the

COVID-19 crisis, particularly when it came to the status of women and the youth. Since 2014, the data has shown a shift of entire (and younger) families leaving to seek their future in other countries. The pandemic has widened the long-existing gender pay gap.

Women's earnings have decreased because working mothers have had to take leave from work or resign their positions to care for children (and other family members) in the event of illness or the closure of schools or day-care centres. This also applies to working mothers in senior leadership positions, who were also faced with increased family obligations during the pandemic. The UN BiH Common Country Analysis for 2022 showed that the increased demand for unpaid domestic and care work deepened the already existing gender inequalities in the division of unpaid labour. Women were more likely than men to report an increase in the number of hours devoted to unpaid domestic work (50% and 35% respectively) and childcare work (28% and 23% respectively). The increase in hours was even higher among women who were unemployed prior to the pandemic.

The UNDP Report Economic Impact Assessment of COVID-19 in BiH recognized the significant impact of the pandemic on sectors where women constitute more than 50% of the workforce, based on 2020 figures. Sectors such as human health and social activities (71%), education (69%), arts, entertainment, and recreation (66%), financial and insurance activities (63%), as well as other service activities (58%), have experienced notable disruptions due to the COVID-19 pandemic. When it comes to the size of enterprises, the report demonstrated that companies employing less than 250 workers (micro, small and medium enterprises, which make up the vast majority of enterprises) faced a risk of a complete shutdown.

In 2023, UNDP BiH published a gender study on the differential impact of the COVID-19 and inflation (UNDP, 2023), aimed at shedding more light on how the crisis resulted in increased poverty and food deprivation, and worsened inequalities. The data shows that a higher percentage of women (55.5%) have experienced a worsened financial situation compared with men (44.9%). A significantly higher percentage of women (13.5%) also reported reduced remittances compared with those of men (8%). Regarding the care economy,

70% of women stated that they have had to devote more time to their children than usual as a result of the pandemic; 63.3% spent significantly more time doing household chores compared with men at 55,1%. The study also showed that the COVID-19 crisis severely hit older women and those living in remote rural areas.

13. Recommendations

Bearing in mind relevant international standards, the legislative frameworks of the country, as well as the situation in practice that is documented in many reports, several recommendations for addressing the gender pay gap can be suggested:

1. For the last two decades, relevant legislation aligned with international standards has been introduced in BiH. However, some further harmonisation of the legislation at the state, entity, district and cantonal levels needs to be undertaken in all aspects, such as in relation to maternity and parental leave. In this respect, it is also important to encourage male parental leave, as well as remote and part-time working.
2. Despite the fact that legislation is modern and reflects gender equality, its implementation is still inadequate and requires appropriate monitoring and an assessment of its impact on gender equality.
3. Discrimination in employment based on sex is still widespread and very much depends on the sexist beliefs of decision-makers and senior staff that have the greatest influence over employment, promotions and pay rises. Therefore, continuous training of senior officials and more balanced representation of women and men in senior management positions need to be achieved, through the quota system.
4. Annual reporting on gender equality for companies with more than 50 employees should be introduced with a supervisory body that will have clear competencies to monitor the process and to provide support and training on gender equality to companies, including training on combating gender stereotypes and prejudices in employment. This recommendation builds on the principles of the UNDP's Gender Equality Seal. The Gender Equality Seal (GES) methodology should be further expanded among both public and private companies in BiH by highlighting, for example, Gender Equality and Women's Empowerment training, wage transparency and

the elimination of the gender pay gap, introducing zero tolerance towards sexual harassment and family friendly policies, and conducting external gender audits.

5. Social dialogue about advancing women's rights and equal pay needs to be strengthened. To achieve this, it is necessary to organise consultations about the factors influencing the gender pay gap with NGOs working on the economic empowerment of women, business associations, including the business associations of women, and trade unions, including the women sections of trade unions. Establish a list of priority issues to be further elaborated and translated into demands for tripartite negotiations.
6. It is important to enforce reporting with a dedicated government actor, such as a labour inspector, rights ombudsman or a certified external auditor, to improve compliance and the quality of reporting (OECD, no date).
7. The equal pay for equal work clause needs to be further defined with more precise elements that constitute equal pay. In this regard, some regional laws can serve as an inspiration for the improvement of the clause on equal pay.
8. Pay transparency needs to be introduced, including pay transparency prior to employment and a ban on pay confidentiality clauses in employment contracts. Moreover, adequate policies need to be introduced regarding the accessibility of information on allowances, bonuses and awards, business trips, honoraria for work in committees, transparency of pay setting, and career progression policy.
9. It is also essential to embed pay transparency within a broader, systematic, life course approach to promoting gender equality in society, labour markets, governance, and public policy. This includes gender-equal access to all levels and subjects of education, family and work-life balance supporting policies like childcare and parental leave, efforts to improve the division of unpaid work, anti-discrimination legislation, improving women's access to leadership roles, and closing gender gaps in old

age (OECD, no date). This OECD recommendation could be transposed in goals, measures, activities, and budget of gender equality strategies of BiH. In addition, businesses should be encouraging employees to negotiate their salary, which is not a part of Western Balkan culture, especially among women.

10. Laws should prescribe regular, annual analyses and publishing of data on the gender pay gap with the aim to identify obstacles in tackling the gender pay gap and for proposing and introducing adequate measures and activities to achieve a balanced and equal pay for women and men.
11. Special measures should be defined and reporting obligations on gender equality established on the part of the employer, including pay transparency measures, gender equality audits, the use of job-classification systems and mandatory quotas for women in higher-level positions or company boards.
12. Collection and analyses of statistical data on discrimination cases need to be accessible, as well as the central database of acts of discrimination. Only by having access to discrimination cases would it be possible to make an assessment on the effectiveness of protection mechanisms, which are also a driving force for gender equality.
13. Consultative meetings and public events should be organised with companies to present best practices from BiH and the region regarding ESG standards, with special emphasis on the participation of women in governing boards, wage transparency, internal business procedures regulating support for work-life balance, as well as the other factors influencing the gender pay gap.
14. In cooperation with business associations, successful stories about companies that already implement, or are on the way to implementing, ESG standards should be published and promoted.

Furthermore, the business sector and policy makers in Bosnia and Herzegovina should consider the following recommendations from international organisations:

1. Mandate the policy of 'equal pay for work of equal value' and introduce job classification systems which assess the value of work using gender neutral criteria to calculate pay scales. The criteria used to determine pay scales must be accessible to employees.
2. Introduce legislation to oblige businesses to collect and publish data on the gender pay gap in their business.
3. Make this data easily accessible for employees and employee representatives – to facilitate pay negotiations and potentially pay discrimination claims.
4. Publish this data online so it is easily accessible to the wider public, to facilitate scrutiny by potential employees, the state, international organisations, and NGOs.
5. Businesses should use a factor-weighted method to calculate their gender pay gap, taking account, for example, of men and women's level and nature of work (full-time or part-time), educational background and existing work experience, before comparing their pay.
6. View the collection and publication of gender pay gap data as a starting point to instigate further change, mandating an explanation of the reasons underlying the pay gap and the preparation of an action plan to tackle it, alongside publication of the raw data.
7. Do not confine gender pay gap reporting obligations to larger business - include smaller businesses with fewer employees, e.g., setting the threshold at a minimum of 25 employees.
8. Provide support for businesses to ease the financial and administrative burdens of introducing pay gap reporting requirements, for example the

publication of guidance and toolkits advising on how to collect data and calculate the pay gap, the creation of an independent monitoring and advisory body to support and oversee the process and allocating funds for smaller businesses to apply for financial support where needed.

9. Implement wider changes to wage policies, for example increasing the national minimum wage to increase the pay of women who are disproportionately represented in minimum wage jobs.
10. Implement changes to address the 'motherhood penalty' such as the right to return to the same or similar job at the end of maternity leave, wider investment in affordable childcare to assist women's return to work and policies to encourage men to take paternity leave such as 'use it or lose it' quotas.

Annex 1: A deeper look at how to implement gender pay gap reporting: recommendations from international organisations and the EU Transparency Index

▶ The Implementation of Gender Pay Gap Reporting Obligations at a Domestic Level

The previous section of this paper outlined gender pay gap reporting as one of the most common and recommended measures for identifying and prompting action on closing the gender pay gap. This section will look further at the specificities of implementing gender pay gap reporting, based on recommendations from the ILO and other bodies, and focussing on the recently-introduced EU Transparency Index.

▶ Measuring the gender pay gap

The gender pay gap, as a measurement that indicates inequality, can vary depending on the data fed into it. There are multiple ways of defining ‘pay’, ‘average’, or even the population of wage employees (ILO, 2018, pp.20-21). Two companies adopting different standards for measuring can make it difficult to compare, and impede those seeking to identify the necessary steps to reduce the gap. This does not mean that the gender pay gap is not important; just that it is a data shorthand that should be considered in context and understood by the States that mandate its collection.

> Mean v Median

One difference is between the mean and median gender pay gap. The former compares the average of women's pay distribution to the average of the men's pay distribution, while the latter compares the value located in the middle of women's pay distribution to the value located in the middle of the men's pay distribution (i.e., half the staff earn more than the median, and half earn less) (ILO, 2018, p.22). The difference between the mean and median gender pay gap can be striking: in Bulgaria, the mean hourly wage gender pay gap is 13.2%, while the median hourly gender pay gap is 1.9%. Such data reflect the fact that there are generally fewer women in higher-paying roles than men, making the gender pay gap as measured by mean earnings more significant. In countries where the vast majority of women and men earn similar low-medium incomes and a minority of male employees earn far higher incomes, the median gender pay gap will be smaller than the mean gender pay gap. The benefit of the median is that it provides a better expression of the experience of the everyday woman; the benefit of the mean is that it provides a better overall picture. The OECD, for example, recommends the median because 'mean averages are subject to distortion from extreme values' (OECD, 2021).

The mean and median, like all data, must be interpreted in context. Some countries around the globe have negative mean or median gender pay gaps. These are, with the exception of Luxembourg, low- or middle-income countries with very different wage distribution. In Egypt, there is no representation of women at all at the low end of wage distribution, and clusters of women towards the middle and upper end of the wage spectrum. Women in such countries either work informally or in the home, meaning they are not counted in statistics, or enter the workplace if they are in a position to be relatively successful. Within OECD countries, in Greece, Italy, and Turkey, small gender pay gaps are the result of comparatively lower women's participation in the labour force on the whole, but highly educated and higher-earning women employees remain in formalised employment and thus inflate the average earnings of women employees (OECD, 2021).

In other countries, the mean and median are inverse to what we would expect: Portugal's mean gender pay gap of 19.3% monthly, or 15.8% hourly is slightly lower than its median gender pay gap of 19.9% monthly or 16.9% hourly.

This reveals unequal wage distribution masked by a singular measurement: in Portugal, far more women than men earn a minimum wage or just above it, making the median for women significantly low. Fewer women than men earn a middle-range income. There is then a small cluster of highly paid women, though still fewer than men. Considering both the mean and median together therefore gives us more information on wage distributions than one alone.

Finally, it is important to consider that the mean and median gender pay gap may get worse before it gets better. A large intake of women in low- or medium-salaried jobs, with the intention of developing and promoting these women to become high-paid employees, can cause the gender pay gap to increase before it decreases.

The gender pay gap is therefore a useful shorthand, but it is important to consider it in the context of the whole dataset and the wage distribution patterns it reveals. It is therefore best practice for companies or States to include an explanatory statement if they wish to clarify aspects of their gender pay gap.

> **Hourly v monthly**

Continuing with the case of Portugal, the hourly gender pay gap (median or mean) is around 3% lower than the monthly gender pay gap. This is a trend reflected in almost all countries – because across the globe, women are more likely to work part-time or reduced hours than men are. The UN SDG indicator 8.5.1 indicates that using hourly wages to estimate the gender pay gap has the advantage of disentangling working time from earnings. Using monthly, weekly, or even daily pay can reflect differences not only in hourly pay but also in the number of hours worked over a period of time.

The reasons for working part-time are diverse; but in many European countries (Bulgaria, Cyprus, Italy, Romania, and Spain), it appears to be involuntary (ILO, 2016). Many women are working part-time out of necessity rather than choice, primarily to balance paid with unpaid work that disproportionately is performed by women, or to meet the cultural pressure of not upstaging their husband (ILO, 2018a). Using the monthly gender pay gap therefore implicitly takes into account the cost to women of fewer full-time opportunities (ILO, 2018, p.22).

As set out below, within the OECD Employment Database, countries mostly use monthly earnings data:

- **Hourly:** Denmark, Greece, Iceland, New Zealand, Portugal
- **Weekly:** Australia, Canada, Ireland, UK, US
- **Monthly:** Belgium, Chile, Czech Republic, Estonia, France, Germany, Hungary, Italy, Israel, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, Norway, Poland, Slovakia, Slovenia, Sweden, Switzerland, Turkey
- **Annual:** Austria, Finland, Spain

Different measurements, different data (*data from ILO 2018/19, intended to indicate differences in measurements rather than provide information on the gender pay gap in these countries today)

Poland

Hourly mean gender pay gap: 8.8%	Hourly median gender pay gap: 8.2%
Monthly mean gender pay gap: 18.9%	Monthly median gender pay gap: 13.0%

Bulgaria

Hourly mean gender pay gap: 13.2%	Hourly median gender pay gap: 1.9%
Monthly mean gender pay gap: 14.6%	Monthly median gender pay gap: 2.1%

Slovenia

Hourly mean gender pay gap: 4.5%	Hourly median gender pay gap: 0.8%
Monthly mean gender pay gap: 7.6%	Monthly median gender pay gap: 5.1%

Hungary

Hourly mean gender pay gap: 11.2%	Hourly median gender pay gap: 0.8%
Monthly mean gender pay gap: 15.1%	Monthly median gender pay gap: 6.5%

Czech Republic

Hourly mean gender pay gap: 22.1%	Hourly median gender pay gap: 16%
Monthly mean gender pay gap: 22.8%	Monthly median gender pay gap: 18%

> The Factor-Weighted Gender Pay Gap

Given the simple nature of the ‘raw’ gender pay gap, which can mask wage distribution trends and vary depending on the approach to measuring, the ILO has pioneered a factor-weighted form of measuring the gender pay gap. This is intended to assist with policymaking and monitoring by providing a comparable standard (ILO, 2018, p.36).

Methodology – the ‘Factor-Weighted Gender-Pay Gap’

The methodology is as follows: women and men employees are grouped into more homogeneous subgroups, and a gender pay gap for each subgroup is calculated. The overall gender pay gap is a combination of these subgroup gaps, weighted to reflect the size of each subgroup. This is the ‘factor-weighted gender pay gap’ (ILO, 2018, p.43). The subgroups are indicators that together pick up the major composition of most economic contexts:

- Education.
- Labour market experience (using age as an approximation).
- Working-time status (part- or full-time) – women are more likely to work part-time.
- Public-sector or private-sector – women are more likely to work in the public sector rather than the private sector.

The ILO found that applying this factor-weighted gender pay gap makes the gender pay gap bigger in almost all cases (ILO, 2018, p.43). For example, Slovenia's raw mean gender gap of under 5% increased to around 12% (ILO, 2018, p.44). In countries where the 'raw' gender gap is negative, the factor-weighted method corrected the distortion from wage distribution and shows that in fact women in these countries are on average paid below what men are paid. This methodology is not yet in wide use, but States could consider it to provide a more accurate picture of the workspace.

Above all, ILO calls for good measurements and data, made publicly available, which States can analyse themselves and provide to international organisations for more detailed review (ILO, 2018, p.90). Within the OECD, some countries require only one or two simple data points, like the wage gap at the mean and median, while others ask for an extensive list of gender-disaggregated statistics on wage and employment outcomes across different jobs. The simpler form is often easier for companies but may conceal inequalities. Reporting the gender wage gap by subgroups like occupation, skills and experience 'better reveals inequalities across similar men and women' (OECD, 2021). An OECD report recommends that 'companies calculate *both* sets of statistics, with the overall wage gap easily estimated based upon the disaggregated measures' (OECD, 2021).

► EU Transparency Directive

The principle of equal pay 'for equal work or work of equal value' is laid down in Article 157 TFEU. Additionally, the Equal Treatment Directive 2006/54/EC implements the principle of equal treatment between men and women in employment, *inter alia* prohibiting direct or indirect discrimination on the basis of gender when concerning recruitment and access to employment (Recital 10). Nevertheless, the EU reports that 'implementation has long been challenging'. The gender pay gap in 2020 stood at 13% (EU Transparency Directive, Recital 15). Reasons for this have included: a general lack of transparency, meaning gender-based pay discrimination and bias can go undetected or unproved; a lack of legal certainty on the concept of work of equal value; or procedural obstacles faced by victims of discrimination (EU Transparency Directive, Recital 11). It has also observed the importance of gender stereotypes, the 'glass ceiling'

and ‘sticky floor’ (see above), horizontal segregation, and unequal unpaid work (EU Transparency Directive, Recital 15). The Covid-19 pandemic has furthermore ‘highlighted the continued, structural undervaluation of work predominantly carried out by women’ and may ‘widen gender inequalities and the gender pay gap unless the recovery response is gender sensitive’ (EU Transparency Directive, Recital 14).

The EU has spent a decade considering the impact of pay transparency measures in reducing the gender pay gap. In 2014, a notable report for the European Commission outlined that the cumulative impact of providing workers with an entitlement to pay information, regular pay transparency reporting, equal pay audits, and considering equal pay in collective bargaining, would amount to a reduction of up to 4.33%. The Commission previously recommended strengthening the principle of equal pay between men and women through transparency (European Commission, 2014, p.3). It has consulted with public and private sector employers and groups such as the European Women’s Lobby (European Commission, 2014, p.3). Gender pay transparency was therefore included as a key priority in the EU Gender Equality Strategy 2020-2025, with a directive proposed in 2021 and adopted by the European Parliament in March 2023 (Council of the EU, 2023). The key requirements of the new legislation are detailed below.

“Equal work deserves equal pay. And for equal pay, you need transparency. Women must know whether their employers treat them fairly. And when this is not the case, they must have the power to fight back and get what they deserve.” – Ursula von der Leyen, President of the European Commission.

To improve general transparency, companies are obliged to guarantee transparency in pay, prohibit pay secrecy, and make criteria used to determine pay levels and pay aggression accessible to workers (EU Transparency Directive, Articles 5, 6, and 7, and Recitals 32 and 35). Job classification and evaluation systems, as well as job vacancy notices and job titles, must be gender-neutral (Recitals 31 and 32). Employers are prevented from asking candidates about

their pay history, which has been demonstrated to perpetuate the gender pay gap and must inform candidates on the starting salary or pay range of advertised positions (Articles 5, 6 and 7).

Companies will be required to report annually (for 250+ employees) or once every three years (100+ employees) on their gender pay gap. This applies to all workers, including part-time and fixed-term workers (Recital 18). Pay includes all elements of remuneration, and pay levels are expressed as the gross annual pay and corresponding gross hourly pay (Article 3(1)(b)). Employers must provide the mean gender pay gap, mean gender pay gap in complementary or variable components, median gender pay gap, and median gender pay gap in complementary or variable components (Article 9). The information must be made public, but employers can accompany the published data with an explanation of any gender pay differences or gaps (Recitals 38 and 29, and Article 9). These requirements represent a floor, not a ceiling; Member States may increase the frequency of reporting or make regular reporting on pay mandatory for employers with fewer than 100 workers (Article 9). For example, the OECD notes that some countries mandate companies with 30 employees and more to report and calls on countries to increase the share of firms that are covered by reporting requirements (OECD, 2021).

Crucially, the legislation mandates follow-up steps: where differences in average pay for the same work or work of equal value between men and women workers is not justified on the basis of objective, gender-neutral criteria, the responsible company should take steps to remove inequalities (EU Transparency Directive, Recital 39). If there is a difference in average pay level of at least 5%, which cannot be justified on such criteria, this triggers a joint pay assessment with worker representatives wherein pay structures are reviewed and revised (Article 10).

Additionally, the legislation introduces a number of legal measures to address pay discrimination that greater transparency may reveal. National rules on limitation periods must not make it 'virtually impossible or excessively difficult' to challenge pay discrimination (EU Transparency Directive, Recital 53). When there is a *prima facie* case of discrimination, or if the system of pay is totally lacking in transparency, the burden of proof should be shifted to the respondent

(Article 18). Additionally, in situations where no real-life comparator exists to determine whether work is of equal value, the use of a hypothetical comparator is allowed to enable workers to show they have been treated differently to a hypothetical worker of another sex (Article 19(3)). These lifts existing obstacles in highly gender-segregated employment, where the requirement of finding a comparator of another sex makes it almost impossible to bring an equal pay claim (Recital 28). To make bringing a pay discrimination case more financially feasible, unsuccessful claimants, if they had ‘reasonable’ grounds for bringing the claim (for example, if a successful respondent had not complied with pay transparency obligations) should not be required to pay the costs of proceedings (Recital 54 and Article 22). Successful claimants are meanwhile entitled to compensation: the respondent must cover in full loss and damages sustained as a result of pay discrimination (Recital 50). Other remedies include courts requiring the employer to take structural or organisational measures to comply with its obligations regarding equal pay, such as reviewing the pay setting mechanism based on a gender-neutral evaluation (Articles 16 and 17). Penalties include fines which could be based on an employer’s gross annual turnover, or revocation of public benefits or a period of exclusion from award of public tender procedures (Article 23).

The monitoring of the implementation of this directive should be overseen by a dedicated body; this can be newly set up, or tasks can be conferred upon an established monitoring body (EU Transparency Directive, Recital 61 and Article 29).

To summarise, the legislation primarily focuses on ending gender pay discrimination, by demanding transparency, making it easier for employees to bring challenges in courts, and outlining real penalties for employers. By requiring gender pay gap reporting and pay reviews, however, it also intends to generate discussion within companies on how to generate change and address the wider causes of differences in labour market participation between men and women. How successfully these measures will be implemented remains to be seen, but it provides a useful basis upon which both EU and non-EU states can build and improve their existing systems to tackle the gender pay gap.

Annex 2: The Implementation of Gender Pay Gap Reporting Obligations at a Domestic Level – a comparative analysis of existing legal frameworks governing gender pay gap reporting obligations in jurisdictions across Europe

► Summary

Obligations under international instruments to counter the gender pay gap (as described in the section above) have been implemented differently across different jurisdictions. This annex contains analysis of the position across six European jurisdictions to provide an overview of the different methods by which gender pay gap reporting obligations may be implemented, as well as a review of their efficacy.

The section begins with a thematic comparison of the legal obligations across France, the UK, Germany, Iceland, Croatia and Slovenia. These jurisdictions have been chosen to demonstrate a diversity of responses to the gender pay gap: France, the UK, Germany and Iceland have all implemented different legislation relating to the gender pay gap, whilst Croatia and Slovenia have indirect wage transparency mechanisms. It then examines the operation of GPG reporting obligations in those jurisdictions, highlighting any key success stories and examples of best practice, as well as any issues in implementing the obligations and proposed solutions to such issues. Finally, it includes

more detailed information on the legislative frameworks and specific reporting obligations in each jurisdiction, to inform any future legislative or policy reforms in this area in BiH.

► **Comparative analysis of relevant legal obligations**

Of the six jurisdictions covered, only Croatia and Slovenia do not have legislative instruments explicitly addressing wage transparency. All six jurisdictions have national laws guaranteeing the principle of equal pay for equal work; however, in the last several years, Germany (2017), the UK (2017), France (2018) and Iceland (2018) have introduced legal obligations relating specifically to wage transparency. Croatia has an indirect pay transparency mechanism in that all statistical data and information collected by government bodies, public agencies and institutions must be expressed by gender. Similarly, the Slovenian Statistical Office collects data regarding average pay, including by gender.

› **Scope of the legislative measures**

The organisations covered by wage transparency laws vary across the jurisdictions. The two main categories by which obligations are imposed on organisations include: (i) the sector in which the organisation operates, i.e. the public or private sector; and (ii) the number of employees it has.

France and Germany impose more stringent wage transparency obligations on the private sector, whilst Croatia's indirect pay transparency mechanism only applies to the public sector. For example, in France, whilst the public sector must publish a "unique social report" which contains information relating to women and men they employ, public sector employers are not bound by the compulsory indicators or rating criteria to judge gender equality which apply to private sector employers. The UK and Iceland place similar obligations on both the private and public sector, and in Slovenia data is collected across both sectors.

The smallest organisations to which the wage transparency laws apply are those with at least 25 employees in Iceland, followed by those with 50 employees in France, 200 employees in Germany and 250 employees in the UK. Other than in the UK, organisations are divided further based on their size, such that

the requirements are more burdensome for bigger employers. For example, in France, the requirement to calculate one's gender pay equity score is based on five different indicators for organisations with at least 250 employees, but only four indicators for those with less than 250 employees.

› Requirements of the legislative instruments

Legislative requirements in the UK and France are data driven: employers must collect and publish prescribed details about their workforce. This is similar to Croatia and Slovenia as the data collected is expressed in a certain manner, e.g., by gender. In contrast, in Iceland, the focus is on pay auditing processes, which involves systematically determining the value of a job within an organisation and ensuring equal pay for jobs of equal value (Wagner, 2022, p.477). German legislation is hybrid: individuals can request the provision of certain data and the largest employers must explain whether or not they have taken measures to promote equality, but the largest employers may also voluntarily conduct pay audits. The outcome of complying with the relevant legislation is usually available to employees and the general public.

In the UK, employers must report annually on the proportions of women and men they employ in each of four quarter pay bands in addition to the overall difference in the mean and median gross hourly rates of pay and bonus pay, and the proportions of men and women who received a bonus pay in the last 12 months. The report is published on the organisation's website by a specified deadline for at least 3 years. This information is also provided to the government, which publishes it on the online platform, Gender Pay Gap Service.

Similarly, French legislation requires organisations to calculate their gender pay equity score annually, publishing the outcome on their website for at least a year and providing it to the Ministry of Labour. The Gender Equality Index score is based on five indicators for the largest private employers and four for those with less than 250 employees. The indicators are weighed differently and include the wage gap between men and women of comparable position and age, the number of women who received a salary increase on return from maternity leave and the number of women amongst the top 10 wage earners.

Employers in the public sector in Croatia must report annually to the Croatian Bureau of Statistics the average remuneration by category of employee or position, broken down by gender, which is published on the Bureau's website. In Slovenia, the Statistical Office is obliged to collect data across various categories, including by sector, employment type, activity and sex (CMS, 2022).

In contrast, Icelandic employers must obtain a certificate, which must be renewed every 3 years, to verify that they pay equal wages for work of equal value.^[95] The certificate is provided by a competent body, such as an accredited auditor or certification body, following an audit of pay policies and processes and their implementation in accordance with the Equal Pay Standard. The key point of the Equal Pay Standard is that decisions on wages must be based on relevant considerations and not on direct or indirect gender discrimination. It therefore summarily requires: (i) an assessment and formalisation of a company's pay policies and processes related to pay decision; (ii) classification of jobs according to equal value; and (iii) analysis of the wages paid for jobs of equal value and explanations and analysis of the reasons that such wages are paid. There are detailed statutory guidelines on the auditing process. The certificate and the report of the audit outcome are sent to the Centre for Gender Equality, which awards the equal pay symbol. The Directorate of Equality maintains and publishes a register of organisations that have acquired certification.

Germany grants individuals working in companies of at least 200 employees an individual right to obtain information from their employer upon a written request (and subject to satisfying other conditions). This includes information concerning the criteria for determining the remuneration of the requesting employee as well as information on the average gross monthly salary and further salary components e.g. bonuses. The employer must respond in writing within three months. A request by an employee can be made every two years.

For private sector employers with more than 500 employees, a report on equality and equal pay must be prepared, attached to the management report and published in the German Federal Gazette every three years (or every

[95] Iceland's Equal Pay Standard IST 85 is the first to be deliberately developed according to international ISO standards, allowing it to be translated and adopted across the globe.

five years if an employer is bound by or applies collective agreements). The report must detail the measures taken to promote equality, including efforts to achieve gender-equal pay, and the impact of those measures (or explain why no action has been taken). Additionally, these employers may conduct voluntary operational audit procedures to review their compliance with the principle of equal pay. Employees must be informed about the results, and the employer must rectify any identified inequalities.

› **Enforcement**

With respect to enforcement of the gender pay gap reporting obligations, France and Iceland provide for financial penalties for non-compliance. However, the UK and Germany have no enforcement mechanisms specific to wage transparency obligations, relying on public enforcement and private enforcement based on other equality legislation, respectively.

In Iceland, social partner organisations monitor and report employers to the Centre for Gender Equality for non-compliance with the wage transparency obligations. The Centre for Gender Equality can make a formal demand to the non-compliant employer to rectify the situation by a certain deadline. If the employer does not comply with the Centre's request for data or other information or if it violates the requirement for the equal pay certification, it may incur fines of up to 50,000 ISK (around €360) per day. Those deliberately or negligently violating the relevant legislation may also have to compensate the affected parties for financial and non-financial loss.

There is no enforcement mechanism of the wage transparency obligations against the public sector in France. Private sector companies achieving less than 75/100 on the Gender Equality Index must implement corrective measures to reach the threshold within three years. These measures must be determined either via negotiation if there is a collective bargaining agreement or unilaterally by the employer. An employer achieving between 75 and 85/100 must set improvement targets for each criteria for which a maximum score was not reached. Both the corrective measures and the improvement targets must be published on the employer's website and notified to the Ministry of Labour. Companies may be fined up to 1% of their total payroll for, amongst other things,

failure to reach a Gender Equality Index score of 75/100 after three years, failure to publish information on their website or failure to implement corrective measures.

The UK has not provided for any enforcement provisions or sanctions for non-compliance specifically for the wage transparency obligations. The Equality and Human Rights Commission, an executive non-departmental public body, has general powers to carry out investigations and order employers to plan and take remedial action. These powers are enforced by a court order, and it is only after non-compliance with the court order that an employer may be subject to an unlimited fine.

Similarly, there are no enforcement provisions or sanctions for non-compliance of the wage transparency obligations in Germany. The information right granted to employees may be used by individuals pursuing private enforcement to assert that the employer has violated the principle of equal pay. In this case, the employer must pay the employee the amount of remuneration they would have received if the employee had not been discriminated against. Should the employer refuse to pay, the employee can pursue legal action in which they must prove that the discrimination is due to their gender. This burden of proof reverses if, amongst other things, the employer does not comply with the information request, does not comply in time, or complies (obviously) incorrectly.

› **The Impact of COVID-19 on Legislation**

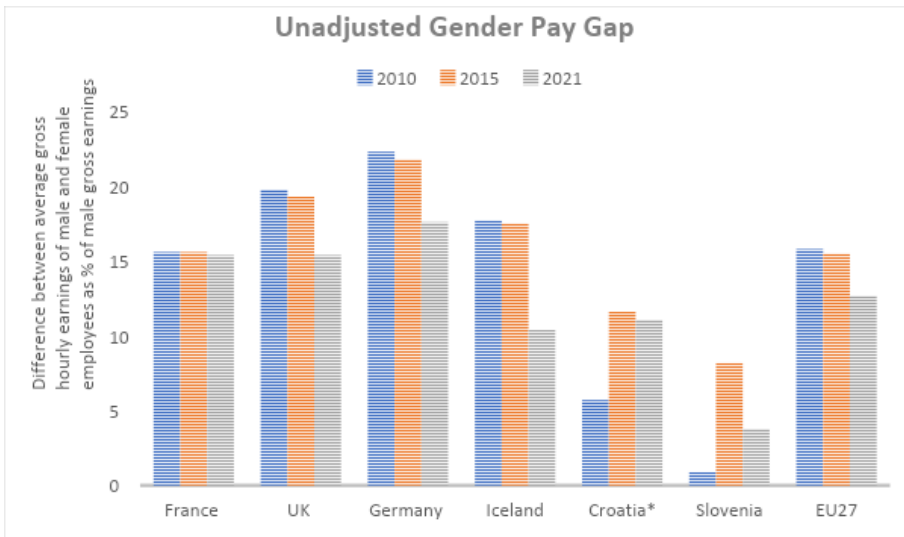
With the exception of the UK, COVID-19 had no impact on the legislative requirements in the jurisdictions covered. In the UK, the wage transparency obligations were suspended for the year 2019-2020 and the deadline to report was extended by six months for the year 2020-2021. The obligations resumed as normal for the year 2021-2022.

► Review of the Impact of the GPG Reporting Obligations

► The gender pay gap in the last decade

Figure 5 below shows the unadjusted gender pay gap across the six jurisdictions examined and the average unadjusted gender pay gap across the EU27. The unadjusted gender pay gap measures the average hourly earnings, the monthly average of the number of hours paid (before any adjustment for part-time work) and the employment rate.

Figure 5 Source: Eurostat; Office of National Statistics.

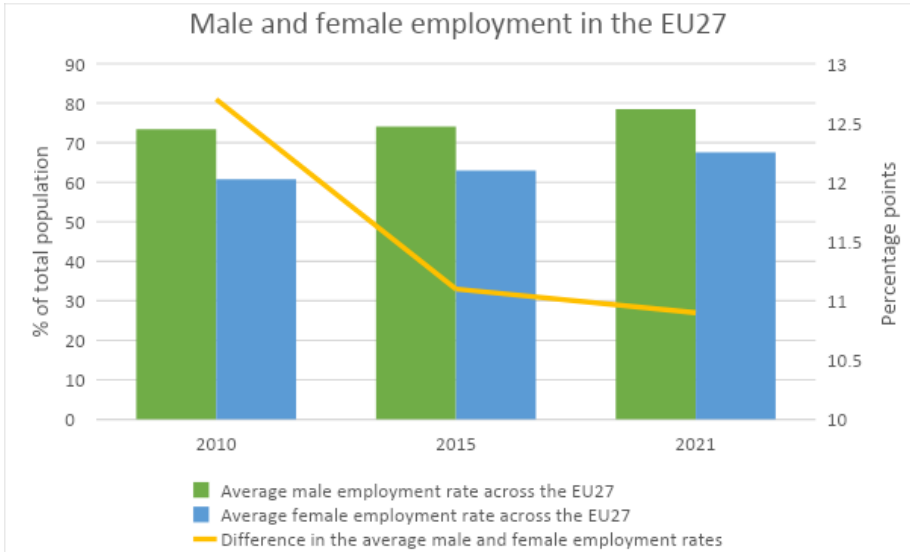


**Croatia's unadjusted gender pay gap for the year 2015 is not available, therefore the data for the year 2016 has been used.*

As the graph illustrates, the gender pay gap has, in general, been decreasing across the majority of jurisdictions in the last decade.

Conversely, the employment rate for women has been increasing and the gap between employment of women and men has been declining, as shown by Figure 6 below.

Figure 6 Source: Eurostat; Office of National Statistics.



Figures 7 and 8 below summarise these trends by plotting the relationship between the GPG and the employment rate of women in 2010 and 2021. An increase in the employment rate of women and a decrease in the unadjusted gender pay gap can be seen across all jurisdictions. Of the states with wage transparency laws, Iceland leads with the highest employment rate and the lowest GPG. Of the states with no wage transparency laws, namely Slovenia and Croatia, Slovenia has the highest employment rate of women and the lowest GPG. Additionally, Slovenia outperforms the average across the EU27, France and the UK in terms of both the employment rate of women and the gender pay gap. (See above for a discussion of the causes of the GPG; and see below for a discussion of the GPG in Slovenia and Croatia.)

Figure 7 Source: Eurostat; Office of National Statistics.

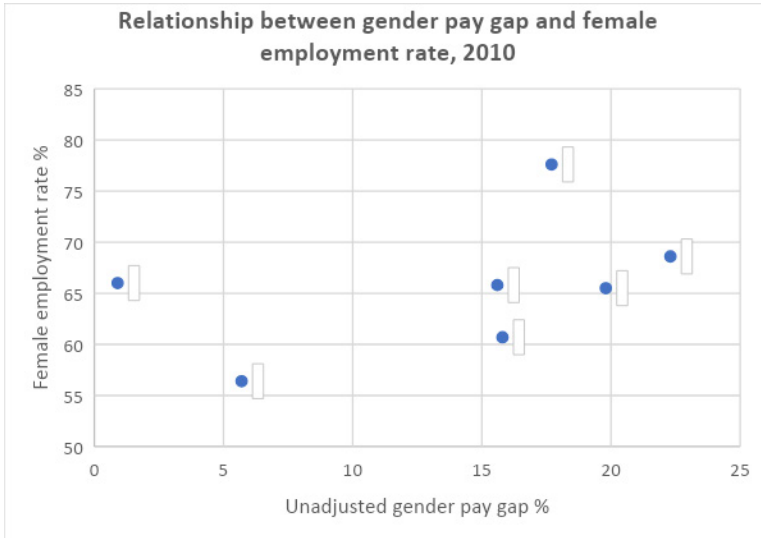
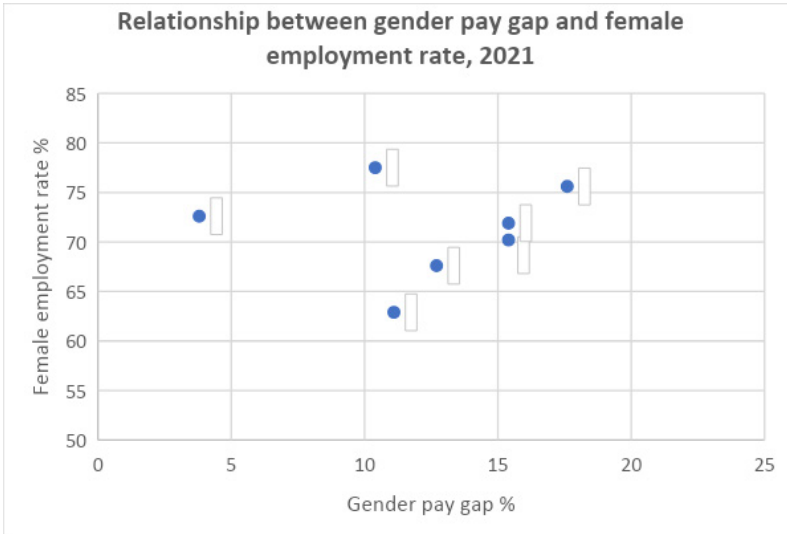


Figure 8 Source: Eurostat; Office of National Statistics.



> **A decrease in the gender pay gap**

With respect to the UK in the years 2018-2019, research has found a 14-16% reduction in the gender hourly pay gap attributable to the gender pay gap reporting obligations (Blundell, 2021, p.16; Duchini, Simion and Turrell, 2021, p.14). This is particularly effective in comparison to other reforms: for example, extension of parental leave and child care subsidies in Austria had “virtually no impact” on the gender pay gap (Blundell, 2021, p.16). There has also been a fall in the GPG across most sectors since the reporting obligations came into effect (Sharp, 2022).

This decrease in the gender pay gap in the UK has occurred in practice through an (unintended) decline in men’s wages, up to a 2.6% decrease in men’s real hourly pay, with the effect being larger at the top of the wage distribution. The slowdown in men’s pay is larger in top-paid occupations compared to other professions. Notably, women in top-paid occupations experience a pay increase. Overall, on average employee wages fell whilst workforce composition remained stable (Blundell, 2021, p.16; Duchini, Simion and Turrell, 2021, pp.13, 19 and 25).

In contrast, a report published by the German government shows that the transparency laws have had a minor impact so far (Dechert note). Similarly, a French study has found no detectable effect on gender inequality in the companies affected attributable to the wage transparency legislation due to the gradual decrease over time of pay inequality as a result of other factors and the complexity of the wage gap indicator which can vary over time (Breda *et al*, 2023, pp.10-11).

Therefore, given the diversity of gender pay gap legislation and the variety of responses to, and the duration of, said legislation across the jurisdictions, it is unclear whether effecting a decline in the gender pay gap via a decline in men’s wages (a practical, unintentional effect) is a general trend or an outlier.

> **Other effects on the work environment**

In addition to the decrease in the GPG, wage transparency obligations have had other positive effects on the work environment. Transparency increases

women's trust in employers and wage policies (Wagner, 2021). In the UK, there has been increased transparency in recruitment: organisations are 10% more likely to post wages, and increase their entry level wages. In the same jurisdiction, firms are also more inclined to grant flexible working requests to retain women (Duchini, Simion, Turrell, 2021, pp.3, 14, and 24).

In France, the Gender Equality Index has galvanised companies which previously had little or no interest in this issue to consider their own gender pay gap and how they may reduce it (although there remain companies which do not engage with this topic at all) (Cart, Pernod-Lemattre, and Toutin, 2022, p.4). In addition, since 2019 change has been noticed in the leadership of major French companies: Veolia, Suez, Engie and Orange (all companies registered with the French stock market CAC 40) have appointed women as CEOs (Dechert note).

In the UK, some employers are moving beyond the minimum legislative requirements by using the gender pay gap reporting mechanism to inform their decisions on pay structures and broader diversity and inclusion matters, such as analysing their pay gaps by other categories e.g. ethnicity, disability and social mobility. The professional services firm, KPMG, has noticed an increase in equal pay auditing due to, amongst other things, an increase of equal pay-related Employment Tribunal decisions from about 3,000 in 2017 to about 6,5000 in 2021 (Sharp, 2022). The timing of the increase correlates with when the gender pay gap legislation came into effect in the UK in 2017.

In Iceland, the equal pay auditing requirement has led to more open discourse about equal pay and the factors influencing men and women when they enter the job market or move jobs. Some managers have used this to initiate discussions about whether the job evaluation reflects the true value of the job or merely societal notions of value; others are even more proactive. For example, in one company where women worked primarily in the lower-paid office environment and men worked in better-paid outside jobs, focus groups were held with those women to ascertain the barriers preventing them from applying for the better-paid outside work. As a result, at the time of the study, the company was revising its shift system to provide shorter, more flexible shift hours. Nonetheless, the discourse is slow and patchy, driven by individuals in particular companies, rather than it being a systemic change (Wagner, 2022, pp.490-491).

On the other hand, wage transparency obligations have few negative effects. A survey found that 56% of women said that working at an organisation with a gender pay gap would reduce how motivated they felt in their role (Equality and Human Rights Commission, 2018, p.4). A study has noted a reduction in labour productivity in the UK since the introduction of the gender pay gap reporting mechanism, but there has been no significant impact on profits as the decline in productivity has been offset by the lower salaries (Duchini, Simion, Turrell, 2021, p.4).

> **Effect on wider society**

Gender pay gap transparency legislation has been criticised for being too blunt a tool to deal with a complex issue as it does not take into account, for example, working arrangements and caring responsibilities (Sharp, 2022). It has also been criticised as a missed opportunity to improve women's career opportunities: family policy incentives, such as expanding all-day childcare, are seen to have a better impact on women's careers than gender pay gap reporting obligations (Reinsch, 2017).

Firstly, whilst family policy incentives are undoubtedly important, an analysis of the extension of parental leave and childcare subsidies in Austria found that it had "virtually no impact" on the gender pay gap (Blundell, 2021, p.16).

Secondly, and more importantly, this criticism arguably misses the mark. Because the gender pay gap is such a complex issue, there is no one particular method that will eliminate it; rather the approach must be multifaceted and appropriate in the context of each country. Gender pay gap transparency legislation represents only one tool in what must be a multidimensional toolbox (Cowper-Coles *et al*, 2021, p.20). For example, wage transparency legislation that requires public disclosure fosters debate within firms and society as to what else may be done to improve the gender pay gap. Commentators have praised public disclosure of the GPG for drawing attention to the importance of narrowing the GPG and initiating debate; whilst studies on wage transparency legislation without public disclosure lament the lack of public accountability (Sharp, 2022; Bennedsen, Larsen and Wei, 2023; Lahuerta, 2021; Ahrens and Scheele, 2022).

› **Scope of the legislative measures**

Whilst commentators are generally not concerned about the divide between the public and private sector, most do not believe that wage transparency obligations reach a sufficient number of employees (with the exception of Iceland). In respect of France, the wage gap indicator of the Gender Equality Index covers only 25% of private sector employees (Breda *et al*, 2023, p.6). In Germany, the wage transparency obligations affect 14 million employees, about a third of the workforce (Ahrens and Scheele, 2022, p.166). In addition, only about half of employees are covered: in 2017, women composed 54% of the workforce in small and medium-sized companies (SMEs) and SMEs with less than 250 employees comprise 99.4% of all German companies (Ahrens and Scheele, 2022, p.166; Reinsch, 2017). Similarly, the gender pay gap reporting obligations in the UK are not sufficiently targeted as SMEs account for the majority of employers globally (Cowper-Coles *et al*, 2021, p.3).

› **Requirements of the legislative instruments**

Overall, studies have found that there is generally contentment amongst employers in Iceland and France with the wage transparency legislation; research with regards to the UK and Germany is less clear, although it is noted that some employers in both jurisdictions have gone beyond the strict legislative requirements. As may be expected, criticism of the policies is contradictory as it comes from opposing parties: employers highlight the administrative burden of the legislation whilst proponents emphasise that the legislation is not sufficiently ambitious. However, a notable absence in all wage transparency measures is the lack of consideration given to intersectional discrimination.

The Icelandic pay transparency legislation is the first policy in the world requiring organisations to prove they pay equally for work of equal value (Wagner, 2021). The detailed guidelines assisting employers to assess and categorise the value of a job challenges the subjective understanding of value and realigns job categories. Once job re-evaluations are completed, it enables employers to identify and correct pay gaps. The specificity and transparency in job evaluations provides for pay predictability and minimises manager bias

whilst maintaining flexibility to consider individual factors and particular personal skills (Wagner, 2022, pp.487-491; Lahuerta, 2021, p.9).

The innovative nature of the French legislation lies particularly in the indicator relating solely to salary increases following maternity leave (Cowper-Coles *et al*, 2021, p.16). This has encouraged companies to comply with their legal obligations in respect of salary increases on return from maternity leave (Breda *et al*, 2023, p.14). None the of the other jurisdictions examined draw specific attention to this area despite extensive evidence of the ‘motherhood penalty’ (Harkness, Borkowska and Pelikh, 2019, p.6; Whiting, 2022).

French employers are generally happy with the comprehensive approach of the Gender Equality Index as it reveals dynamics within their companies of which they were not aware, including the impact of part-time employment (Cowper-Coles *et al*, 2021, p.16). Separately, the UK transparency legislation is viewed as minimising figure-dressing and discouraging the outsourcing of lower-paid jobs as it requires firms to state the representation of women across the pay quarters (Cowper-Coles *et al*, 2021, p.15).

The most voiced criticism is that the legislative requirements are burdensome for the affected employers. In France, the Gender Equality Index is perceived as an administrative burden requiring significant investment in time, skills and training systems (Breda *et al*, 2023, p.13). This is echoed in Germany where employers estimate the cost may be as high as €10,000 if external experts are hired (Bennedsen, Larsen and Wei, 2023, p.30). However, other research suggests the actual cost to companies is on average under €1,000 annually (OECD, 2021a, p.9).

The Icelandic regime is particularly time-intensive and arduous, as indicated by the several extensions of the deadline, with SMEs facing a disproportionately higher compliance burden (Wagner, 2022, p.488; Lahuerta, 2021). Nonetheless, overall, the burden can be viewed as a short-term sacrifice which ultimately benefits the corporate culture and the payment structure (Wagner, 2022, p.488).

A close second critique is that the legislative requirements are not sufficiently ambitious. In Iceland, whilst the legislation encourages discussion of how jobs

are valued and on the basis of which criteria, employers are not required to consider how jobs, traditionally predominantly performed by either women or men, are valued and whether there is a difference in valuation based on cultural bias (Wagner, 2022, p.486).

In respect of the UK and France, the concern is that the legislative requirements normalise gender inequality by requiring only monitoring of the GPG and providing for low pass marks, respectively (Cowper-Coles *et al*, 2021, p.17). As noted above, UK legislation does not require firms to compile a narrative report or publish an action plan to tackle their gender pay gap. By and of itself, this normalises the gender pay gap; and over time, can remove the 'shock' factor in the publicised statistics. In France, the low pass mark means companies may achieve respectable scores whilst simultaneously facing legal action for violation of gender pay equality legislation. The Gender Equality Index score may be easily optimised as, for example, hiring one woman in a senior role can improve the score from 64/100 to 76/100 (Cowper-Coles *et al*, 2021, p.17). There is concern that the Index can mask real inequalities due to, for example, small numbers in respect of certain indicators and the grouping of vastly different employees (Breda *et al*, 2023, pp.7-8; Cart, Pernod-Lemattre and Toutin, 2022, pp.2-3).

The German individual right to information is subject to strict and burdensome requirements complicated by legal provisions that are difficult for employees to understand (Dechert note). As the law requires at least a comparable group of 6 employees, in highly individualised or differentiated employment structures, there is very little to no transparency (Ahrens and Scheele, 2022, p.167). In addition, the lack of collective action means that there are more reputational, financial and psychological pressures facing employees, particularly women and those with precarious working arrangements (Deutscher Bundestag, 2017; Ahrens and Scheele, 2022, pp.167 and 170). 16% of employees surveyed stated that they had not exercised their individual information right in order to avoid negative consequences for their relationship with their employer (Dechert note). The combination of these factors means the individual information right has rarely been used and is rarely the reason for adjusting pay structures (Ahrens and Scheele, 2022, pp.167 and 170; Dechert note).

Similarly, the requirement that companies voluntarily undergo auditing of their operation procedures has been met with scepticism. Some have highlighted that voluntary measures have been unsuccessful in the past. More fundamentally, with no certified audit procedures and unclear criteria for determining reporting requirements, it is unclear what the outcome of the auditing undergone by some companies demonstrate, let alone whether the outcomes can be compared across companies and sectors (Deutscher Bundestag, 2017).

Finally, a criticism that may be levelled against all jurisdictions is that no intersectional elements are required to be considered by any of the legislative instruments (Cowper-Coles *et al*, 2021, p.14). Whilst wage transparency legislation as it stands may positively affect intersectional discrimination, it is unlikely that such legislation will alone be sufficient to tackle an even more complex issue. Intersectional discrimination recognises that two or more grounds of discrimination “operate simultaneously and interact in an inseparable manner, producing distinct and specific forms of discrimination”(Council of Europe, no date). The Council of Europe provides the following example:

“For example, a young Roma woman is discriminated in the labour market because she is Roma and is perceived to be ‘dangerous’, because she is a woman, and is therefore ‘bound to have children soon’, and because she is young and therefore unexperienced. In particular circumstances, the combination of these factors creates a negative synergy, so that the discrimination cannot be fully understood as the addition of criteria alone.”
(Council of Europe, no date)

Given the social strata and multiculturalism of many European countries, the lack of attention given to intersectional discrimination in the context of wage transparency is regretful. However, there has been some movement on this front. Some UK employers have voluntarily started analysing their pay gaps by categories other than gender, e.g., ethnicity, disability, and social mobility (Sharp, 2022); and the UK government held a public consultation on ethnicity pay reporting (although it has yet to report on the outcome) (Department for Business and Trade, 2018).

> Compliance and enforcement

As may be expected, compliance with legal obligations was higher where the obligations were mandatory. Similarly, larger firms consistently have higher compliance rates than smaller firms. However, the quality of firms' compliance with their legal and extra-legal obligations is unclear and potentially questionable in certain respects.

In the UK, the Equality and Human Rights Commission reported 94% compliance by, and 100% compliance within 6 months of, the deadline for the year 2017/2018. About 50% of employers produced a narrative explaining their pay gap figures and about 48% published an action plan outlining how they intended to tackle their gender pay gap (neither of which are required by the legislation). However, the quality of the reports differed: around 20% of employers had an action plan that was time-bound and included target-driven activities, and only 11% of employers had action plans that enabled them to measure their progress year-on-year, with the larger employers being more likely to set themselves targets (Equality and Human Rights Commission, 2018, pp.3-5).

According to a review conducted by the German government in 2019, the individual information right is rarely used: only 4% of employees with the right requested information from their employer. As noted above, this appears to be due to fears of retaliation and the inaccessible nature of the right. Of the legal obligation to publicise a report on equality and equal pay, at the time of the survey 44% of companies claimed compliance and 40% planned to follow (Ahrens and Scheele, 2022, p.167). In respect of the voluntary auditing, 45% of surveyed firms with more than 500 employees and 43% of firms with 200-500 employees voluntarily reviewed their pay structures (Bennedsen, Larsen and Wei, 2023, pp.27-28). (As noted above, there are no statutory guidelines as to how to conduct an audit or the criteria by which to measure, so the value to be ascertained from the audit is limited.)

As a mandatory measure, the publication of the Gender Equality Index in France was complied with by 61% of the affected companies in 2022. 92% of those companies scored above 76/100 and 2% scored 100/100. There has been a consistent improvement in compliance – with the larger companies obtaining

higher compliance rates – and the average Gender Equality Index score of all reporting companies has improved every year, from 82.4/100 in 2018 to 85.9/100 in 2021 (Breda *et al*, 2023, pp.6-7). However, only half of the companies subject to the wage transparency obligation declared a score and, as aforementioned, there are concerns about companies “optimising” their scores (Breda *et al*, 2023, pp.5-6; Cowper-Coles *et al*, 2021, p.17).

Statistics published by the Icelandic Directorate of Equality show that of the 1094 parties required to complete the process for equal pay certification (or verification) in 2022, only 40.5% did so. In contrast in 2021, only 22.65% of companies had not completed the relevant process. The difference between 2021 and 2022 is due to companies with 50-89 employees being required to obtain equal pay certification by 31 December 2022. This category had the largest number of applications in 2022 and the lowest completion rate. The statistics indicate that each year the latest band of affected organisations have the lowest compliance rate, with each previous band of organisations performing better. As expected, the largest organisations have the highest compliance rate (Directorate of Equality, no date).

Despite these less than ideal compliance rates, there have been few to no heavy penalties used in the countries which provide for sanctions, namely France and Iceland. Research has found that the presence of sanctions as a last resort is useful to motivate companies to comply (Cowper-Coles *et al*, 2021, p.13).

By increasing public scrutiny and permitting comparisons across firms, public disclosure of the relevant GPG figures magnifies the disciplinary effects of the legal obligation, and therefore is particularly effective. As noted above, in the UK, the larger employers are more likely to publish a narrative report to explain, and an action plan to tackle, their gender pay gap – neither of which are required by law. Employers with the worst gender pay gaps received lower impression scores from women in the UK, with over 60% of women saying they would be more likely to apply to an employer with a lower pay gap and a study showing that 61% of women would accept a 2.5% lower salary to avoid a high pay gap employer (Blundell, 2021, p.26). Reputational concern is a strong motivator: employers with the worst gender pay gaps saw the biggest reduction in their

gender pay gap the following year (Duchini, Simion and Turrell, 2021, p.19). This concern has also been noted amongst French companies (Cowper-Coles *et al*, 2021, p.13).

› Indirect wage transparency in Croatia and Slovenia

Croatia and Slovenia have introduced no legal instruments with respect to gender pay gap reporting obligations on employers. However, both countries have indirect transparency mechanisms: their respective national statistical offices collect various employment data, including segregated by gender.^[96]

Figure 8 above shows both Slovenia and Croatia have a lower gender pay gap than the average across the EU27. Whilst Croatia has a lower employment rate for women than the EU27 average and the other jurisdictions examined, Slovenia has a higher employment rate for women rate than the EU27 average, as well as higher than the UK and France.

As discussed in the first section of this paper, the gender pay gap is a complex issue and its calculation is impacted by multiple factors, including the number of women in employment. However, the gender pay gap is also affected by the methodology used to calculate it. Poje and Roksandic write:

“Different methodologies used in the monitoring of the gender pay gap and different statistical surveys have delivered different results when it comes to determining the size of the gender pay gap in Slovenia. In 2010, the gender pay gap according to the survey of earnings structure equalled 0.6%.... Data on the unadjusted gender pay gap published for the same year show that according to Eurostat the unadjusted GPG was 0.9%. However, the data from the annual structure of earnings statistics published for the same year reported the gender pay gap at 3.7%.” (Poje and Roksandic, 2014, p.8)

[96] See above for further detail.

As the value of calculating the gender pay gap is to highlight the inequalities in respect of men and women's wages, the methodology chosen should be the most effective at doing so. The opportunity to identify and accentuate problematic areas is lost if a methodological approach masks those issues; indeed, such an approach would be harmful as it provides a false sense of security that there are no issues.

Nonetheless, data consistently has shown that Slovenia has one of the lowest gender pay gaps in the EU (Eurostat, 2023). This, in conjunction with its indirect wage transparency measures, highlights that gender pay gap reporting must only be (and must be perceived as) one element of a wider package of support to tackle gender inequality in the workplace and wider society. For example, given the impact of motherhood on women's careers, policies could focus on improving parental leave and the availability of high quality, affordable childcare. More widely, addressing the undervaluation of women's work and occupational segregation is also important (Cowper-Coles *et al*, 2021, p.14).

Annex 3: Overview of existing legal frameworks governing gender pay gap reporting obligations

This annex provides a more detailed overview of the legal frameworks used to introduce GPG reporting obligations in the four European jurisdictions with GPG reporting legislation in place which are discussed in this paper: the United Kingdom, France, Iceland, and Germany. It also summarises the practical mechanisms used to implement and enforce such obligations across these jurisdictions. These four jurisdictions provide the opportunity to compare and reflect on four different manners in which GPG reporting obligations might be introduced.

In particular, in respect of each jurisdiction, this Annex contains analysis of:

- The relevant legal framework, including the main primary and secondary legislation and guidance governing gender pay gap reporting;
- The scope of the GPG reporting obligations, including which employers are subject to the reporting requirements; and
- Key mechanisms for enforcement and oversight of the GPG reporting obligations.

► France

> Relevant Legal Framework

In France, the relevant legislation, which applies to private and voluntary sector employers with at least 50 employees, is the Professional Future Act of 5 September 2018 (*Loi "Avenir professionnel"*, n°2018/771), which came into force on 1 January 2019. The Act introduced a new chapter in the Labour Code called

“measures aiming at abolishing pay gaps between women and men within companies”, under articles L.1142-7 to L.1142-11 of the Labour Code.

This new chapter of the Labour Code obliges companies subject to the requirement to calculate annually their gender pay equity score / index. The gender equality index is one of numerous legislative measures implemented to prevent discrimination and inequality on the basis of gender within a professional framework. Included in Title IV of the Labour Code on gender equality, the Professional Future Act tackles the issue of equal pay, and strengthens the legal framework which includes, particularly, provisions on the prohibition of gender discrimination before or during an employment relationship and protection against moral and sexual harassment within the workplace.

In respect of companies employing more than 250 employees, the gender pay equity score is assessed on the basis of 5 different indicators set by articles D. 1142-2 and D.1142-2-1 of the Labour Code:

- The wage gap between men and women of comparable position and age (40 points).
- The percentage of men and women who received a wage increase (20 points).
- The percentage of men and women who were promoted (15 points).
- The number of women who received a salary increase on their return from maternity leave (15 points).
- The number of women amongst the 10 top wage earners (10 points if there are at least 4 women).

In respect of companies employing between 50 and 250 employees, the score is based on 4 different indicators. The percentage gap between individual pay increases not related to promotions and the percentage gap between promotions (the second and third indicators listed above) are replaced with a single indicator – the percentage gap of pay increases between men and women generally (up to 35 points).

The obligation to calculate and report on the gender pay equity score was introduced gradually. It applied to private companies and voluntary sector

employers with at least 1,001 employees from 1 March 2019, those employing between 251 – 1,000 employees from 1 September 2019, and to those with between 50 - 250 employees from 1 March 2020.

The French government, through the Ministry of Labour, has published an online simulator to help companies to calculate their equity score. Training and assistance have also been made available to smaller companies by the administrative authorities. A telephone helpline has also been implemented to assist companies in the calculation of their score, and specialised public agents have been appointed within administrative authorities to become points of contact to employers seeking advice (Article D. 1142-7 of the Labour Code).

Public sector employers are subject to less extensive requirements under article 5 of the Public Service Transformation Act (Loi dite “transformation de la fonction publique”, n°2019-828) passed on 6 August 2019. Public sector employers are obliged to produce, annually, a ‘unique social report’ containing information and data on various aspects of their recruitment and employment practices. The Public Service Transformation Act introduces an obligation for public sector employers to include, in their unique social report, information comparing the situation of women and men they employ, including information on differences between their working hours, access to promotions, experiences of violence and harassment, and data on the gender pay gap.

Government guidelines have been published to help public sector employers determine relevant indicators to calculate gaps in pay and promotion between genders, as well as the impact of gender pay gaps on careers. The Act does not, however, set out compulsory indicators, rating criteria or sanctions.

› **Scope of the obligations**

The Professional Future Act applies to private sector employers, understood by the Labour Code as all employers in the private sector, including unincorporated bodies and non-profit organizations, as well as public entities employing staff under the conditions of private law.

By 1 March at the latest, each year, all companies with at least 50 employees must calculate and publish on their website and that of the Ministry of Labour, in an intelligible and noticeable way:

- i. The overall gender equity score obtained (out of 100); and
- ii. The individual results obtained for each indicator described above.

In the absence of a website, employees must be informed by alternative means. The score (and the data used to calculate it) must also be provided to the company's Social and Economic Committee (Article D. 1142-5 of the Labour Code).

The results must remain available on the company's website at least until the publication, the following year, of the subsequent score for the current year (Articles L.1142-8 and D. 1142-4 of the Labour Code).

> **How is the obligation enforced?**

Companies with a rating below 75/100 must implement corrective measures, including financial catch-up measures where needed, so as to reach a 75-point rating or more within 3 years (Article L.1142-10 of the Labour Code).

If a company reaches the target of 75 points before the 3-year deadline and then falls below it the following year, it benefits from a new period of 3 years to make itself compliant (Article D. 1142-8 of the Labour Code).

The corrective measures must be determined using a process of mandatory negotiation on gender equality. In the absence of an applicable collective bargaining agreement, the employer may define these measures unilaterally after consulting the Social and Economic Committee (Article L. 1142-9 of the Labour Code).

All corrective measures, alongside the gender equity score, have to be published on the company's website and communicated to employees (Article D.1142-6 of the Labour Code). The publication of corrective measures should be mentioned on the same page as the results of the gender equality index.

The corrective measures must also be integrated into the Economic, Social, and Environmental Database (BDESE) and sent to the Ministry of Labour (Article D. 1142-6-2 of the Labour Code).

Companies with a rating between 75 and 85/100 must define and set improvement targets for each gender equality criteria for which the maximum score has not been reached (Articles L. 1142-9-1 and D. 1142-6-1 of the Labour Code). The improvement targets must be published on the company's website until they reach a rating of 85/100 (Article D.1142-6-1 of the Labour Code). Employers must also inform both the Ministry of Labour and staff representatives through the BDESE of the rating for each indicator, global rating as well as improvement targets (Article D.1142-6-2 of the Labour Code).

According to article L. 1142-10 of the Labour Code, companies will be subject to a fine up to 1% of the company's total payroll when:

- they fail to reach a rating of at least 75/100 after 3 years; or
- they fail to comply with the obligation to implement a company-wide collective bargaining agreement on gender equality or a unilateral plan on gender equality; or
- they fail to publish information on their index; or
- they fail to implement corrective measures.

The level of the fine is determined by the administrative authority after review of the employer's observations and explanations on the company's failure to comply with its obligations (Article D.1142-10 of the Labour Code). The administrative authorities can also extend the deadline, up to a year, for the company's obligation to implement its corrective measures and get a minimum rating of 75/100 (Article D.1142-11 of the Labour Code).

► The United Kingdom

› Relevant Legal Framework

In England and Wales, the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (SI 2017/172) (**GPG Regulations**), govern the GPG reporting

obligations which apply to private and voluntary sector employers. The GPG Regulations were made on 6 February 2017 and came into force on 6 April 2017.

The GPG Regulations were made under Section 78 of the Equality Act 2010 (**EqA**), which gives the UK Government the power to make regulations requiring private and voluntary sector employers to publish information relating to various specific aspects of their gender pay gap.

Employers to which the GPG Regulations apply were required to take their first “snapshot” of data on 5 April 2017 and to publish their first gender pay gap report by 4 April 2018.

The EqA is the principal legislation in the UK addressing unlawful discrimination in employment, and related fields such as the provision of goods and services. The GPG Regulations form part of a broader framework of legislative measures designed to address gender-related discrimination and inequality. These include provisions, also in the EqA, concerning equal pay and unlawful discrimination because of sex, victimisation, and harassment on the grounds of or relating to sex.

Both the UK government (through the Government Equalities Office (**GEO**)) and the Advisory, Conciliation and Arbitration Service (**Acas**), a publicly funded independent organisation that aims to promote better employment relations, have published non-statutory guidance to assist organisations in complying with the GPG Regulations. The GEO and Acas, and certain other interested bodies, have also published toolkits to assist employers to close identified gender pay gaps.

Public sector employers are subject to similar requirements to private and voluntary sector employers under the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (SI 2017/353) (**SDPA Regulations**), which were made on 9 March 2017 and came into force on 31 March 2017.

Section 78 of the EqA, and therefore also the GPG Regulations, apply to Great Britain (i.e., in England, Wales and Scotland). Employment law is a devolved matter in Northern Ireland. Section 19 of the Employment Act (Northern Ireland)

2016 sets out a gender pay gap reporting requirement. However, we understand that this section has not yet been brought into force, and no draft regulations have been proposed.

› **Scope of the obligations**

Gender pay gap calculations are based on employer payroll data drawn from a specific date each year. The specific date is called the ‘snapshot date’. Most public authority employers must use a snapshot date of 31 March. They must report and publish their gender pay gap information by 30 March of the following year. Private, voluntary, and all other public authority employers must use a snapshot date of 5 April. They must report and publish their gender pay gap information by 4 April of the following year. These employers must also provide a written statement which confirms that the published information is accurate and is signed by a senior individual, such as a director.

The GPG Regulations apply to any “relevant employer” which is defined as any private or voluntary sector employer with 250 or more employees on the “snapshot date” (5 April in the relevant year). “Employer” is not defined in the GPG Regulations, but includes companies, limited liability partnerships, partnerships, limited partnerships, unincorporated bodies and any other type of employing entity. Each company or entity in a group must be considered as a separate employer for these purposes.

“Employees” are defined widely, by reference to the definition of employment included in section 83 of the EqA. This includes not just “traditional” employees with a contract of employment, but also covers “workers” with a contract personally to do work, as well as apprentices and Crown and Parliamentary staff. This definition would include salaried partners and limited liability partnership members who may be treated as employees for payroll purposes.

Public sector employers are outside the scope of the GPG Regulations. However, many public sector employers, except for devolved public authorities in Scotland and Wales, are subject to the SDPA Regulations imposing similar reporting obligations (the main difference is that the deadline date for reporting is instead 30 March in the relevant year). The SDPA Regulations apply to

the specific public sector organisations named in Schedule 2 of the SDPA Regulations. Most devolved Scottish and Welsh public authorities are instead subject to their own specific gender pay gap reporting obligations, made by the devolved administrations in Scotland and Wales.

An employer who is within the scope of the GPG regulations must calculate, report on and publish gender pay gap figures as specified in the GPG regulations. The first step for the employer is to identify its “full pay relevant employees” meaning those employees who are employed on the snapshot date and who are not being paid at a reduced rate (for example, due to being on maternity or sick leave). For each identified employee, the employer must calculate an hourly rate of pay following the formulae set out in the GPG regulations, and also identify any bonuses paid. The employer must then calculate and publish the following information:

- its “gender pay gap,” meaning the overall difference in the mean and median gross hourly rates of pay between men and women full-pay relevant employees as at 5 April each year;
- its “bonus pay gap” meaning the difference in the mean and median bonus pay paid to men and women relevant employees in the 12 months to 5 April each year;
- the proportions of men and women relevant employees who received bonus pay in the 12-month period to 5 April each year; and
- the proportions of men and women full pay relevant employees in each of four quartile pay bands.

The UK Government has created an online platform called the Gender Pay Gap Service, on which employers must publish the gender pay gap and bonus pay information required by the GPG Regulations. The employer must input the calculations set out in 4.12 (i)-(iv) above and add the details of the person who signed the statement confirming that the published information is accurate (referred to in paragraph 4.8 above).

The Government guidance on the GPG Regulations encourages employers to provide an accompanying narrative and/or an action plan with their gender pay gap information which may provide context, explain any identified gender

pay gaps and what steps may be taken to close those gaps. However, publishing supporting narratives and employer action plans are discretionary, rather than compulsory, and they are not uploaded to the Government website.

The GPG information must also be published in a prominent place on the employer's public facing website. The information must be available online for at least three years from the date of publication. If the employer does not have a website, they should publish the information on any intranet and / or parent company website and ensure that the information is brought to the attention of employees.

› **How is the obligation enforced?**

The GPG Regulations and the SDPA Regulations do not contain any specific enforcement provisions or sanctions for non-compliance. The Equality and Human Rights Commission (**EHRC**), an executive non-departmental public body, has powers of enforcement which are set out in the Equality Act 2006. The EHRC is empowered to investigate and to issue “unlawful act notices” and action plans in the event of a suspected breach of the EqA. This action can be taken, for example, in relation to employers who are in breach of the GPG regulations by failing to report on time or reporting inaccurate data.

The EHRC has the power to carry out investigations and, where appropriate, order employers to plan and take remedial action, which may be enforced by a court order if the employer does not comply. If the employer fails to comply with any such order it may be subject to unlimited fines. Part Two of this project will consider how these powers are used and whether this kind of enforcement action is effective in practice.

The Government has stated that it will run checks to assess for non-compliance. It has also stated that it will publish tables, by sector, of employers' reported gender pay gaps. The Government has established a database of compliant employers, and it is possible to check an organisation's compliance and their gender pay gap by running a simple search on the database. It is also possible to compare gender pay gaps across different employers. The database currently contains over 13,000 employers.

During the COVID-19 pandemic, the gender pay gap reporting obligation for the 2019-2020 reporting year was suspended by the Government Equalities Office and the EHRC. In respect of the 2020-2021 reporting year, the EHRC confirmed that the deadline would be suspended by six months until 5 October 2021, due to the continuing pandemic. For the 2021-2022 reporting year, the deadline reverted to 5 April under the GPG Regulations and 30 March under the SDPA Regulations.

▶ Iceland

> **Relevant Legal Framework**

The Act on Equal Status and Equal Rights of Women and Men NO.10/2008 provides that employers must not discriminate between women and men on grounds of their gender both in respect of wages paid and their terms of employment (Article 25).

Article 19 (amended) of the Equal Status and Equal Rights of Women and Men Amendment Act 2018 (the 2018 Act) requires employers within the scope of the requirement to obtain certification using the “Equal Pay Standard” to verify that they pay equal wages for work of equal value.

Regulation No. 1030/2017 of the Certification of Equal Pay Systems and Standard ÍST 85, Equal Wage Management System set out the standards required to obtain equal pay certification. The government has also published guidance and a handbook on how to achieve certification.

Article 6 of the Act on Equal Status and Equal Rights Irrespective of Gender, No. 150/2020 provides that women, men, and persons whose gender is registered as neutral shall be paid equal pay and enjoy equal terms of employment for the same jobs or jobs of equal value. Articles 7-11 of this Act set out conditions for equal pay certification and confirmation.

In view of the time it takes to adopt equal pay management systems that meet the requirements of the Equal Pay Standard, workplaces received a grace period in which to acquire the certification, the length of which depended on the size of the workplace:

- Workplaces employing 250 or more workers were required to obtain equal pay certification by the end of 2018.
- Workplaces employing 150-249 workers were required to obtain certification by the end of 2019.
- Workplaces employing 90-149 workers were required to obtain certification by the end of 2020.
- Workplaces employing 25-89 workers were required to obtain certification by the end of 2021.
- Public institutions, funds and companies that are half-owned or more than half-owned by the state with an average of 25 employees, or more, were required to obtain certification no later than 31 December 2019.
- The Icelandic government ministries, operating under the Icelandic Government Ministries Act, No. 115/2011, were required to have acquired certification, no later than 31 December 2018.

The overall aim was to adopt obligatory equal pay certification in stages over a period of four years, to provide businesses with adequate leeway in which to meet the requirements and so that the experience of the largest workplaces, which would be certified first, would be of use to smaller workplaces following in their wake. However, the relevant minister had the power, by means of a regulation, to lengthen the grace period granted for companies or institutions to acquire certification or confirmation by up to 12 months.

› **Scope of the obligations**

The obligation to obtain equal pay certification applies to companies or institutions with 25 employees or more. However, a company which employs an average of 25– 49 employees can choose to either undergo an equal pay certification or to receive an equal pay confirmation following the submission of documentation showing that its equal pay system and its implementation comply with the requirements of the Directorate of Equality for the confirmation. Workplaces employing fewer than 25 workers can request equal pay certification on the basis of the Equal Pay Standard, but are not obliged to. Employers are expected to renew their equal pay certification every three years (Art 19, 2018 Act).

To obtain certification, a company or institution must meet the requirements of the Standard ÍST 85 (otherwise known as the Equal Pay Standard), Equal Wage Management System. The Equal Pay Standard requires:

- Assessment and formalisation of a company's pay policies and processes related to pay decisions;
- Classification of jobs according to equal value; and
- Analysis of the wages paid for jobs of equal value and explanations and analysis of the reasons that such wages are paid.
- Employers must explicitly state the considerations on which wage decisions are made, to enable analysis of whether or not gender discrimination is a factor in those decisions.

The Equal Pay Standard does not require employers to pay individuals exactly the same wages for the same or comparable work. For example, employers are permitted to take into consideration individual factors, such as an individual's qualifications, experience, job performance or responsibilities. The key point is that decisions on wage levels must be based on relevant considerations and must never be based on gender discrimination of any type, direct or indirect.

The company or institution must apply for certification of its equality management system by a competent body. Companies are assessed by an accredited auditor / certification body, which examines their equal pay management systems, and the implementation of such systems, to verify that they comply with the Equal Pay Standard.

Following the certification body's audit of the employer, a certificate, and a report on the outcome of the audit is sent to the Centre for Gender Equality (a national bureau in charge of administering the Act on the Equal Status of Women and Men). Once a certificate is received, the Centre for Gender Equality awards an equal pay symbol to the company or institution based on the certification. The Directorate of Equality also maintains a register of companies and institutions that have acquired certification and publishes it in an accessible manner on its website.

Iceland's Equal Pay Standard ÍST 85 is the first to be deliberately developed according to international ISO standards, allowing it to be translated and adopted

across the globe. The standard could also be used to eliminate discrimination based on other grounds such as ethnicity, sexuality, and nationality.

> **How is the obligation enforced?**

Social partner organisations in Iceland are commissioned to monitor compliance. Where a workplace either has not acquired equal pay certification or has failed to renew it by the deadline, the social partner organisations can report the employer to the Centre for Gender Equality.

The centre can impose on the workplace a formal demand to rectify the situation by a certain deadline. Rectification measures can involve, for example, the provision of information and release of materials or the drawing up of a scheduled plan of action on how the workplace intends to meet the requirements of the Equal Pay Standard.

If the workplace fails to act on instructions of this type, the Centre for Gender Equality is authorised to impose per diem fines. Article 6 of the Act on the Administration of Matters Concerning Equality provides for “per diem fines” up to 50,000 ISK per day (around €360) where an entity does not respect the Directorate of Equality’s request for data or information or has violated the requirement for equal pay certification under Article 10(1) of 2020 Act. Under Article 31 of the Act on Equal Status and Equal Rights of Women and Men, anyone who, deliberately or through negligence, violates the Act, shall be liable to pay the party affected by the violation compensation for non-financial loss in addition to financial loss (where appropriate). In addition, under Article 32, violations of the Act, or of regulations issued pursuant to the Act may be punishable by fines unless heavier penalties are prescribed in other statutes.

Every two years, the Minister of Social Affairs and Equality assesses the results of certifications and confirmation of the equal pay systems of companies and institutions under the legislation.

▶ Germany

> Relevant Legal Framework

The relevant laws applying to private and voluntary sector employers in Germany are the Remuneration Transparency Act of 30 June 2017 (Entgelttransparenzgesetz; “EntgTranspG”), which came into force on 1 July 2017, and the General Equal Treatment Act of 14 August 2016 (Allgemeines Gleichbehandlungsgesetz; “AGG”), which came into force on 18 August 2006. As the more specific provisions, the provisions on pay discrimination of the EntgTranspG take precedence over the AGG provisions.

> Scope of the obligations

Section 7 EntgTranspG sets out the general principle of equal pay, regardless of gender, for work of equal value. This applies to all employers in the private as well as the public sector. The EntgTranspG does not, however, directly oblige companies (with up to 500 employees) to identify pay discrimination. Instead, an individual information right is granted.

In companies with at least 200 employees, sections 10 et seq. EntgTranspG grant employees an individual right to obtain information from their employer upon written request. This includes information concerning the criteria for determining the remuneration of the requesting employee as well as information on the average gross monthly salary and further salary components (e.g., bonuses or hardship allowances). The right to information regarding the average gross monthly salary only exists if at least six other employees within the company have the same or a comparable job. The information request must be addressed to the employer; however, if a works council exists, it may also be addressed to the works council. A request can be made every two years. The employer has to respond to an information request within three months in writing.

According to section 17 EntgTranspG, private companies with more than 500 employees are requested to conduct voluntary operational audit procedures (betriebliche Prüfverfahren) regarding their compliance with the principle of equal pay on a regular basis. The employees of the respective company must

be informed about the results of the audit procedures. If the review reveals discriminatory treatment, the employer must rectify any identified inequalities.

Employers in the private sector with more than 500 employees are required to prepare a management report in accordance with sections 264 and 289 of the German Commercial Code (*Handelsgesetzbuch*; “**HGB**”). These employers are also obliged to prepare a report on equality and equal pay (section 21 EntgTranspG). Employers in the public sector are not subject to this obligation.

The report must provide details of the measures taken to promote equality between women and men, including the efforts of the respective company to achieve gender-equal pay, as well as the impact of those measures. To the extent that no action has been taken, the company is required to provide reasons to explain why no action has been taken.

These companies must also provide gender-specific information regarding the last calendar year in the reporting period, specifically the average total number of employees and the average number of full-time and part-time employees. The report has to be attached to the management report (section 289 HGB) of the company, which has to be disclosed in the German Federal Gazette, i.e., it is accessible to the public (however, a violation of the publication obligation is not subject to any sanctions). According to section 25 para. 2 and 3 EntgTranspG, the obligation to prepare and disclose the specific report has applied since 2018. The first report must only cover the last completed calendar year preceding 2017. Employers who are bound by or apply collective agreements^[97] must disclose a report every five years, all other employers are obliged to issue a report every three years.

[97] In Germany, wages and working conditions of employees may be agreed either individually within each company but can also be negotiated collectively for the entire sector. Collective wage agreements are concluded by trade unions and employers’ associations for their entire industry, or by trade unions and an individual employer.

> **How is the obligation enforced?**

In the event of a violation of the equal pay principle (which can be identified by asserting the information right pursuant to sections 10 et seq. EntgTranspG), the employer has to pay the employee the amount of remuneration that they would have received if the employee had not been discriminated against due to their gender.

If the employer refuses to pay the equal remuneration, the employee must take legal action in order to enforce the right of equal pay by claiming the payment of the remuneration withheld in violation of the principle of equal pay. Such legal action can be based on the directly applicable article 157 of the Treaty on the Functioning of the European Union or on section 3, 7 EntgTranspG. In this instance, the employee has to prove that the employee's gender is the reason for the discrimination. However, where the employee proves that there are certain indications which lead to an assumption of discrimination based on gender, the burden of proof then shifts to the employer in accordance with section 22 AGG. The information obtained by asserting the information right according to section 10 et seq. EntgTranspG is intended to put the employee in a position to meet this burden of proof. If the employer does not comply with the information request, does not comply in time, or complies (obviously) incorrectly, the employer has to prove that there has been no violation of the equal pay principle.

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