

TOWARDS PAY EQUITY

Regulations, reporting
and practical application
in the Nordic region



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1. About the report

Promoting gender equality in the labour market is and has long been a priority for all the Nordic countries, as well as in official Nordic cooperation. Today, women in the Nordic countries are among the most active labour market participants in the world, but the goal of equal conditions in the labour market is far from being achieved. One of the clearest indicators of this are pay differentials between women and men, which persist despite it being a long-standing priority to close this gap.

To help reduce the pay differences that still exist between women and men in the Nordic countries, the Nordic Council of Ministers has initiated a project on pay equity in the Nordic region. The Nordic Council of Ministers' cooperative body Nordic Information on Gender (NIKK), located at the Swedish Secretariat for Gender Research, carried out the project, which resulted in this publication. The report is written by the lawyer Eberhard Stüber. He has worked as, among other things, an analyst at the Equal Opportunities Ombudsman (JämO), and as a senior investigator at the Swedish Gender Equality Agency, both in Sweden.

The publication describes legislation and policy initiatives in the Nordic countries, including a discussion about the implementation of the EU Pay Transparency Directive with focus on the issue of pay equity. The report also provides a brief overview of Nordic labour market models and highlights differences for possibilities to advance work towards equal pay for equal work and work of equal value. Special attention is paid to the interaction between legislation, collective wage agreements and requirements for reporting wage statistics related to the ISCO standard.

This publication is the first in a series of reports from the project on pay equity in the Nordics. The second report in the series examines how available public statistics can be used to measure wage differences between women and men in equivalent work at national level in the Nordic countries, with in-depth study of Finland, Norway, and Denmark. The third report discusses various explanatory approaches regarding the undervaluation of women's work in a gender-segregated labor

market, based on a survey of the labor market partners and other key actors in the Nordic countries. The second and third reports will be published in the winter of 2024/2025.

Special thanks go to the members of the project reference group: Byrial Rastad Bjørst, PhD, lawyer at The Danish Association of Professional Technicians (DK); Þorgerður Jennýjardóttir Einarsdóttir, Professor of Gender Studies at the University of Iceland (IS); Milla Järvelin, Analyst at the Council of Nordic Trade Unions (NFS; Nordics); Kevät Nousiainen, Professor Emerita, Juris Doctor, University of Turku (FI); and Mari Teigen, Professor and research leader of CORE – Centre for Research on Gender Equality at the Institute for Social Research (NO).

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2. Executive summary

A story of many words and little action – can a new directive change things?

Differentials in pay between work dominated by women and work not dominated by women are the main reason for the pay gap between women and men. The principle of equal pay for work of equal value is based on the knowledge that work dominated by women is generally valued less in terms of pay than work not dominated by women with equivalent qualification requirements.

The principle of equal pay for work of equal value is mentioned in the ILO's founding document as far back as 1919. More recently, the principle was clarified with the ILO's adoption of Convention No. 100 on equal remuneration for men and women workers for work of equal value. The development of EU law has given more substance to the principle, most recently with the adoption of the EU Pay Transparency Directive 2023/970.

The requirements for equal pay for equal work and work of equal value cannot be seen in isolation from other proactive provisions in Nordic discrimination legislation. These include, for example, requirements pertaining to reconcile work and parenthood, the issue of working hours or preventive measures to counteract sexual harassment. The issue of equal pay is thus linked to the question of how unpaid domestic work is organised or the theme of violence by men against women, at both a structural and an individual level. Different provisions on proactive measures thus have a mutually reinforcing effect on promoting gender equality in the labour market.

The report describes the issue of equal pay for work of equal value as existing within an area of tension between different arenas and actors. These include:

- Representatives of employers and employees in individual organisations with the possibility to negotiate collective agreements *at local level*. Local representatives may also have obligations to cooperate on pay surveys based on equal work and work of equal value.
- Employer and trade union organisations *at union or central level* with the ability to negotiate collective agreements.
- Reporting, analysing, and publishing pay statistics in relation to *national level*, preferably within the framework of Agenda 2030.
- *National* human rights body that supervises discrimination legislation and can represent individuals in discrimination disputes.
- *The ability of politicians to steer the agenda* by setting up committees or commissions and to change framework conditions by means of legislation, defining budgetary frameworks at national, regional, or local level, etc.

The equal pay principle in EU law, based on the requirement of equal pay for equal work and work of equal value, is recognised in all Nordic countries through the prohibition of pay discrimination. Court cases concerning equal pay for work of equal value are rare. However, there are differences between the Nordic countries. In recent years, Iceland and Norway have seen most court cases, in relative terms, pertaining to work of equal value.

In all Nordic countries, except Denmark, there is also supplementary legislation in the form of pay survey provisions. The purpose of these provisions is to detect, remedy and prevent unwarranted differentials in pay. Pay survey provisions have existed in Sweden since 1994, and in the other Nordic countries since 2015 or 2018. The provisions in Iceland are modelled on product safety legislation and have a different legal structure. This affects the design of supervision. In Iceland, the supervisory authority has a register indicating which employers have not submitted documentation approved by the certification body. In Norway, it is required that a *likestillingsredegjørelse* (equality statement) be included in annual reports. There is no corresponding requirement for reporting or publication in Finland and Sweden. Combined with the low priority given to supervisory activities, this means that compliance with the pay survey provisions in these countries is extremely limited.

Corresponding proactive legislation in Denmark provides detailed requirements for reporting and analysing pay statistics from a gender equality perspective. The concept of work of equal value is not addressed in the Danish provisions.

The report focuses on the Nordic countries' reporting to the ILO on measures taken to achieve the aim of ILO Convention No. 100, i.e. equal remuneration for work of equal value. The review shows significant differences in the countries' treatment of the theme of work of equal value and that some countries avoid touching on the core issue. The role of the ILO is also highlighted in light of the fact that the

organisation is responsible for providing guidance on which statistics should form the basis for indicator 8.5.1 in Agenda 2030. The purpose of this indicator is to describe the progress made in achieving equal pay for work of equal value. Here it is noted that the statistics underlying this indicator describe something completely different, namely pay differentials on national level between women and men related to an international system of occupational codes (ISCO). These statistics proximate to the concept of equal work but not work of equal value. To overcome this shortcoming, the report details a number of alternative approaches to provide a complementary picture of the pay gap between women and men at national levels, taking into account the issue of work of equal value.

Pay statistics in all the Nordic countries show that jobs dominated by women are generally lower paid than jobs not dominated by women with equivalent qualification requirements. The ratio of women to men is higher in the public sector than in the private sector. For this reason, attention is drawn to the status of *frontfagsmodellen* (frontline labour model) in the Nordic countries. Under this model, the manufacturing industry, which is subject to a high degree of competition from abroad, is assigned a normative role for pay formation in other industries and sectors. The model has the most significant impact in Denmark, Norway, and Sweden.

The report summarises research, studies and government reports published since 2019 that focus on issues of work of equal value or structural pay differentials between women and men. There are differences between the countries in the way the theme of work of equal value is treated. Here are some examples:

The Danish reports tend to focus on the issue of structural pay differentials at a general level without explicitly addressing the theme of work of equal value. The Icelandic reports focus on different assessments of the application and effects of the equal pay standard ÍST-85. Both the Icelandic and Norwegian reports emphasise the need for better supportive measures from authorities to carry out analysis at the operational level. The Finnish report *Statsrådets bedömning om jämställdhetspolitiken* (the Council of State's assessment of gender equality policy), which represents the Government's view, emphasises the need to intervene in pay discrimination and to correct pay structures that increase gender inequality. It also emphasises the need for a reassessment of how demanding the jobs in different sectors are and for pay to be compared across collective agreements. The evidence from Sweden highlights two themes in particular. Firstly, the link between equal pay and equal earnings, which is a theme in three of the Swedish reports. Secondly, a number of implementation problems with the pay survey provisions are highlighted, largely related to a lack of supervision, advice and support to local party representatives and the fact that pay surveys are not treated as an integral part of local parties' work on pay issues.

A common phenomenon in several Nordic countries is state involvement in tripartite commissions on the theme of equal pay. This applies to Finland, Denmark, and Iceland. In Sweden, a commission on equal lifetime earnings resulted in a comprehensive report. What these commissions have in common is that the proposals presented, at a later stage, have all too rarely resulted in specific measures to address gender-related imbalances in the labour market. Social partners have generally shown little ambition to integrate the concept of work of equal value into their own collective agreements and to see it as a concept that requires practical application. In one of the Finnish reports, this problem is exemplified as follows. While labour market organisations generally declare that they are committed to promoting gender equality and that they evaluate the effects of their own collective agreements on women and men, there is a contradiction in that these declarations rarely seem to be translated into specific actions that produce measurable results.

The realisation that a voluntary approach has regularly been used to avoid taking action that results in change is the basis for the adoption of the EU Pay Transparency Directive 2023/970. The adoption of the directive into national law will require change from both government regulators and social partners at local and central level. A much more active approach to the concept of equal work and work of equal value will be required compared to what has so far been applied. The directive must be implemented by 7 June 2026.

The implementation of the directive means that large amounts of payroll data will need to be compiled and analysed at the organisational level, reported to a monitoring body, analysed at the authority level, and compiled to be made available to the public and for further reporting to the European Commission. To reduce costs for employers, simplify their administrative burden and ensure that all reporting and evaluation at the authority level is carried out as smoothly as possible, it is essential that the State takes overall responsibility in this area. The actual development work, with the possibility of sector-specific solutions, should preferably take place in consultation with the social partners.

A key aspect of ensuring compliance with provisions for equal pay for work of equal value is effective and adequately funded enforcement. The EU Pay Transparency Directive risks becoming a paper tiger if reporting requirements are not combined with an effective system of penalties. This includes the requirement to report pay differentials for equal work and work of equal value.

Knowledge and ability to analyse pay structures from a gender perspective is another important aspect of the implementation of the principle of equal pay. Such knowledge is not automatically acquired through the completion of human resource management studies, by functioning as a trade union representative or member of an anti-discrimination authority. The issue of imparting such knowledge needs to be addressed at a number of different levels, including in the content of university

HR programmes, by social partners in the development of individual or joint training materials and guides adapted to their respective sectors and in internal training for government employees with supervisory responsibilities for the principle of equal pay.

A key issue not addressed in the Directive is defining cases in which reference to the 'market pay situation' can constitute substantive grounds for departing from the principle of equal pay. It is important that both legislators and social partners show an ambition to distinguish between documented difficulties in retaining and recruiting staff from situations in which a reference to market forces reflects gender discriminatory values. The issue requires clearer guidance than is currently the case.

The assessment of work requirements is a key element of classifying work of equal value. The concept of work requirements appears in three unrelated contexts that are relevant to the social partners: in discrimination legislation, indirectly in legislation on statistics and in related collective agreements on the reporting of pay statistics, and in recurring formulations in collective pay agreements that state that work requirements should constitute a basic reference point when setting pay. Social partners play an important complementary role in making the concept of work of equal value understandable and manageable by aligning collective agreements with the terminology of EU law. The EU Pay Transparency Directive defines a number of specific concepts that are relevant for analysing gender pay differentials.

Particular attention should be paid to the design of procedural rules with respect to consultation and cooperation under the EU Pay Transparency Directive. The concept of cooperation in these contexts has a different purpose than traditional co-determination in the labour market. The collaboration group is expected to take joint responsibility in relation to the remuneration of all employees, regardless of union affiliation. Thus, there are broad similarities with the role of a safety representative in the context of work environment issues. The purpose of the cooperation group is not to establish an extra round of negotiations. Instead, the correction of unwarranted pay differentials is about preventing violations of individuals' human rights, which is a joint task for employers and employee representatives.

The EU Pay Transparency Directive includes a specific rule to address pay differentials of at least 5 per cent within a "category of workers". To prevent misunderstandings about the meaning of the principle of equal pay, when this rule is to be applied, provisions for pay surveys should be supplemented in the manner set out in the Swedish Discrimination Act, Chapter 3, § 9, cl. 3.

In the final chapter of the report is a discussion about the EU Pay Transparency Directive as a threat to the established Nordic labour market models. The pay adjustments that can be expected as a result of the implementation of the Directive are not likely to threaten this model. It is difficult to discern from the Directive any reason why the new rules will interfere with the right of parties to negotiate and conclude collective agreements.

This report is part of an initiative by the Nordic Council of Ministers aimed at strengthening exchanges in the area of equal pay, work of equal value and job evaluation, and building alliances in the Nordic countries. It is proposed that further exchange on work of equal value will take place on the basis of the following themes:

- Statistics and indicators
- Development of tools and templates
- The use and compilation of new information resulting from the reporting requirements of the EU Pay Transparency Directive
- Linking work of equal value to the broader gender equality policy context and other gender equality policy objectives
- Legal aspects
- The role of collective agreements in promoting the principle of equal pay



3. The concept of work of equal value, methodology and structure of the report

Differentials in pay between work dominated by women and work not dominated by women is the main reason for the existence of a gender pay gap. The principle of equal pay for work of equal value is based on the knowledge that work dominated by women is generally valued less in terms of pay than work not dominated by women with equivalent qualification requirements.

The concept of work of equal value

The requirement of equal pay for work of equal value, i.e. pay equity, is mentioned in the introduction to the *ILO Founding Constitution*, as far back as 1919.^[1] In 1951, the ILO adopted *Convention No. 100* concerning equal remuneration for women and men workers for work of equal value. At that time, it was made clear that the basis for comparing different work should be the content of the work, regardless of whether the work was similar or not. There is no case law on ILO Convention No. 100 that is legally binding on signatory states. However, there are non-legally binding statements made by the ILO Committee of Experts.^[2] The principle of equal pay for work of equal value has been clarified mainly in the context of EU law. The first equal pay directive was adopted in 1975 and has since been replaced by Directive 2006/54. *The EU Pay Transparency Directive (2023/970)* further clarifies the EU's principle of equal pay. Article 4(4) of the Directive states that the criteria for assessing the equivalence of two jobs are skills, effort, responsibility and working conditions. This represents a codification of previous case law. The principle of equal pay is also enshrined in Article 157 of the Treaty on the Functioning of the European Union.

1. The International Labour Organization (ILO) is the UN's special agency for employment and labour issues.

2. ILO (1986) *Equal Remuneration*, *International Labour Conference 72nd Session 1986*.

From the case law of the Court of Justice of the EU, it follows that a prerequisite for the payment of damages for pay discrimination is that the pay comparisons can be attributed to a single source.^[3] The ILO's *Equal Pay. An introductory guide* from 2013 interprets work of equal value in line with the case law of the Court of Justice of the EU. This means that the concept of work of equal value in this context relates to pay comparisons at the local level, usually in the context of a single employer, which may include workers from different operational units or different parts of a corporate group.^[4]

With the adoption of the United Nations' *Agenda 2030*, the concept of work of equal value has been set in a new context. Among other things, goal 8.5 of the Agenda commits states to achieving equal pay for work of equal value by 2030. To monitor progress towards this goal, there is a specific indicator, 8.5.1, which aims to describe the development of the pay gap in relation to the concept of work of equal value. The ILO (custodian agency) is responsible for formulating and administering this indicator. The formulation of indicators and the use of statistics have a political dimension, as the figures communicated regarding the scale of gender pay differentials are a decisive factor in whether or not they are perceived as a high-priority social problem.

The range within which the issue of the size of the pay gap is communicated is typified by an example from Sweden, using 2021 figures as a starting point. According to official statistics, the pay gap for this period was **9.9 per cent**. The starting point for these calculations is proximate to the concept of equal work. However, the notes on these statistics stated that the statistically unexplained pay differential is reduced to **4.5 per cent** when applying standard weighting and to **4.2 per cent** when using regression analysis.^[5] On the basis of the same statistical data, the Swedish Gender Equality Agency presented a draft indicator aimed at describing structural pay differentials. In this case, all occupations were grouped into 13 equivalent requirement levels. The estimated pay gap in this case was **19 per cent**. This example, presented in more detail in *Chapter 6*, illustrates the differences between the principle of equal pay for equal work and equal pay for work of equal value.

When discussing the topic of work of equal value, it is important to distinguish between material that refers to the local level and material that aims to illustrate differentials at the industry, regional or national levels. Pay data based on job

3. See cases C-320/00 *Lawrence* cl. 18, C-256/01 *Allonby*, cl. 46 and C-624/19 *Tesco Stores*.

4. In a Nordic context, the concept of work of equal value has received particular attention in four dissertations: Susanne Fransson (2000) *Lönediskriminering – en arbetsrättslig studie av könsdiskriminerande löneskillnader och konflikten mellan kollektivavtal och lag* (Pay discrimination – a labour law study of gender-discriminatory pay differentials and the conflict between collective agreements and the law), Anja Nummijärvi (2004) *Palkkasyrjintä. Oikeudellinen tutkimus samapalkkai-suuslainsäädännön sisällöstä ja toimivuudesta* (Pay discrimination. A legal study of the regulation of equal pay and its content and functions), Byrial Bjørst (2005) *Ligeløn for job af samme værdi* (Equal pay for jobs of equal value), Lena Svenaeus (2017) *Konsten att upprätthålla löneskillnader mellan kvinnor och män* (The art of maintaining pay differentials between women and men).

5. The Swedish National Mediation Office (2022) *Löneskillnader mellan kvinnor och män 2021* (Pay differentials between women and men 2021).

evaluations of individual employers cannot be aggregated to illustrate pay differentials regarding work of equal value at an aggregate level.

Method

Due to the scope of the assignment and the content of the source material, the report is characterised by an interdisciplinary industrial relations perspective. A dogmatic legal method forms the basis for the description of the legal source material in the form of legislation and case law. The presentation then moves on to describe the functionality of the law in a social context. In this context, the report describes how social partners and the state relate to the concept of work of equal value in various forms. Another central concept is job evaluation, which is linked to both research on organisational theory and gender. It also describes various methods for using statistical tools to describe the undervaluation of work dominated by women. The report takes a comparative approach. This is particularly justified as the concept of work of equal value is not linked to national characteristics but to common commitments resulting from the signing of ILO Convention No. 100 and from EU and EEA law.

The Nordic countries consist of Denmark, Finland, Iceland, Norway, and Sweden, as well as the Faroe Islands, Greenland and Åland. The Faroe Islands and Greenland have their own legislation prohibiting pay discrimination based on equal work and work of equal value.^[6] Åland has no equivalent legislation of its own. Particular attention is not given to these autonomous territories in this report. This is due to the fact that specific information on the theme of work of equal value in the form of reporting, statistics or case law from these areas has been difficult to access

The report is primarily based on material received up to 1 May 2024. References to reports and studies in Chapter 7 primarily cover the period 2019–2024.^[7] Some parts of the text, primarily the description of legislation in the Nordic countries, are taken and adapted from a report published in 2020.^[8] An English version of the report will be finalised in the autumn. The Nordic Council of Ministers has previously published a report on the theme of job evaluation and work of equal value, *Lön efter förtjeneste? Nord 1992:10* (Pay according to merit? Nord 1992:10).

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6. See § 4 in the Equality Act of the Faroe Islands and § 14 in the Greenlandic Discrimination Act.
 7. The report is a supplement to and further development of NIKK's previous publication *Lika lön i Norden – Lagar och politiska strategier*, Måve (2019; Equal pay in the Nordic countries – laws and policies).
 8. *Stüber (2022) Pay transparency – ett nordiskt perspektiv med Island som utgångspunkt, underlagsrapport till Kommissionen för jämställda livsinkomster, dnr. Komm2020/00749/A (Pay Transparency – a Nordic perspective with Iceland as a starting point, background report to the Commission on Equal Lifetime Earnings, No. Komm2020/00749/A).*

Structure of the report

Chapter 4 describes the legal frameworks in the Nordic countries and where the concept of work of equal value applies. Descriptions of the countries' pay survey provisions take centre stage. Special attention is paid to the Icelandic standard *ÍST 85:2012 Equal wage management system*. In the case of Denmark, requirements for reporting statistics on pay differentials between women and men are described. These various provisions are proactive in nature, focussing on comparing pay between groups of workers. Furthermore, prohibitions against pay discrimination are described, the main function of which is to provide compensation for past or ongoing disadvantage. In these cases, the focus is on the pay setting of individual workers.

Chapter 5 provides a picture of the case law in the Nordic countries where the concept of work of equal value has been subject to interpretation. The chapter estimates the prevalence of judicial reviews of work of equal value compared to all judicial reviews of discrimination issues.

Chapter 6 focuses on national commitments. It begins by presenting each country's reporting back to the ILO on the implementation of Convention No. 100 and the ILO's feedback on these reports. It then discusses the reporting of pay data in the context of Agenda 2030 and the role of the ILO in this context. The chapter draws attention to alternative approaches that aim to develop methods to describe pay differentials between work of equal value at the sectoral, regional, or national level.

Chapter 7 aims to summarise research, studies or government reports published since 2019 that focus on issues of work of equal value or structural pay differentials between women and men. The chapter concludes with an assessment of any specific characteristics regarding the content of the different countries' publications and possible commonalities.

Chapter 8 focuses on the link between work of equal value and the EU Pay Transparency Directive 2023/970. It begins by describing the implications of the pay reporting and publication requirements that enable comparisons between employers, sectors, and regions within a country. This is followed by a description of how comparisons of equal work and work of equal value have been interpreted under current pay survey provisions and the changes that the Directive will introduce. It also addresses the issue of Member States' responsibilities for developing templates and analytical tools in light of the need to limit additional costs and administrative burdens for employers.

In the following two chapters, the perspectives are broadened somewhat. They highlight parallel processes that can be indirectly linked to the theme of work of equal value. The first example, in **Chapter 9**, deals with the interaction between pay

survey requirements, requirements for reporting pay statistics linked to the international ISCO standard and the design of existing collective labour agreements. It highlights shortcomings in this interaction, which have resulted in recurring objections from employers regarding 'double work'. The discussion centres on an example based on Swedish conditions.

Chapter 10 describes certain features of the Nordic labor market models. A recurring theme in the discussion of structural pay differentials between women and men is the role played by different variants of the frontline labour model in the various Nordic countries. This chapter provides a brief overview of the implementation of this model in each Nordic country and how it relates to the theme of equal pay.

Chapter 11 presents a concluding discussion. It centres on the question of the implementation of the EU Pay Transparency Directive and how it might affect the Nordic labour market model. It also discusses the extent to which complementary measures may be necessary, either through legislation or collective agreements. As the Nordic Council of Ministers has expressed an ambition to strengthen exchanges in the area of equal pay, work of equal value and job evaluation, and to build alliances in the Nordic countries, the report concludes with some ideas for such further work.



4. Current legislation on equal pay for equal work and work of equal value

In this chapter is given a description of current legislation in the five Nordic countries that can be linked to the EU's principle of equal pay, i.e. equal pay for equal work and work of equal value. First, it describes the existence of proactive provisions in which the requirement to conduct a pay survey plays a central role. The purpose of this type of provision is to reveal pay differentials between women and men. These pay differentials should in turn be related to the individual employer's basis or criteria for setting pay. Pay differentials that cannot be objectively explained are expected to be corrected, without an individual employee having to pursue legal action against their employer.^[9]

This is followed by provisions prohibiting pay discrimination. Such prohibitions require that an employee brings a civil case against the person who can be held legally responsible for pay setting. In practice, this means bringing a case against their employer. All Nordic countries have such provisions, which at the same time correspond to Article 4 (prohibition of pay discrimination) and Article 19 (on the burden of proof) of EU Directive 2006/54. Supervisory mechanisms and legal avenues for different types of procedures are described in more detail in [Chapter 5](#), which deals with case law.

A limitation of this report is that it does not address provisions on entitlement to compensation or leave associated with childbirth, parental leave or care of sick children and/or close relatives. From a broader perspective, such provisions are of great importance to shed light on various factors affecting the pay gap between women and men.

9. Such an approach is codified in the Pay Transparency Directive and can be likened to a two-stage process. Article 9.10 can be said to constitute step 1 and the joint pay evaluation under Article 10 step 2.

Denmark

Proactive provisions – Equal Pay Act §§ 2a and 5a

Denmark has a specific law on equal pay, *Lov om lige løn til mænd og kvinder* (Act on equal pay for men and women), also known as the Equal Pay Act. The Danish Act contains both prohibitions against pay discrimination and provisions of a preventive nature. Of interest to this report is § 5a on gender-disaggregated pay statistics. The Danish provisions can best be described as a system of mandatory reporting of pay data based on the six-digit DISCO code, with employers receiving statistics back in a processed form. The purpose of the processing is to provide employers with a basis for dialogue with employee representatives on gender pay differentials.

DISCO is the Danish adaptation of the International Standard Classification of Occupation 2008, ISCO-08. This standard was developed by the ILO. The standard forms the basis for international comparisons of pay data.

§ 2a of the Equal Pay Act is an important complement from a transparency perspective. The provision gives the employee the right to pass on information about their own pay to others, i.e. to colleagues or to third parties. This prevents the employer from applying loyalty clauses in employment contracts that could, for example, prohibit employees in a workplace from exchanging information on individual pay. § 5a also gives individual employees the right to obtain information about their own DISCO code registration. §§ 2a and 5a are also linked to a prohibition on retaliation in § 3 of the act.^[10]

Developments in rules on reporting and equal pay statistics

The provision in § 5a on pay reporting was introduced on 1 July 2001. The details of the legal text have been amended on a number of points over the years. In amending the legislation, two issues have been central: firstly, the number of employees required for the law to apply and, secondly, the size of the groups of workers performing work with the same DISCO code to meet the requirements for pay reporting.

Between 2001 and 2008, the requirement was at least 10 employees (for the law to apply) and the minimum group of employees was five persons with the same DISCO code (to meet the reporting requirement). In 2008, the law was changed to apply to employers with at least 35 employees and the comparison group had to consist of at least 10 women and at least 10 men (10/10 requirement) performing

10. The individual's right to transparency in the employer's processing of personal data is also set out in § 31 of the Personal Data Act; see also Warming and Precht (2017, p. 21 ff.).

work under the same DISCO code. An exemption from the law was introduced for employers in the sectors of agriculture, commercial gardening and horticulture, forestry and fishing. In 2014, the law was amended but never came into force. The minimum requirement was changed to at least 10 full-time employees, with a minimum comparison group of three men and three women with the same DISCO code. The sectoral exemptions for fishing and green industries were removed. In 2016, a decision was made on a 'reinstatement', which meant that the 35-employee limit would continue to apply, as well as the requirement of at least 10 women and 10 men classified under the same DISCO code. The aforementioned sectoral exemption was reintroduced. The core of the current provisions has thus been in force since 2008. The penalty for non-compliance is a fine.

Details of the wording of the provision

Employers affected by the provision initially need to decide between two options:

- provide *kønsopdelt lønstatistik* (gender-disaggregated pay statistics) or
- draw up a *redegørelse om lige løn* (declaration on equal pay).

Gender-disaggregated pay statistics

If the gender-disaggregated pay statistics option is chosen, this means that the employers concerned must report certain specified pay data to *Danmarks Statistik* (Statistics Denmark) directly or via a central employer or industry organisation by 31 December each year. By 1 September of the following year at the latest, feedback is provided by Statistics Denmark or via the central employers' organisation. Thereafter, it is the employer's responsibility to present the statistics to the employees. According to *Lov om information høring af lønmodtagere* (Act on Information Consultation of Employees), the employer is required to seek the views of employee representatives in this context.

In the case that gender-disaggregated pay statistics are provided, there are two further alternative routes. The most common option is for employers to report all data required under § 8 in *Lov om Danmarks Statistik* (Act on Statistics Denmark) to their own employer organisation. Private employers who are members of Dansk Arbejdsgiverforening (Confederation of Danish Employers, DA) or Finanssektorens Arbejdsgiverforening (Finance Denmark, FA) report their pay statistics to these organisations. The employer organisations in turn forward the statistical data to Statistics Denmark. Feedback is reported in the same way. The central employer organisations are responsible for providing their member companies with the statistics requested. Public employers also have access to statistics that can easily be obtained from the respective trade organisations. Non-organised private employers are referred to the alternative route, which involves direct reporting to and dialogue with Statistics Denmark.

Declaration on equal pay

In the case of a declaration on equal pay, the documentation must include a description of the grounds for setting pay and an action plan aimed at preventing and reducing gender pay differentials. The action plan must cover a period of three years and include a description of how annual follow-ups will be administered. Further details are left to negotiating parties to agree on.

Evaluations of the Act have shown that this option is not very common. It is therefore unusual for employers to enter into agreements with trade unions on how to implement the prevention of gender pay differentials.

Pay reporting requirements under the Act on Statistics Denmark

Under §§ 6 and 8 of the Act on Statistics Denmark, all businesses with at least 10 full-time employees are required to report individual pay statistics on a quarterly basis, including, among other things, each employee's gender and classification in the 6-digit DISCO code. An exception to this obligation applies to the agriculture and fishing industry. Statistics Denmark thus has access to gender-related pay data covering approximately 85 per cent of the country's employees.^[11] The pay data registered under the Statistics Act thus covers considerably more employees than the pay data that must be reported under the Equal Pay Act. Pay data is only one part of the overall reporting requirements to the statistics authority. Unlike the Equal Pay Act, the Act on Statistics Denmark does not require feedback to employees that summarises the gender pay differentials at the organisational level.

The interaction between the Equal Pay Act, the Act on Statistics Denmark and *Persondataloven* (the Personal Data Act) and an employee's right to gain insight into matters relating to pay, as well as to have the right to pass on information about their own pay, has been analysed by *Institut for Menneskerettigheder* (the Danish Institute for Human Rights) in the report *Hvad tjender du? Åbenhed om løn på arbejdspladsen* (What do you earn? Transparency about pay in the workplace).^[12] The survey showed that less than half of the respondents were aware of their right to access information about their pay. The same applied to the right to pass on information about their pay and thus also to ignore agreements that include confidentiality clauses. Furthermore, the report shows that there are major shortcomings in terms of employees' transparency on the existence and content of pay criteria and preparation for pay negotiations and information on the outcome of these negotiations.

11. Larsen, Verne and Højgaard Mikkelsen (2020, p. 22).

12. Warming and Precht (2017).

Prohibition of pay discrimination – Equal Pay Act § 6

The prohibition of pay discrimination is set out in § 6 of the Equal Pay Act. The connection to the concepts of equal work and work of equal value is set out in § 1.2.

Finland

Finland has an Act on Equality between Women and Men (609/1986). The requirement to promote gender equality in a targeted and planned manner applies to all employers (§ 6). More specifically, this requires that employers:

- endeavour to ensure that vacancies are applied for by both women and men,
- promote gender balance in internal and external recruitment,
- promote equal employment conditions, including pay,
- facilitate the reconciliation of work and parenthood, and
- prevent gender discrimination.

Provisions on pay surveys came into force on 1 January 2015 and have since undergone a number of changes. Currently, employers with at least 30 employees must draw up an equality plan, including a pay survey, every two years. The pay survey must provide information on classification, pay and gender pay differentials for all employees. The law states that the parties can agree on an alternative approach: a pay survey conducted every three years and the other areas of the plan drawn up every year. The gender equality plan must be drawn up in cooperation with representatives appointed by the employees (§ 6a).

The purpose of a pay survey is to determine whether there are unwarranted differentials in pay for equal work and work of equal value. The grounds for pay differentials must be investigated and, if there are no acceptable grounds, the employer is required to take appropriate corrective action (§ 6b).

§ 7 prohibits discrimination on the grounds of sex and § 8, cl. 3 explicitly states that this prohibition applies to the application of pay conditions.

Iceland

Proactive provisions in Iceland are based on a different regulatory approach to the pay survey provisions in place in Finland, Norway, and Sweden, as well as the parts of the EU Pay Transparency Directive that deal with pay surveys. Instead, the background to the design of the Icelandic provisions can be found in the EU provisions on product safety. This regulatory approach reflects interaction between

legislation via democratically elected institutions and standardisation via standardisation bodies in the form of ISO.^[13]

Unlike the Icelandic legislation, which is freely available in English, the ÍST 85 standard is more difficult to access. Against this background, the Icelandic provisions are given slightly more attention than those of other countries.

Legal rules and the ÍST 85:2012 standard in the context of the Icelandic labour market model

The Icelandic rules on certification and equal pay are based on a standard presented in 2012, *ÍST 85:2012 Equal wage management system – Requirements and guidance* (hereafter abbreviated as ÍST 85). Social partners and collective agreements have played a central role in the development of the standard:

The overall concept has been in preparation since 2008 and was initiated by the social partners the Icelandic Confederation of Labour, ASÍ and SA–business Iceland. Þorsteinn Viglundsson, who was also the Managing Director of SA–Business Iceland from 2013 to 2016, said, 'the trade unions proposed that we should develop some kind of equal pay mechanism, which quickly developed into the methodology of an international management standard. And that was in development between 2008 and 2012' (...) Their aim was to create a bottom-up alternative, with a toolkit for companies to use to check whether they were discriminating or whether they had some bias (Interview, SA, 2018). Accordingly, the trade union and the employers' association signed the collective agreement in February 2008 with a specific mention of the aim to develop a certification system, in one form or another, that both parties could agree on.^[14]

The initial aim was to develop a voluntary methodology through which learning examples, at the company or organisational level, would be the driving force in promoting equal pay. In terms of methodology, the parties chose to establish a link to management and leadership systems in the form of ISO standards that are widely recognised in the business world.

A change occurred on 1 January 2018, when the Gender Equality Act made the standard mandatory for employers with at least 25 employees. The reason for the amendment was to improve the implementation of the principle of equal pay for equal work and work of equal value. Until then, the application of the standard had been extremely limited.

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13. ISO stands for *International Organization for Standardization*. The regulatory approach is considered appropriate in areas where safety or environmental requirements need to be progressively adapted to new scientific and technical developments. Adjustments to the details of a standard are generally quicker to implement than changes to legislation. For this reason, relevant laws are usually more general in nature. The law, in turn, refers to the latest version of a particular specified standard, which in turn sets out specific guidance or limit values.
14. Wagner and Skevik Grødem (2018, p. 18). The report provides a detailed description of the background to the development of the standard and amendments to the Equality Act that entered into force on 1 January 2018.

Since then, Iceland has introduced a new gender equality act, the Act on Equal Status and Equal Rights Irrespective of Gender (No. 150/2020). Article 7 of the Gender Equality Act contains a reference to the ÍST 85 standard. In addition, there is a Regulation on the certification of equal pay systems of companies and institutions according to the ÍST 85 Standard – No. 1030 of 13 November 2017. An additional protocol to this regulation also contains *Rules on the use of the equal pay symbol*. In addition, there are guidelines with *Special criteria for certification bodies of the Standard ÍST 85*. The Standard ÍST 85 consists of about 50 pages of tables and dense text. These pages provide, among other things, detailed instructions on how a job evaluation or pay analysis should be conducted. The Icelandic Gender Equality Act is supplemented by the 2021 Act on the Administration of Matters Concerning Equality.

The Gender Equality Act and gender equality standard – regulations with different purposes

The purpose of the Icelandic Gender Equality Act is linked to the Icelandic State's obligations under EEA law (and thus also EU law) and to obligations under international law relating to the concept of human rights. The origins of the prohibition on pay discrimination in the EU were based in competition law and expressed in Article 119 of the 1957 Treaty of Rome. The provision was a result of concerns raised by the French State over competitive advantages for countries with low pay for women.^[15] Over time, the Court of Justice of the EU has clarified in various judgements that the right not to be discriminated against on the grounds of sex is one of the fundamental human rights that the court has to ensure. The court has also emphasised that the economic aim of the prohibition of pay discrimination is secondary to the social aim of the EU community.^[16]

The introduction to ÍST 85 (p. 5) states that the standard is promoted on the grounds that its application is expected to increase the competitiveness and profitability of organisations:

To implement the Equal Wage Standard could enhance its credibility regarding professional human resource management, corporate responsibility and good management practice. (...) Reviewing the jobs of all employees can reveal opportunities for a more efficient division of labour, reduced cost, and as applicable, increased income. The cost that may at first appear to result from a project of this kind could prove small in comparison with more efficient management, more content staff and eventual impact on financial results

15. See Byrial Bjørst (2000) p. 91 ff.

16. See, for example, judgements 149/77 *Defrenne* cl. 27 and C-279/97 and C-271/97 *Deutsche Post AG* cls. 56 and 57.

Active measures on pay and on other gender equality issues

The provisions on promoting gender equality in the Icelandic Gender Equality Act are very similar to the corresponding provisions in Finland, Norway and Sweden in the sense that they deal with issues of internal and external recruitment, working conditions, preventing sexual harassment and facilitating the reconciliation of work and parenthood (Articles 4 and 12–14). These elements apply to all employers. The concepts of gender equality and equal pay relate to three groups: women, men and "persons whose gender is registered as neutral in Registers Iceland" (Article 6).

Employers with at least 25 employees must draw up a gender equality plan every three years or "mainstream gender equality perspectives into their personnel policy" (Article 5). The law sets two different thresholds for work on pay surveys.

The first option, "equal pay certification" (Article 7), applies to employers with at least 25 employees. It requires that pay surveys and analyses be reviewed and approved every three years by an independent third-party body certified by the Directorate of Equality. Approval means the employer receives equal pay certification. The review body will in turn send a copy of the employer's documentation to the supervisory authority. The employer then receives a special equal pay symbol from the supervisory authority (Article 9).

For employers with 25–49 employees, there is a simplified option, equal pay confirmation (Article 8). In this case too, documentation must be provided every three years. The documentation is sent directly to the national supervisory authority, the Directorate of Equality, for review. If the documentation is satisfactory, the employer receives a confirmation

The supervisory authority maintains registers of all employers who have submitted approved documentation, as well as registers of employers who have not complied with the documentation requirements every third year. On the basis of these registers, the authority is able to initiate penalty procedures on its own initiative against those who violate the legislation (Articles 9 and 10).

Changes introduced in the new Gender Equality Act from 2020, revised from the 2018 act, require that employers submit documentation every three years, as opposed to every year, and simplify the procedure for employers with 25–49 employees.

Specifics pertaining to ÍST 85 – content and headings

The standard consists of nine pages of text and four annexes. Annex A (4 pages) contains comments on various clauses of the standard. Annex B (12 pages) is a guide for the classification of work, i.e. for the evaluation of the requirements of jobs. It is based on the four basic criteria for work of equal value set out in EU law.

Annex C (13 pages) is a set of guidelines for pay analysis. It provides various fictitious examples to show how the analysis should or can be done from a variety of perspectives. Annex D (13 pages) provides a brief summary of the guiding case law from the Icelandic Gender Equality Complaints Committee, the Supreme Court of Iceland and the Court of Justice of the EU. It also briefly presents relevant provisions of Icelandic law as well as provisions of EU and EEA law.

ÍST 85 – some special characteristics

Employers' pay surveys are audited by an independent third-party body accredited by the state patent office. The organisations that conduct audits to issue equality certificates are commercial companies.

- The standard includes a glossary that defines and explains 35 different terms.
- The standard emphasises that work on equal pay should be characterised by continuous improvement.
- It is a requirement that the pay analysis should not only result in necessary measures, such as skills development or pay adjustments, but that the *equal wage system* should set measurable targets.
- The organisation's *equal wage policy* must be publicly available. It must include that the organisation undertakes to comply with all obligations arising from legislation and standards, that the organisation sets measurable goals in its gender equality work and that the organisation undertakes to work to make continuous improvements in relation to its internal gender equality goals. An explicit purpose of this transparency requirement is to create interest and trust in the employer with respect to prospective employees.
- However, the publicly available pay policy is not the same as the organisation's *wage formation system*, similar to the Swedish *lönepolitik* (pay policy). This *system* should be known to employees.
- All decisions in an organisation on pay and conditions of employment must be documented, annotated or reasoned and traceable to an external reviewer. In addition to the pay criteria, the transparency requirement applies to the basis on which a job evaluation is conducted. "*Documentation (...) shall include (...) all decisions on wages and terms, together with the data on which they are based, including job classification, job descriptions and sources of information on the evaluation of individual jobs or employees or groups of employees, as applicable, as well as changes in the wages of individual employees or groups of employees following audits*" (clause 4.4.4.e of ÍST 85). However, this provision does not give individual employees any right of access under Article 6, Section 3 of the Gender Equality Act.

- The organisation must have documented job descriptions for all work, which can be used as a basis for comparison if different jobs are similar or of equal value (Annex A, cl. 4.4.4).
- The management shall ensure that sufficient resources are available to fulfil the improvements and responsibilities required by the standard.
- The organisation is responsible for all necessary training and competence in areas covered by the standard. This applies to employees involved in decision-making on pay.
- Documentation shall indicate who in the organisation is responsible for implementing the various commitments listed (*responsibility within organisation for achievement of objectives*) (...) (*Roles, responsibility and authority shall be defined*).
- As part of the internal control of the equal wage system, the members of the company's board are assigned specific roles to ensure that the equal wage system fulfils all legal requirements imposed on the employer. In addition to the internal audit requirement, there is a specific section, under the heading 'Management review', which includes a requirement for the board to schedule meetings to monitor compliance with the system.

Prohibition of pay discrimination

The prohibition of pay discrimination linked to equal work and work of equal value is contained in Article 18 of the Equality Act.

Norway

The current legislation in Norway in this area is *Lov om likestilling og forbud mot diskriminering* (Act relating to equality and prohibition of discrimination) also officially known as *Likestillings- og diskrimineringsloven* (the Equality and Anti-Discrimination Act), which entered into force on 1 January 2018. At the same time, Norway introduced initial provisions on pay surveys. The prohibition of discrimination applies in relation to 12 specified grounds of discrimination or combinations of these grounds. Provisions on *aktivt likestillingsarbeid* (active gender equality work) complement the prohibition on discrimination.

The requirements for affirmative measures concerning employer-employee relations cover, in principle, the same areas as in the other Nordic countries (except Denmark), i.e. also pay surveys. The provisions are divided into sections on the employers' duties, including *aktivitetsplikt* (the duty to act; § 26), *redegjørelsesplikt* (the duty to report; § 26a) and *opplysningsplikt om likestillingsarbeid* (the duty to disclose information on gender equality work; § 26b).

The duty to act refers to a four-step approach. The first step involves analysing the risks of discrimination and obstacles to equal treatment and conducting surveys of pay relations. The second step requires an analysis of the causes of identified risk factors. Step three involves formulating measures to combat discrimination and promote equal treatment. The fourth step involves evaluating previous measures to address equality problems. This work must be done continuously and in cooperation with employee representatives. The employer must draw up a pay survey every two years relating to the concept of equal work and work of equal value (§ 26.2a). All public and private employers with more than 50 employees are required to keep records. The documentation requirement also applies to private employers with 20 to 50 employees at the request of a local trade union organisation.

The duty to report requires that the documentation called for in § 26 is made available to the public via the annual reports of companies or public organisations. This requirement only applies to private employers with more than 50 employees. The results of pay surveys must be presented in anonymised form. In the case of non-compliance, *Diskrimineringsnemnda* (the Anti-Discrimination Tribunal) has the ability to issue injunctions in combination with a fine.^[17]

The duty to disclose arises in relation to employees, trade union representatives and researchers. The right of access to documentation under § 26 is more extensive, as it also requires that information be obtainable at the individual level. In these situations, special provisions on confidentiality arise. Individual job applicants (§ 31) and employees (§ 32) are also entitled to written information on pay levels and criteria for setting pay, both with regard to their own pay and the pay against which they wish to compare.

The provisions of the act pertaining to pay surveys are brief. In addition, the supervisory authority *Bufdir* (Norwegian Directorate for Children, Youth and Family Affairs) provides instructions and templates, but these are not of a statutory nature.^[18] A prohibition on pay discrimination linked to the concepts of equal work and work of equal value is contained in § 34.

Sweden

Sweden introduced active measures or affirmative rules on pay surveys as early as 1994, inspired at the time by the provinces of Ontario and Quebec in Canada. Initially, annual documentation had to be provided by employers with at least 10 employees. As the pay survey provisions proved difficult to apply, a number of clarifications were made in 2001 to the then *Jämställdhetslagen* (Gender Equality

17. See Prop. [Swedish Government Bill] 63 L (2018-2019) p. 9 and *Lov om Likestillings- og diskrimineringsombudet og Diskrimineringsnemnda* (Act on the Equality and Anti-Discrimination Ombud and the Anti-Discrimination Tribunal).

18. *Likestillingsredegjørelse, lønnsforskjeller etc.* (Equality statement, pay differentials), extract from *Bufdir* document January 2023.

Act). From 2009, a number of discrimination laws were combined into one law, *The Discrimination Act, 2008:567*. The Swedish act contains seven grounds for discrimination. At the same time, the requirement for annual documentation was changed to every three years. In addition, the requirements for documentation were changed to only apply to employers with at least 25 employees. In January 2017, the requirement for annual written documentation for employers with at least 10 employees was reintroduced. The purpose of pay surveys is to discover, remedy and prevent unfair gender differentials in pay and other terms of employment between women and men.

The law sets out a methodology for conducting pay surveys. The first step is to analyse provisions and practices on pay and the employment conditions of the employer. The second step is to analyse pay differentials regarding equal work and work of equal value (Chapter 3, § 8). The third step is to analyse existing gender pay gaps. This means that it must be possible to explain the pay structure or the pay of individual employees on the basis of the provisions provided in step one. A separate analysis should be made of work that is equal, for work that is of equal value and for groups of workers performing work that is, or tends to be, dominated by women and a group of workers performing work that is not, or tends not to be, considered to be dominated by women but pays more despite the fact that the requirements of the work are considered to be lower.^[19] This third step is summarised in Chapter 3, § 9. Chapter 3, §§ 13 and 14 describe the fourth and final step, which concerns documentation requirements. The written report must include the results of the pay survey and analysis, pay adjustments or other measures that need to be taken and a cost estimate and timetable. Corrective action should be taken as soon as possible and at the latest within three years. The documentation must also include an account and evaluation of the measures planned for the previous year

All steps of the pay survey must be carried out in collaboration with employee representatives (Chapter 3, § 11).^[20] The annual written documentation must also include an account of how the duty to collaborate has been fulfilled.

The previous Gender Equality Act contained an explicit prohibition on pay discrimination. In the current Discrimination Act, Chapter 2, § 1 contains a general prohibition on discrimination in working life. The preparatory work for the Act shows that this provision includes a ban on pay discrimination related to equal work and work of equal value.

19. The last-mentioned clause refers to the case law of the Court of Justice of the EU in case *157/86 Murphy*; see Fransson and Stüber (2021, p. 224).

20. The specified requirement for cooperation to take place at all stages of the work on active measures is only stated in the preparatory work of the act, Prop. 2015/16:135, p. 104.

Summarising comments

Denmark is the only Nordic country without provisions on pay surveys. As a result, there is no requirement to analyse pay differentials according to work of equal value. Instead, there are comprehensive provisions on the reporting of gender-related pay statistics and a 6-digit DISCO code. Icelandic regulation differs in that the provisions on pay surveys in the Gender Equality Act refer to a detailed protocol that every employer has to follow, i.e. the ÍST 85 standard. Such a regulatory model is not normally applied in a labour law context. Furthermore, the Icelandic model assigns accredited private operators a special status in terms of monitoring compliance with regulations. The method of entrusting the monitoring of labour law rules to companies operating in a competitive market must also be described as an unusual phenomenon in the Nordic labour law context.

The Finnish, Norwegian and Swedish pay survey provisions are similar in their designs. However, the Finnish and Norwegian rules are somewhat less detailed than the Swedish ones but have the same starting point, i.e. the concept of equal work and work of equal value. In Sweden, for example, there are requirements for cost estimation, time planning and pay adjustments, which must be implemented as soon as possible and within three years at the latest. The Finnish Act specifically states that staff must also be informed about the gender equality plan and any updates made to it. The Norwegian Act states that the results of pay surveys must be made publicly available. Swedish law sets out a slightly different method for making pay comparisons in pay surveys, compared to the Pay Transparency Directive and legislation or recommendations from other Nordic countries. In Sweden, pay levels between female-dominated work and *non-female-dominated work* must be compared. The directive refers to differentials in pay levels of female and *male workers*. Sweden is also in a unique position in that provisions on pay surveys were introduced there in 1994.

Proactive or affirmative legislation on equal pay in the Nordic countries

	Denmark	Finland	Iceland	Norway	Sweden
Type of rules	Statistics & DISCO code	Pay surveys	Pay surveys	Pay surveys	Pay surveys
Legislation since	2001	2015	2018	2018	1994
Documentation requirements, frequency	1 year	2 years**	3 years	2 years	1 year
Minimum number of employees for documentation requirements	35	30	25	0/20/50*	10

* At the request of a trade union organisation of a private employer, the lower limit is 20 employees. For public employers, the documentation obligation applies regardless of the number of employees.

** The employer may agree with the trade union organisation on three-year documentation intervals.



5. Case law from the Nordic countries

This chapter briefly summarises the case law in which provisions on equal pay for equal work or work of equal value have been examined. The presentation is based on a selection with particular focus on decisions from the last five or ten years and on decisions in which the concept of work of equal value has been assessed. At the same time, decisions from further back in time are also of interest. One reason is that in some countries, case law relating to the principle of equal pay from the last ten years is extremely limited. This is the case in Denmark, Finland, and Sweden.

Another reason is that some issues concerning the practical application of the principle of equal pay have been clarified in the past. The Court of Justice of the EU's landmark judgement from the early nineties, *C-400/93 Royal Copenhagen*, is one such example .

One limitation is that this report does not provide an in-depth description of the forum rules in the respective countries when equal pay legislation is examined. As an example of the complexity, in Denmark there are three possible avenues that can be pursued: general courts, with *Landsret* (the High Court) as the court of first instance; *Ligebehandlingsnævnet* (the Board of Equal Treatment) and *Faglig Voldgift* (Labour Arbitration). A common denominator for the case law presented is that it almost exclusively concerns disputes in which an employee has claimed discrimination or disadvantage combined with a claim for compensation. Only in Sweden are rulings available linked to proactive legislation, i.e. the provisions on pay surveys. In these cases, the pay setting of individuals is not subject to review. What is examined, in simple terms, is whether the employer has conducted a pay survey or if certain steps in the pay survey process have been missed.

Denmark

Ligebehandlingsnævnet (The Board of Equal Treatment) is an administrative body to which individuals can apply for compensation in cases of alleged discrimination based on nine different grounds of discrimination. In 2019–2020, about 300 cases were decided per year. Since then, the number of cases has risen to over 400 per year. These cases concern all areas of society covered by discrimination legislation. Most decisions in recent times have been linked to the discrimination ground of disability. One advantage of turning to the Board is that no fees need to be paid. A limitation is that the Board bases its decisions only on written submissions. In the case that testimony is considered necessary, the applicant must turn to civil courts. The Board's database contains 44 cases registered between 2009 and 2023 that are related to the keyword *ligeløn* (equal pay). Of these cases, only two concern *arbejde af samme værdi* (work of equal value). In a decision dated 10 December 2014, the plaintiff, who was employed in a shoemaking company, got no support that the comparator's job was work of equal value. In a decision dated 8 October 2014, a female salesperson was found to have failed to provide sufficient evidence that she performed work of equal value compared to a male colleague.

Overall, there are very few decisions in Denmark that can be said to have led to clarification of the concept of work of equal value. The following is a sample:

One case that has been of fundamental importance in clarifying the meaning of the concept of work of equal value is C-400/93 Royal Copenhagen. In clause 28, the Court of Justice of the EU stated that if the grounds for setting pay appear unclear, the burden of proof shifts to the employer to explain the differentials in pay. The case in question concerned a comparison of a workers' collective dominated by women with a workers' collective dominated by men. When the pay of these groups was compared, it was on the basis of a calculated average pay. However, it was impossible to demonstrate which factors had been decisive in determining the tariffs or the bases for calculating the variable part of the pay. Based on the judgement of the Court of Justice of the EU, the case was subsequently decided by the national court, Faglig Voldgift 19 mars 1996 (Labour Arbitration 19 March 1996). Labour Arbitration is an arbitration procedure for disputes over the meaning of collective agreements.

Another decision made by Labour Arbitration, dated 9 April 1997, concerned a comparison between two categories of workers on *Helsingør-Helsingborg overfarten* (Elsinore ferry). The case examined whether all work covered by the collective agreement for *gastronomgruppen* (the gastronomy group) constituted work of equal value. The case compared the work of a *smørrebrødsjomfru* (sandwich maker), work dominated by women, with the work of a cook preparing hot dishes, work dominated by men. An overall assessment showed that the

knowledge, skills and responsibility requirements were higher for the cooks, and that only some of the women working as sandwich makers had sufficient qualifications to perform the duties of a cook.

In a decision by Labour Arbitration on 19 November 2013, it was found that unpaid breakfast breaks in certain jobs dominated by women constituted pay discrimination compared to paid breaks for employees in jobs dominated by men.

On 9 February 2024, a decision was reached by Labour Arbitration concerning the company Novozymes, which has 3,000 employees in Denmark. The comparison concerned the jobs of laboratory assistant (a position dominated by women) and technician (a position dominated by men). Both categories of workers are involved in the production of enzymes and both categories of workers handle biomass in this context. The court found that the job of technician required a greater degree of autonomy and responsibility than the job of laboratory assistant. As the jobs could not be considered of equal value, this provided a factual explanation for an average pay differential of 12–16 per cent between these categories of workers.

Finland

The Finnish Non-Discrimination Ombudsman does not have information on the number of discrimination cases heard by Finnish courts each year. The judgements of lower courts are not digitally searchable. According to the Finnish Ombudsman for Equality, *Tasa-arvo*, the following equal pay cases were heard in Finnish courts between 2015 and 2024.

The case at the District Court of South West Finland on 19 December 2019 concerned comparisons of managerial pay within a municipality. In an initial judgement, the court found that a female social manager performed work of equal value to a male culture manager. Furthermore, it was found that the pay of the social manager and the pay of the culture manager were based on different collective agreements. It follows from the judgement that pay differentials due to the provisions of collective agreements do not in themselves constitute acceptable grounds for pay differentials. The pay of the culture manager, who also worked as a teacher, was affected by the working time measure for teachers. As a result, he received certain overtime payments while performing his duties as culture manager. The court found that the pay differential was justified by the specific nature of the teaching post and the difference in the professional experience of the two managers. With regard to the second comparison, with the municipal director, there was no evidence to suggest that there had been pay discrimination.

On 5 May 2022, the Administrative Court of Northern Finland heard a case concerning the remuneration of managers in Rovaniemi Municipality. A woman, holding the position of development manager, compared her pay with that of two other managers within the municipality, the security manager and the culture

manager. The court found that the difference in the nature of the duties and responsibilities was significant enough that there was no comparable situation, i.e. the work was neither equal nor of equal value.

A decision of 15 January 2024 concerned a woman who had worked for the fire department of Helsinki since 2010, most recently as a senior safety trainer. In this case, a pay differential was examined in relation to male employees in the roles of senior fire inspector and senior control planner. The comparators were part of the same work team, in which the applicant was the only woman. Her pay was, according to the collective agreement, in a different category to the men's pay. After reviewing extensive evidence regarding the content and requirements of the various jobs, the district court found that the jobs were of equal value. The fact that the pay was the result of collective agreements did not constitute acceptable grounds to justify the pay differential. The employer was thus found to have been guilty of pay discrimination.

On 5 February 2024 the Supreme Court issued a ruling, HD 2024:9. It addressed the issue of time frames for adjusting established pay inequalities between first-line nurses performing equal work or work of equal value between 2014 and 2019. The court found that the employer had taken steps in 2016-2019 to begin eliminating the gender pay differentials from 2019. Thus, the hospital district had not acted in breach of the requirement of impartial treatment under Chapter 2, § 2(1) of the Employment Contracts Act.

Further rulings related to the issue of equal pay

Three decisions from the early 2000s addressed the issue of the requirement of proof in an equal pay dispute, specifically the burden of proof shifting to the defendant. In case TT:2002-10, the Labour Court held that it was sufficient for the applicant to show that their pay was lower than that of the comparator. In two subsequent decisions, the Supreme Administrative Court's judgement 2005:51 from 29 July 2005 and the Supreme Court's judgement KKO 2009:78 of 7 May 2009, the applicant did not succeed in establishing the existence of gender discrimination. The reason was that there were also men in the allegedly underpaid pay category to which the applicant (a woman) belonged.

Iceland

In recent years, Iceland's Equality Complaints Committee has decided over 20 discrimination cases per year. These cases cover all grounds of discrimination and areas of society covered by the prohibition of discrimination.^[21] Between 2017 and 2023, ten equal pay cases were decided.^[22] In seven of these, the issue of equal pay for work of equal value was examined. In some of the cases, the comparators were found not to be performing work of equal value. For example, in one case, the applicant, who was a male employee of the Food and Veterinary Authority, was found to be performing less qualified tasks than the female comparator (case 2/2022). The same was true in two cases involving employees with supervisory positions in the health sector (regional directors) but with different underlying training, i.e. managers who were basically either nurses or doctors (cases 5/2016, 6/2016 and 5/2018). In another case, a male applicant was unsuccessful in his claim because it was judged that work experience and level of education justified the pay differential between him and the female comparator (case 10/2017). In one case in which the applicant was successful, the decision was based on an employer's failure to explain pay differentials between a female manager and two male managers on the basis of objectively applied pay criteria (case 15/2021). In case 3/2017, deficiencies in the employer's documentation resulted in the court ruling in favour of a woman. In case 5/2017, the employer's argument that a woman worked part time and a man full time was not sufficient to justify a disputed pay differential.

A number of older cases from the general courts are also considered significant in this context. The Supreme Court's judgement 255/1996 describes a comparison between a woman and a man who both worked as technicians at the national radio station RÚV. They worked under different collective agreements, which the court did not accept as an explanation for the pay differentials between them. Two further cases decided by the Supreme Court concerned the town of Akureyri. Case 11/2000 concerned a comparison between two civil servants responsible for gender equality and education and for entrepreneurship. In this case too, the pay conditions of the woman and the man were determined by different collective agreements. Although an initial job evaluation had given the man a higher score, the court ultimately concluded that the woman had been discriminated against in terms of pay. Case 258/2004 compared a woman who was a social services manager with a man who was employed as a technician. In this case too, the initial job evaluation had given the man a higher score than the woman. Furthermore, the employer had cited "market reasons" as an additional explanation for the pay differential. In its overall assessment, the Supreme Court rejected the employer's arguments and deemed the work to be of equal value.

21. In addition to the Equality Act, Act (86/2018) on Equal Treatment on the Labour Market covers 10 grounds of discrimination.

22. Cases about equal pay and pay equity 2017-2023 from the Equality Complaints Committee in Iceland.

Norway

For a number of years, *Diskrimineringsnemnda* (the Anti-Discrimination Tribunal) has been the main body that decides on cases of discrimination and harassment related to all grounds of discrimination.^[23] The Tribunal's website includes 2,630 searchable cases from 2018 onwards. The total number of cases related to working life during this period was just over 1,100. Of these, 468 were related to gender, with 45 cases concerning *lik lønn for arbeid av lik verdi* (equal pay for work of equal value).^[24] On the same website, it is possible to search for older cases, when the Tribunal operated with a different name and composition. From 2006 to 2017, a further 44 cases on equal pay issues can be found, of which 23 concern work of equal value.

The first major ruling pertaining to the concept of work of equal value was handed down by the Labour Court of Norway on 28 September 1990, which found that the work of a bioengineer was of equal value to that of other types of engineers in the municipality. The Court thus overturned the collective agreements concluded in so far as they were found to be discriminatory on the grounds of sex.

In Norwegian equal pay disputes, employers' references to market forces as a factual basis to explain alleged gender pay differentials have been subject to scrutiny on a number of occasions. The reference to the concept of market forces can be seen as nearly synonymous with difficulties in retaining and recruiting staff. Brief reference is made here to four cases that were examined by the *Klagenemnda for likestilling* (LKN; Complaints Board for Equality) and *Likestillings- og diskrimineringsnemnda* (LDN; the Equality and Anti-Discrimination Ombud) between 2001 and 2009.^[25]

Case LKN 2001-2 concerned a pay comparison between a nurse and an engineer employed in a hospital. The majority of the Tribunal found that a general reference to recruitment difficulties was not sufficient to justify the pay differentials in question. The employer had not been able to provide written documentation that concretely substantiated the argument.

Case LKN 2002-5 concerned a comparison in a municipality between three female *aktiviteter* (labourers) and a male craftsman. The decision states that although the market pay for craftsmen is generally higher than for labourers, the municipality was not able to provide evidence that the man's pay level, which was above pay level 23, had been decisive in or necessary for successful recruitment. It turned out

23. The Equality and Anti-Discrimination Act lists 10 grounds for discrimination. The Tribunal also examines issues of discrimination related to political opinion or trade union membership.

24. The search was conducted on 8 March 2024.

25. For more detailed documentation, see memorandum *Marknadsargumentet i norsk rettspraxis 2001–2009* (The market argument in Norwegian case law 2001–2009).

that two other craftsmen with similar skills had applied for the job. The advert had stated that the pay would correspond to pay level 23.

Case LDN 23/2008 concerned a comparison between two nurses with supervisory responsibilities and four engineers who had supervisory or coordinating roles in a hospital. After a detailed examination of the 'market considerations', the Tribunal found that the pay differentials were objectively justified.

Case LDN 42/2009 concerned pay comparisons of a female supervisor of a municipal school and leisure activities (SFO) and five male supervisors in a technical administration. The pay had been determined on the basis of different collective agreements. The majority of the Tribunal found that the work was of equal value. Furthermore, the Tribunal found that there was no evidence to prove that the relatively higher pay level in the technical department was an effective means of recruiting or retaining staff.

Finally, brief summaries of four decisions from recent years are provided. A decision on 19 May 2020 by the Anti-Discrimination Tribunal concerned a pay comparison between a woman and a man working as *førsteamanuensis* (associate professors) at one of the country's universities. The Tribunal never took a clear position on whether the work was equal or of equal value. In any case, the applicant was able to present facts that gave reason to presume that she had been discriminated against. Thus, the burden of proof shifted to the employer. The Tribunal stated the following with reference to the wording in the preface of the Discrimination Act: "In order to ensure that the right to equal pay is not undermined, the employer shall be required to provide counter-evidence or justification in these cases. It should not be sufficient to merely refer to the fact that market value, for example, has been emphasised in the pay determination. Here, it must be established, among other things, that high pay was necessary to recruit or retain the employee(s) and that the same considerations cannot be applied to the person(s) being compared with." The employer's evidence, which consisted of a general reference to a pressurised recruitment situation and a desire to fill the position quickly, did not meet this requirement.

The decision of the Anti-Discrimination Tribunal from 15 February 2021 concerned the pay of doctors in a prison. As in the decision of 19 May 2020, the Tribunal never took a position on whether it was equal work or work of equal value. The applicant, who was a woman, had in any case managed to establish that the pay setting was discriminatory in relation to two male colleagues. In this case too, the employer countered that the recruitment situation when the male doctors were appointed had been pressured and that there had been difficulties in finding doctors with the right skills. As no further evidence was presented to substantiate the recruitment difficulties, the Tribunal concluded that there was pay discrimination.

In a decision by the Tribunal on 5 March 2021, the question of whether female and male *kantineledere* (canteen managers) of a private employer performed work of

equal value was considered. The central issue was that the different canteens were categorised differently, as either 'standard' or 'premium'. After an overall assessment, the Tribunal found that the work was not of equal value.

A judgement by the Oslo District Court on 15 June 2023 concerned a woman working in financial analysis in a senior position at *Norges Bank*. The woman claimed that she performed tasks of equal value compared to 12 male colleagues. In this context, she claimed retroactive pay compensation for 2012–2022 of more than NOK 16 million. A review found that nine of her colleagues had "investment responsibilities" and that three had no such responsibility. The court concluded that the woman's work was not of equal value compared to the nine colleagues who had "investment responsibilities". As for the other three colleagues, the court found that the woman had performed duties of equal value to them for parts of the ten-year period. The men's higher salaries could be explained by the pay criteria applied by the bank, which were found to be gender-neutral. The bank had therefore not been guilty of pay discrimination.

Sweden

Pay discrimination disputes

Disputes about discrimination related to the seven grounds of discrimination in the legislation are, in principle, handled in two different types of courts. If an employee is represented by a trade union, the dispute is referred, after negotiations at local and central level, to the Labour Court. If the employee is not represented by a trade union, the case is referred to the district court, i.e. a general court, in the first instance and the Labour Court in the final instance. Discrimination disputes concerning areas of society other than working life are heard in general courts. In recent years, 15-20 discrimination cases per year have been decided in the general courts. The number of cases that reach the Labour Court has been three to four per year. In the last ten years, no equal pay cases have been heard.

The concept of work of equal value or similar work has been examined on seven occasions by the Labour Court: AD 1995 No. 158 Kumla Municipality, AD 1996 No. 41 Örebro County Council I, AD 1996 No. 79 Karlskoga Municipality, AD 2001 No. 13 Örebro County Council II, AD 2001 No. 51 County Administrative Board of Skåne, AD 2001 No. 76 Stockholm County Council and AD 2013 No. 64 Gryning Vård AB.

In AD 1995 No. 158 and AD 1996 No. 79 the work was 'similar', and the court never took a position on whether it was equal work or work of equal value. In practice, both cases were comparisons of equal work, one pertaining to two economists in Kumla Municipality and one pertaining to two social workers with managerial positions in Karlskoga Municipality. These were the only two cases in which applicants were successful and received compensation in pay discrimination disputes.

The question of comparability of two completely different jobs was raised in two cases pertaining to Örebro County Council. In AD 1996 No. 41 the Labour Court did not want to preclude the possibility of using systematic job evaluation to demonstrate the potential equal value of different jobs, such as midwife and clinical engineer. However, the Labour Court rejected the evaluation method used by the Equal Opportunities Ombudsman (JämO). In AD 2001 No. 13 the Labour Court concluded that the work of midwives and clinical engineers was of equal value. The starting point was an overall assessment based on the criteria of "knowledge and ability, responsibility, effort and working conditions".

A near-identical judgement was reached in AD 2001 No. 76. The Labour Court found that an intensive care nurse and a medical engineer had work tasks of equal value. The two 2001 rulings thus represented a partial success for the applicant in that the Labour Court accepted the principle of comparability of two completely different jobs. In AD 2001 No. 51 there was no dispute that the social counsellors being compared performed work of at least equal value.

In all cases concerning work of equal value, the Labour Court accepted rebuttal evidence from the employer at a later stage of the review, pertaining to market factors influencing the salaries of nurses and medical technicians (AD 2001 No. 51 and AD 2001 No. 76), the significance of previous pay determinations in the form of collective agreements (AD 2001 No. 13 and AD 2013 No. 64), different dates for pay reviews (AD 2001 No. 51) or the unique skills of a specific individual (AD 2013 No. 64).

Examinations of employers' work on pay surveys

The Equality Board's case 1-97, *Scania CV AB*, pertained indirectly to the concept of work of equal value and the related need for pay surveys across agreements. At the centre of the dispute was the issue of what information employee representatives could demand during the consultation on which the provisions were based. The Board's decision went against the Equal Opportunities Ombudsman and meant that, in connection with a pay survey, trade union representatives were only deemed to have the right to scrutinise the pay of their own members. The legal situation was subsequently changed by a legislative amendment in 2001. This made it clear that a pay survey and analysis should be carried out in collaboration, across the boundaries of collective agreements, and cover all employees regardless of union affiliation.

In case 2-08 *Holmen Paper* the Board against Discrimination followed a strict interpretation of the law and ignored previous preparatory works and the Court of Justice of the EU's interpretation of the principle of equal pay in judgement 157/86 *Murphy*.^[26] Following from this judgement, if there is a group with lower work

26. The case had been initiated by the Equal Opportunities Ombudsman and was settled two years later, 2010-05-06 Å 1-09.

requirements but which nevertheless has a higher pay level, such a group should also be included in the comparison and analysis. Based on the judgement made in the case of *Murphy*, cls. 9–12, it follows that a contrary interpretation would mean that the principle of equal pay would be deprived of its proper effect and content. The requirements for conducting an analysis in the case of work of equal value were subsequently clarified by a legislative amendment in 2017.

The issue of identification and categorisation of equal work and work of equal value was at the heart of a case decided in 2016, brought by *Försvarsförbundet* (Union of the Swedish Defence Forces). The union had demanded that categorisation be done on the basis of a uniform standard applied to all employees. The Board agreed with the union's arguments and ordered the employer to carry out a proper pay survey within four months, subject to a conditional fine of SEK 2 million.

The rulings in the *Scania CV AB* and *Holmen Paper* cases have had an impact on subsequent legislative changes linked to the concept of work of equal value.

Summarising comments

Firstly, some general reflections on the number of judicial rulings. This is followed by a discussion of references to 'the market' or the wording of collective agreements as a factual basis for pay differentials.

Judicial rulings on discrimination in general and specifically on work of equal value in recent years

The table below provides approximate figures for each country. The figures from Denmark, Iceland and Norway relate only to 'Board' decisions. The Swedish figures relate to general courts and the Labour Court. There is no data from Finland on the number of discrimination cases heard annually by the courts. The table shows the number of cases first in absolute numbers and then weighted in relation to the population. In January 2022, Iceland had a population of about 376,000 people. The figures for Denmark, Finland and Norway were between just over 5.4 and 5.8 million. Sweden had 10.5 million inhabitants. If Denmark, Finland and Norway are to be used as a benchmark for a comparison of cases per capita, the Icelandic figures need to be multiplied by 15 and the number of cases in Sweden divided by two.

	Denmark	Finland	Iceland	Norway	Sweden
Discrimination, all grounds*	400/year	Data not available	20/year	438/year	21/year
Number of cases/weighted	400	-	300	438	11
Cases related to work of equal value	0 (3)/year**	1	1/year	7–8/year	0/year
Cases related to work of equal value/weighted	0 (3)**	1	15	7–8	0

* The number of grounds for discrimination varies between countries.

** Denmark had 3 equal work cases decided per year but none on work of equal value.

There are significant differences between the countries in terms of the total number of discrimination cases heard. Cases concerning work of equal value have primarily been heard in Iceland and Norway. In the case of Denmark, there are a few exceptions, but this is not reflected in the table. In the case of Finland and Sweden, the lack of trials could justify a discussion on 'access to justice', which is not the subject of this report.

To combine these figures with related factors that could provide possible explanations for the differences, we briefly relate them to the respective countries' gender pay gap statistics and to unionisation rates. According to the OECD *Gender pay gap statistics – OECD 2022*, the unadjusted gender pay gap was smallest in Iceland (9.3%), followed by Sweden (11.1%), Denmark (13.9%), Norway (14.4%) and Finland (15.5%). Thus, no correlation can be inferred between the size of the pay gap and the willingness or need to initiate an equal pay dispute. A high level of unionisation could explain why disputes are primarily resolved within the framework of the pay negotiation system, without the need to go to court. Even in relation to this perspective, the statistics do not provide a convincing explanation.^[27] The range of union density varies from 50 to 90 per cent, with Iceland at the top and Norway at the bottom.

As mentioned earlier, the decisions of the Swedish Board against Discrimination cannot be compared with the cases described above. The Board never examines employers' explanations for particular pay differentials. What is examined, for

27. <https://stats.oecd.org/Index.aspx?DataSetCode=TUD>

example, is whether a pay survey has been conducted and whether the analysis covered both equal work and work of equal value. Since 2001, compliance with the provisions on pay surveys has been at the centre of the cases received. Between 2001 and 2006, the Equal Opportunities Ombudsman brought 13 cases to the Board. Following the establishment of the new Equality Ombudsman, which has supervision of all grounds of discrimination, the review of pay surveys was given lower priority. This authority has not brought any cases to the Board either. Trade unions on central level have initiated eight cases since 2001. Although the last petition from a trade union was successful, the Board has been idle since 2016. In general, the supervision of pay survey provisions is very weak.^[28]

The market argument in pay discrimination cases and pay survey reviews

The review of case law related to the concept of work of equal value reveals an interesting difference between the countries. This is particularly true of judgements from Iceland, Norway and Sweden, where different market pay levels have been put forward as evidence in employers' defences. Another related explanatory factor for differentials in pay levels for work of equal value is collective bargaining, and the idea that this in itself legitimises pay setting. Collective agreements can thus be said to reflect the bargaining power of the parties and the equilibrium point reached based on market logic.

The report *Marknadskrafterna och lönebildningen i landsting och regioner* (Market forces and pay formation in county councils and regions) points out that in many contexts, for example when it comes to different types of job evaluation, it is common to see so-called market factors as one of a number of objective factors that can justify pay differentials between individuals. "But it is not really possible to make such a distinction. It is not the case that there are various factors that influence pay separate from the market; rather, the market is the mechanism that weighs different factors together."^[29]

The Court of Justice of the EU has assessed references to the market made by social partners, as an objective reason for pay differentials. The *Enderby* case (C-127/92) in particular provides guidance. The dispute concerned a speech therapist in a managerial role who considered herself to be discriminated against in terms of pay in relation to a pharmacist in a managerial role of the same level. The work was considered to be of equal value. The employer was able to show that pharmacists had a large alternative labour market and that there was therefore pay competition between several employers. Speech therapists, on the other hand, were in principle confined to a single employer.

28. From SOU 2020:79, p. 147, it is clear that for seven years there has been no examination of the work on pay surveys from the side of the Gender Equality Ombudsman. See also Svenaeus (2020).

29. Calmfors and Richardson, IFAU report 2004:9, p. 23.

The state of the employment market, which may lead an employer to increase the pay of a particular job in order to attract candidates, may constitute an objectively justified economic ground within the meaning of the case-law cited above. How it is to be applied in the circumstances of each case depends on the facts and so falls within the jurisdiction of the national court.

If, as the question referred seems to suggest, the national court has been able to determine precisely what proportion of the increase in pay is attributable to market forces, it must necessarily accept that the pay differential is objectively justified to the extent of that proportion. When national authorities have to apply Community law, they must apply the principle of proportionality.

If that is not the case, it is for the national court to assess whether the role of market forces in determining the rate of pay was sufficiently significant to provide objective justification for part or all of the difference.^[30]

One conclusion of the *Enderby* judgement is that national courts need to examine and determine whether the market argument can explain all or only part of a pay differential.

What distinguishes the decisions of the Swedish Labour Court in this matter from the Icelandic and Norwegian decisions is the following: in all decisions, the Swedish court has accepted references to the 'market', or a pay agreement being confirmed in the form of a collective agreement, as a justification for pay differentials. There are a number of examples of Icelandic and Norwegian judgements where the 'market' argument has been rejected. Pay being set on the basis of a collective agreement also had no decisive significance on any of the outcomes. In Finnish judgements, there are clear statements regarding the reference to various collective agreements as an explanatory factor. The fact that pay was set based on collective agreements was not in itself deemed to constitute an acceptable justification for a gender pay differential.

The 'market argument' received particular attention in Sweden between 2002 and 2008, when reviews of pay surveys were given high priority by the Ombudsman. According to the assessments of the Swedish Equal Opportunities Ombudsman, a reference to the 'market' was an easy way out for employers who wished to preserve the status quo. The issue was highlighted in two reports by the Swedish Equal Opportunities Ombudsman, the 2003 års regeringsrapport om lönekartläggningsbestämmelserna (2003 government report on pay survey provisions; pp. 25–27) and 2005 års regeringsrapport om lönekartläggningsbestämmelserna (2005 government report on pay survey

30. Clauses 26–28 in the Court of Justice of the EU's judgement C-127/92 *Enderby*.

provisions; pp. 34–37).^[31] Furthermore, the issue was highlighted in 2007 in the form of an anthology, *Marknaden – saklig grund för lönesättning? En fråga tio svar* (The market – an objective ground for setting pay? One question, ten answers) and a one-day conference. The initiative came from a network-based research project.^[32] A summary of Swedish experiences on this issue was published in 2023 in the report *Marknadslöneläget som skäl för avsteg från likalöneprincipen* (The market pay situation as a reason for deviating from the principle of equal pay).^[33]

31. Gender Equality Ombudsman (2003) and (2005).

32. Fransson (ed. 2007).

33. Stüber (2023).



6. Work of equal value in ILO Convention No. 100 and Agenda 2030 and alternative approaches for comparisons at a national level

The introductory theme of this chapter is the Nordic countries' reporting to the ILO on measures taken to fulfil the purpose of ILO Convention No. 100. Reports are submitted every three to four years. The most recent reporting period has been reviewed. There are surprising differences between the Nordic countries in their treatment of the theme of work of equal value.

Attention is then drawn to reporting on the implementation of Agenda 2030, specifically goal 8.5 and indicator 8.5.1, which describes progress towards achieving equal pay for work of equal value.^[34] Goal 8.5 also addresses other issues besides equal pay for work of equal value. The goal includes full and productive employment with decent work for all women and men, including young people and persons with disabilities. The ILO is responsible for providing guidance on the statistics to be used for indicator 8.5.1.

In this chapter thus two different perspectives on the theme of work of equal value are addressed. The application of Convention No. 100 focuses on pay comparisons within individual organisations, i.e. at the local level. Agenda 2030 includes indicators that show developments from a national perspective.

The chapter concludes by describing two alternative approaches to comparing work of equal value at national level. In response to the mandate to include "perspectives from other countries", a German model is presented that calculates the influence of the undervaluation of female-dominated work on the gender pay gap.

34. <https://sdgs.un.org/2030agenda>

Implementation of ILO Convention No.100

Where the Government is not in a position to influence levels of remuneration it must nevertheless promote the application of the principle of equal remuneration for work of equal value. (...) Key elements of ensuring and promoting the application of the principle of equal remuneration in accordance with the Convention are the obligations to promote objective methods for the evaluation of jobs and to cooperate with workers' and employers' organizations. (...) Countries that have ratified the Convention are required to provide reports to the ILO on the measures taken to give effect to the Convention and the results achieved.

Quote from *Equal Pay, an Introductory Guide*, pp. 66–67, ILO (2013).

Prior to the writing of this report, a request was made to the responsible ministry in each Nordic country for a copy of the most recent report on Convention No. 100 to the ILO. These writings are commented on below. In addition, the ILO's feedback on these reports is commented on. The ILO feedback is available in the ILO database. All documents commented on in this chapter have been made available via links.

Denmark

The latest report on the implementation of ILO Convention No. 100 is from 2022.

^[35] The core of the reporting consists of references to five court cases from the Board of Equal Treatment. All decisions are linked to pay setting. One decision concerned discrimination linked to the taking of parental leave and part-time sick leave. The other four decisions concerned pay differentials for equal work. Nothing in the report can be linked to the concept of work of equal value.

The feedback from the ILO pertains not only to the above-mentioned document but also to other official information on gender equality provided online by the Government.^[36] Here is a selection of the ILO's comments.

Firstly, the ILO takes note of a Danish report that draws attention to the problem of the structural undervaluation of work dominated by women. According to this official report, 85 per cent of the gender pay gap in Denmark can be linked to the gender-segregated labour market and the fact that men are overrepresented in higher paid jobs. The ILO then asks the Government: What concrete measures have been taken to counteract the problem of structural undervaluation? Furthermore, the ILO requests information that can shed light on the effectiveness of the legislation on gender-disaggregated statistics. The ILO also asks whether this

35. [Regeringen.dk](https://regeringen.dk) (2022) *ILO report C 100 22-04-30*.

36. ILO feedback: *Direct Request – adopted 2022, No. 100 Denmark*.

legislation allows for comparisons between work of equal value. Another issue noted by the ILO is the lack of information on the measures taken to promote, in cooperation with social partners, objective job evaluation methods.

Finland

So far, it has not been possible to obtain any documents from the Finnish Government on reporting on ILO 100. For that reason, comment is only provided on the feedback by the ILO, which consists of two documents from 2023.^[37]

Firstly, it is noted that the Government has initiated a number of studies and projects on equal pay issues and that the ILO is requesting follow-up information. More specifically, information is requested on how supporting measures are implemented to improve compliance with the requirement for pay surveys and the quality of pay surveys. In particular, emphasis is put on the measures taken, in cooperation with social partners, to ensure that the principle of equal pay for work of equal value is implemented. The need to include the principle of equal pay for work of equal value in the design of collective agreements on pay is also emphasised. In addition, information is requested on measures that can be linked to the theme of promoting objective and gender-neutral job evaluation methods. Furthermore, more and clearer information is requested on legal disputes that can be linked to the principle of equal pay for work of equal value.

With regard to information pertaining to Finland, it should be noted that the parliamentary elections in April 2023 resulted in a change of government. The previous government can be described as a centre-left coalition in which gender equality issues were a clear priority, while the new government coalition is dominated by a conservative party and a right-wing nationalist party. According to information received from experts on Finnish gender equality issues, the previous government's reform agenda in this area has been put on hold.

Iceland

The latest Icelandic report to the ILO on the implementation of Convention No. 100 is dated 7 February 2024.^[38] The central theme discussed in the document is the gender-segregated labour market. Among other things, it is noted that the main explanation for the statistical pay gap is related to this gender segregation and that female-dominated work is generally under-valued. It is further noted that the Gender Equality Act, in combination with the ÍST-85 standard, is not intended to address pay differentials between employers, nor does it contain provisions by which to do so. It is reported that the Government has taken the initiative to develop a freely available tool for evaluating work requirements and for conducting

37. ILO feedback: *Direct Request and observation – adopted 2022, No. 100 Finland*.

38. *Government.is (2023:1) ILO report C 100, 24-02-07*.

analyses of the pay structure in individual organizations from a gender perspective. The tool should be suitable for use in both the private and public sectors.

To address the structural undervaluation of female-dominated work, a tripartite committee including representatives of the Government and social partners has been working on recommendations to be finalised by the end of 2023.^[39] It is also reported that from June 2019 to May 2023, six cases on equal pay were heard in court. The report does not indicate whether the cases concerned equal work or work of equal value. In two cases, pay discrimination was found to be present.

The ILO Committee's feedback to the Government relates primarily to previous reports on the development of the equal pay standard ÍST-85, as well as to the development of various tools for pay analysis. Furthermore, it is stated that the ILO encourages the Icelandic Government's efforts, and that the ILO is interested in receiving ongoing information on future evaluative studies.^[40]

Norway

The Government reports that there have been no recent judicial decisions concerning the issue of equal pay for work of equal value.^[41] The report mentions that Norway will for the first time implement a national strategy for work on gender equality issues. The strategy will cover a period of three years starting from 8 March 2024. One of the objectives of the strategy is economic independence and gender equality in employment.

At the Centre for Research on Gender Equality (Core), one of the four priority areas will be the gender-segregated labour market. The report also discusses the causes of the statistical gender pay gap and calls for Core to launch a study to monitor compliance with pay survey provisions.

The report also refers to an earlier report to the Committee on the Elimination of Discrimination against Women (CEDAW) from the Equality and Anti-Discrimination Ombud. This report states that the "Ombud" recommends Norwegian authorities to clarify two specific issues that arise in connection with pay surveys. The first issue is the need to clarify the provision that states that the conditions for setting pay for an individual employer shall be reviewed or investigated. The second question concerns the need for clarification to facilitate the grouping of work of equal value. In its response, CEDAW recommends that the Norwegian Government clarify the legislation so that the principle of equal pay for equal work "goes beyond the same establishment or enterprise" (see footnote 41). With reference to this recommendation, the Norwegian Government states in its report to the ILO that there are currently no plans to amend the legislation on pay survey provisions to allow for comparisons between different employers.

39. This refers to *Job evaluation Iceland, report 2024*. The report is briefly commented on in Chapter 7.

40. ILO feedback: *Direct Request – adopted 2023, No. 100 Iceland*.

41. *Regeringen.no (2023:1) ILO report C 100, 23-05-31*.

It then comments on criticism received by Norway from the European Committee on Social Law on the same issue, namely the external framework for comparing pay for work of equal value. In the discussion that follows, the Norwegian Government refers to the Pay Transparency Directive. The Directive is interpreted by the Government as meaning that "the scope of application of the principle of equal remuneration for work of equal value does not go beyond the same establishment or enterprise" (see footnote 41). Furthermore, reference is made to an ongoing project, run in collaboration with partners to the labour market, which aims to obtain new knowledge on pay differentials for work of equal value. Finally, 16 equal pay cases between 2019 and 2023 are briefly commented on. Links to all cases are provided.

In its response to the Government, the ILO Committee requests feedback from an ongoing project with social partners, from the studies managed by the CORE Institute as well as comments on the evolution of the gender pay gap. Subsequently, the ILO requests specific information on how pay survey provisions have been applied with regard to the principle of equal pay for work of equal value. The ILO also notes that information on the efforts of social partners to address pay inequalities has been extremely scarce. The ILO therefore wishes to receive specific information on the measures or activities of these parties in relation to the principle of equal pay for work of equal value. In particular, the ILO is interested in the results of a project involving these parties related to the issue of work of equal value, with a particular focus on job evaluation. Furthermore, the ILO would like more specific information on the outcome of equal pay disputes.^[42]

Sweden

In the autumn of 2021, the Government Offices of Sweden submitted its latest report to the ILO on the implementation of Convention No. 100.^[43] The report describes in broad terms the work and reforms for equal pay and equal income that were carried out from 1 July 2017 to 30 June 2021. The report also mentions the establishment of the Swedish Gender Equality Agency, the purpose of which is to strengthen the implementation of the gender equality policy and follow up on its the overall objectives. Economic equality is one of the Government's gender equality policy objectives. The report mentions that during the reporting period, the Equality Ombudsman reviewed gender equality plans of 190 authorities, including pay surveys. The Ombudsman has handled four cases related to pay discrimination. There is also a link to an e-learning programme on pay surveys.

In its response, the ILO highlights the consistent lack of concrete measures included in the Government's reporting.^[44] For example, information is requested on how the

42. ILO feedback: *Direct Request – adopted 2023, No. 100 Norway*.

43. *Regeringen.se (2021:1) ILO report C 100, September 2021*.

44. ILO feedback: *Direct Request – adopted 2021, No. 100 Sweden*.

Convention's objective of equal pay for work of equal value has been promoted by social partners in the formulation of collective agreements on pay setting. To address pay differentials rooted in the gender-segregated labour market, the ILO looks forward to the final report and recommendations expected to be presented in February 2022 by *Kommissionen för jämställda livsinkomster* (the Commission on Gender Equal Lifetime Earnings).^[45]

Comments

It is notable that the reports from Denmark and Sweden lack information on the most central issue, specifically an account of successes or problems in applying the principle of equal pay for work of equal value.

Agenda 2030 and indicators of equal pay for work of equal value

Goal 8.5 of the UN's Agenda 2030 calls for national statistics that highlight progress towards the goal of equal pay for work of equal value. The Swedish Gender Equality Agency's report *Ekonomisk jämställdhet* (Economic Gender Equality), published in January 2022, highlights this issue.^[46] Statistics Sweden (SCB) provides annual statistical reports on the implementation of Agenda 2030 in Sweden. The Economic Gender Equality report points out that Statistics Sweden lacks statistical data based on comparisons related to work of equal value. The statistics on which the Agenda's indicator 8.5.1 are based relate instead to pay differentials within equal work, or more specifically to jobs with the same occupational code. The responsible statistical authorities, which are Statistics Sweden and the National Mediation Office, refer to their compliance with the ILO's Guidebook on SDG Labour Market Indicators.

Comments

It is worth noting that the ILO's Guidebook conflates the concepts of equal work and work of equal value. The ILO's instructions on Agenda 2030 therefore conflict with the content of ILO Convention No. 100 and the ILO's Equal Pay, an Introductory Guide, which was published in 2013. In 2021, the Swedish Gender Equality Agency's investigator drew the ILO's attention to this contradiction. The response received at the time was evasive, with the ILO stating that the indicator is based on pay statistics that refer to ISCO codes and that comparisons between the same occupational codes closely resemble a comparison of equal work. In the context of the preparation of this report, the same question was again put to the ILO and a similar response was received.

45. This report, SOU 2022:4, is commented on in Chapter 7.

46. The Swedish Gender Equality Agency report 2022:2.

To summarise, the ILO's handling of the concept of work of equal value can only be described as contradictory. The ILO's comments on government reports on measures and experiences in applying Convention No. 100, as well as the ILO's *Equal Pay Guide* from 2013, clearly show that there is solid knowledge within the ILO of the difference between the concepts of equal work and work of equal value. However, when the ILO has drawn up instructions on the statistical basis for reporting progress towards goal 8.5 of the Agenda 2030, the concepts of equal work and work of equal value have been confused. The underlying statistics for the indicator have no connection whatsoever to the concept of work of equal value.

National reporting on the implementation of Agenda 2030 – work of equal value

Agenda 2030, objective 8.5 – Full employment and decent work with equal pay for all

By 2030, achieve full and productive employment with decent work for all women and men, including young people and persons with disabilities, and ensure equal pay for work of equal value.

The review under this heading is based on the latest available country reporting on the implementation of the various goals of Agenda 2030. In this case, it comments on how goal 8.5, which includes equal pay for work of equal value, has been addressed, as well as indicator 8.5.1. The material shows that in many cases the theme of work of equal value is avoided altogether or that gender pay differentials are described in more general terms.

Denmark's reporting on goal 8.5 does not address the theme of equal pay for work of equal value.^[47] The reporting covers employment. References to indicator 8.5.1 are missing.

The Finnish report briefly comments on the development of the pay gap between women and men.^[48] It indicates that Finland needs to improve equal pay legislation and that this also requires adequate resources. A statistical annex to the report contains a table showing pay development over time and by gender.^[49]

The Icelandic report addresses the theme of work of equal value by mentioning the legal requirement for equal pay certification. It also states that measures have been taken to reduce the pay gap resulting from the gender-segregated labour

47. Regeringen.no (2021) *Regeringens Fremdriftsrapport for FN's Verdensmål 2022-2023* (Government Progress Report for the UN Sustainable Development Goals 2022-2023).

48. Government.fi (2020:1) *Agenda 2030 Voluntary National Review 2020*.

49. Government.fi (2020:2) *Agenda 2030 Review 2020, Statistical Annex*.

market but that further efforts are necessary.^[50] There are no indicators in this report.

There are two reports from Norway, one in English from 2021 and one in Norwegian from 2023.^[51] The 2021 report does not address the issue of equal pay for work of equal value and in the annex of indicators, indicator 8.5.1 is omitted. The 2023 report discusses issues related to traditional pay statistics, especially for low-paid groups, but without linking the issue to gender pay differentials. The concept of work of equal value also does not appear in this report.

The latest Swedish report is from 2022.^[52] Statistics are included under objective 8, but none pertaining to the pay differentials between women and men. There is a sentence in the report stating that men are still paid more than women on average, but that the gender gap has narrowed slightly year on year. The theme of work of equal value is not addressed at all.

Alternative approaches to comparisons of work of equal value at the national level

The fact that the statistics on which indicator 8.5.1 of Agenda 2030 is based does not reflect pay differentials between work of equal value, but instead shows pay differentials between occupations with the same ISCO code, has been recognised by the Swedish Gender Equality Agency and by the Norwegian agency Bufdir (the Norwegian Directorate for Children, Youth and Family Affairs). Among other things, Bufdir has a mandate to promote equal pay.^[53] Two different initiatives are outlined below, the starting point of which is to find a way to use statistics to describe progress towards the Agenda's goal of equal pay for work of equal value at the national level.

Report 2022:2 by the Swedish Gender Equality Agency and the Lönelots Report from January 2023

In connection with a government commission on the development of economic gender equality in Sweden since 2015, the discrepancy between the purpose of indicator 8.5.1 in the Agenda 2030 and the underlying statistics was highlighted. This issue is dealt with by an independent consultant, Lena Johansson, in Annex 3 of that report. In addition, the issue is summarised and commented on in Chapter 7 of the main report. Since then, another report has been presented using the same

50. [Government.is \(2023:1\) Agenda 2030 Voluntary National Review 2023](#).

51. [Regeringen.no \(2021\) Agenda 2030 Voluntary National Review 2021](#) and [Regeringen.no \(2023:2\) Oppfølging av berekraftsmåla i Noreg](#) (Follow-up of the Sustainable Development Goals in Norway).

52. Statistics Sweden SCB (2022) [Statistisk lägesbild 2022. Genomförande av Agenda 2030 i Sverige](#) (Statistical snapshot 2022: Implementation of Agenda 2030 in Sweden).

53. Bufdir is a government agency whose main areas of work are children's rights, adoption issues, equal treatment and non-discrimination and violence and abuse in close relationships; see www.bufdir.no.

methodology as a starting point, this time by the consulting group *Lönelotsarna*, of which Lena Johansson is a member.^[54]

The report *Ekonomisk jämställdhet* (Economic Gender Equality) presents the starting points for an indicator that calculates the pay gap between occupations of equal value at the national level. The proposal is seen as a supplement to the official statistics for which the National Mediation Office is responsible. Firstly, an indicator is proposed that describes structural pay differentials defined by 13 levels of requirements and includes all of the country's occupational categories according to the *SSYK-klassificeringen* (SSYK classification).^[55] Secondly, an aggregate measure for the labour market as a whole is proposed. By this measure, the structural pay differential is calculated to be 19 per cent, based on 2019 figures. The indented text below and two tables are extracts translated from the Swedish Gender Equality Agency's report:

The proposed indicator for work of equal value is based on the conclusion that it is not appropriate to present a single measure, for example in the form of a percentage, for all 428 occupations in the Swedish labour market. Instead, the indicator consists of 13 measures, as illustrated by the 13 points in the diagram below. Each measure represents the group of occupations judged to be of equal value in terms of job requirements.^[56] The indicator therefore consists of 13 measures, each of which shows the pay differential between occupations dominated by women compared with occupations of equal value in the groups that are equal or dominated by men. The pay differential between occupations dominated by women and those not dominated by women are different within each of the groups A to M. For example, within group L, occupations dominated by women are more highly paid than occupations not dominated by women. Within level I, there are no gender pay differentials between the occupations. Each measure therefore needs to be analysed and monitored. The proposed indicator is as follows:

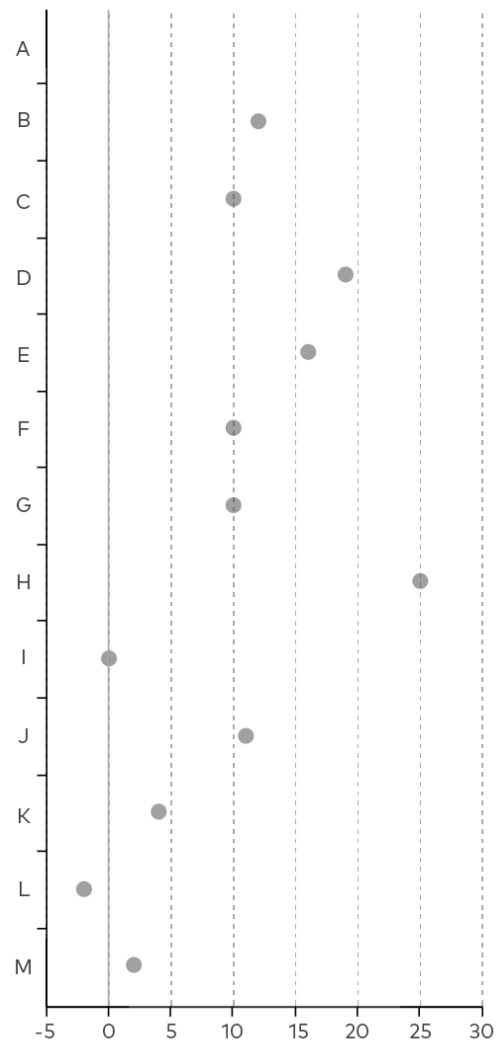
54. Harriman, Johansson and Trollvik (2023) *Strukturella löneskillnader – högt värderad, låg lön* (Structural pay differentials – high value, low pay).

55. SSYK is the national variant linked to the international system of ISCO codes.

56. The breakdown can be found on page 21 of the background report *Indikator för likvärdigt arbete* (Indicators for work of equal value), Johansson (2021).

Measure 1 Average pay differential between occupations dominated by women and other equivalent occupations as a percentage

Group	Pay differential in percentage
A	..
B	12
C	10
D	19
E	16
F	10
G	10
H	25
I	0
J	11
K	4
L	-2
M	2



The table on the left shows the 13 measures (at this point 12 as Group A currently has no occupations dominated by women) that comprise the indicator. The chart on the right provides a visual representation of how the measures relate to each other. Each dot shows the pay differential in each group. The further to the right of the 0 line the dot is, the greater the pay differential for occupations dominated by women. Among other things, the chart shows that the pay differential is greater in occupations with higher job requirements than in occupations with lower job requirements.

The complementary measure compares average pay in *all* occupations dominated by women with average pay in *all* other occupations. This provides an aggregate measure of the structural pay differential. Calculations based on the same data used by the National Mediation Office, i.e. the SSYK occupational classification, shows the following:

Measure 2 The structural pay differential

Average earnings in occupations dominated by women	SEK 31,800
Average pay in other occupations	SEK 39,000
The structural pay differential	SEK 7,200
	19 per cent

One reason why the Swedish Gender Equality Agency has drawn attention to this issue is that, according to the official narrative, pay differentials between different occupations and sectors are not presented as a problem, rather they are communicated as the most important explanatory factor in reducing the gender equality gap to a few per cent. From a communication perspective, it is highly significant which image is most widely disseminated, an unexplained gender pay gap of 4.2 per cent or a structural pay gap of 19 per cent.

Assignment from Bufdir on indicators for work of equal value, September 2023 to December 2024

In September 2023, *Institutt for samfunnsforskning* (the Norwegian Institute for Social Research) received a commission from Bufdir.^[57] The assignment draws attention to the fact that research on pay differentials between women and men performing work of equal value has so far been limited. It is also noted that Norway lacks statistics that relate at a national level to the objective expressed in Agenda 2030, indicator 8.5.1, namely equal pay for work of equal value. Some of the key issues for the project are:

57. <https://www.samfunnsforskning.no/prosjekter/aktive/lonnsforskjeller-mellom-kvinner-og-menn-og-forklar.html>

- the development of the pay differentials between women and men from 2015 to 2022,
- key causes of gender pay differentials in Norway,
- possible ways of measuring pay differentials between work of equal value, which could form the basis of indicators to be used for comparisons at national level.

The project is led by Maria F. Hoen. Here is a summary of her description of the ongoing work, as of 24 April 2024:

The analysis starts with the employees' occupations and a representative set of characteristics using data from the American O*NET database and the working environment monitor from *Statistisk Sentralbyrå's* (Statistics Norway) survey of living conditions. We will then make a number of adjustments, in terms of which characteristics we include and how we measure the characteristics, to study how the results change.

In a next step, these characteristics are combined with the four overarching factors included in discrimination legislation to assess whether two jobs are of equal value. The aim is to group occupations according to the 'value' of each factor (occupations with the same level and type of responsibility, occupations with the same skill requirements, etc.) These groups can then be aggregated into an overall measure (grouping those of equal value across all factors), but this requires a value judgement of how much each factor should count in relation to the others.

Initially it is important to be cautious in making such value judgements, as we consider the debate over valuation to be a political one. Therefore, we intend to highlight the various judgements and choices made in developing a 'value indicator' and highlight the implications of these, for example by illustrating how the ranking/grouping of occupations changes when the weighting of the factors changes. One of the main aims of the study is to make these considerations visible and to highlight the challenges of developing a 'value indicator'.

Comparable Worth-Index as a tool to analyse the gender pay gap

In Germany, two research reports were published in 2016 and 2018 on the development of a comparative index for assessing occupations of equal value at the national level, *Der "Comparable Worth" Index als Instrument zur Analyse des Gender Pay Gap* (The "Comparable Worth" Index as an instrument for analysing the gender pay gap) and *"Comparable Worth"* (CW).^[58] This CW index has then been applied to pay data related to occupational classifications based on the ISCO model. To evaluate existing occupations, the researchers used the methodology of

58. Lillemeier (2016) and Klammer, Klenner and Lillemeier (2018).

the [eg-check.de](https://www.eg-check.de) job evaluation system provided by the *Antidiskriminierungsstelle des Bundes* (Federal Anti-Discrimination Agency). The application of this CW index represents a further step in developing better models to explain the causes of the gender pay gap. A follow-up study published in 2022, *"Evaluative Diskriminierung": Arbeitsbewertung als blinder Fleck in der Analyse des Gender Pay Gaps* ("Evaluative Discrimination": Job evaluation as a Blind Spot in the Analysis of the Gender Pay Gap), shows that almost three-quarters of the gender pay gap in Germany is a result of the undervaluation of work dominated by women.^[59] One factor that has highlighted the concept of work of equal value within the national context is that pay formation in Germany is largely determined by pay scales that are the result of negotiations at the industry level.

Additional control variables for analysing the gender pay gap

In two further studies, commented on in Chapter 7, there is a discussion about the need to use additional control variables to analyse the gender pay gap in the labour market. One is from Denmark, *Den 'uforklarede' del af forskellen mellem kvinders og mænds timeløn* (The 'unexplained' part of the differential between women's and men's hourly pay; 2020), and the other from Iceland, *Icelandic gender pay gap analysis 2008-2020*.^[60]

In summary, the examples from Sweden, Norway and Germany show that statistics aimed at highlighting the undervaluation of work dominated by women challenge the established perception of the gender pay gap. Instead of comparisons between different occupations and sectors being communicated as an explanatory factor that roughly halves the statistical pay gap, according to the official narrative, one of the alternative methods presented shows that the pay gap is rather doubled. In Agenda 2030, the ILO has a mandate as a custodian agency to provide instructions on how countries can use statistical means to describe progress towards the goal of equal pay for work of equal value. A new approach by the UN agency to promote the development of new statistical models seems urgent. Even the national authorities, that have dutifully reported data on the pay gap as part of Agenda 2030 obligations, should have reacted long ago to the fact that this data does not match what is to be described.

59. Klammer, Klenner, Lillemeier and Hellmann (2022). Kompletterande kontrollvariabler för analys av könslönegapet
60. Larsen, Verne and Højgaard Mikkelsen (2020) and Calian (2021).



7. Projects, commissions, research and evaluations since 2019

This chapter summarises how issues related to work of equal value have been addressed in research, studies or government reports since 2019. This includes issues such as relationships in pay between work dominated by women and work not dominated by women, different ways of analysing pay statistics, the application of pay survey provisions, the role of collective agreements in promoting equal pay or governments' strategic positions in this area. The compilation does not claim to be complete. The chapter is structured in such a way that it first provides an overview for each country. It concludes by commenting on possible commonalities or dividing lines.

Denmark

A pay structure committee, consisting of experts and representatives of social partners, carried out work over a period of two years that culminated in the Lønstrukturkomitéens hovedrapport (Pay Structure Committee's Main Report) in 2023.^[61] One of the aims of the report was to develop a common frame of reference on issues related to pay structures and pay development, particularly in the public sector. Furthermore, the consequences of changing existing pay structures were to be highlighted, as well as opportunities for developing approaches to pay setting within the framework of the collective agreement model in the Danish public sector.

61. Andersen et al. (2023).

The report found that public sector occupations dominated by women are low-paid compared to other occupations with similar levels of education. The three public sector occupations that had most clearly climbed the pay hierarchy between 1969 and 2019 were police officers, train drivers and nurses. The pay structures are seen as a result of compromises and priorities governing the behaviour of parties in collective bargaining. The bargaining model is therefore considered to be unaffected by political influence or control. Within the framework of the committee's work, no assessments were made of whether certain categories of workers could be described as undervalued or underpaid, compared with other categories of workers within the Danish labour market.

One of the committee's tasks was to investigate whether there had been problems in relation to the requirement of equal pay for equal work and work of equal value under *Ligelønsloven* (the Equal Pay Act). The report concluded that there were no significant problems with compliance with the Equal Pay Act in the public sector. This conclusion was based on the fact that legal challenges to pay discrimination are extremely rare.

The committee's work resulted in four recommendations for future and sustainable pay setting in the public sector:

1. *Transparency*: Well-functioning and manageable pay setting should be supported by transparency and understanding of parties' trade-offs and priorities, including with regard to the vertical and horizontal aspects of pay structures.
2. *Adaptability*: Pay setting should support the attractiveness of the public sector and facilitate recruitment and retention of the necessary labour force.
3. *Proportionality and legitimacy*: Pay structures should support pay commensurate with employees' qualifications, experience, performance and tasks, and account for private sector pay relationships.
4. *Supporting the public sector's mission*: Pay structures should support the fulfilment of the tasks of public institutions and the public sector as a whole and the effective administration of collective agreements.

The Pay Structure Committee also commissioned VIVE to conduct a knowledge review of the explanations for and consequences of the gender-segregated labour market.^[62] The report *Forklaringer på og konsekvenser af det kønsopdelte arbejdsmarked* (Explanations and consequences of the gender-segregated labour market) from 2022 provides an overview of studies published after 2015.^[63] The theme of these studies is not limited to the situation in Denmark.

62. VIVE is a centre for social science research, <https://www.vive.dk/en/vive-frontpage/>.
63. Holt, Helle and Søndénbroe, Katja Isa (2022).

Researchers Jørgensen, Hansen and Taxhjem from the Danish Institute for Human Rights published the report *Kvindefag i historisk skruetvinge* (Women's trades in a historical clamp) in 2020 and the article 'Half a century of female wage disadvantage' in 2022.^[64] These texts touch on the same theme that formed the basis for the work of the Pay Structure Committee. They examine the relative positions of 13 occupational groups in the public sector. The comparison is based on pay data from 1969 and 2019. The year 1969 is of particular interest, as the Danish Parliament, in the context of a civil service reform, defined and laid the foundation for the pay structure that 50 years later, with a few exceptions, still characterises the public sector. The study concludes that, within the framework of the collective bargaining model, parties have, to a large extent, replicated the values on which the 1969 civil service reform was based. The study concludes with a recommendation that a long-term plan is needed to close pay differentials between occupations dominated by women and those dominated by men and to break the gender divide in the labour market

The starting point of the 2020 study *Den 'uforklarede' del af forskellen mellem kvinders og mænds timeløn* (The 'unexplained' part of the differential between women's and men's hourly pay) is that women have lower lifetime earnings than men.^[65] This is partly because they have lower hourly earnings on average. Previous studies have shown that half of this pay differential is related to different measurable characteristics, mainly that women and men operate in different areas of the labour market. The aim of this study is to provide more insight into the remaining half of the pay differential, i.e. the statistically unexplained part. The report concludes with a recommendation to use other, or rather complementary, control variables to analyse the gender pay gap in the labour market.

A study published in 2019, *Do Firms Respond to Gender Pay Gap Transparency?*, specifically investigated whether § 5a of the Equal Pay Act has led to measurable improvements with regard to the purpose of the provisions.^[66] The study is based on pay data for the period 2003–2008 and compares pay developments in firms with 35–50 employees with pay developments in firms with 25–34 employees. The study is summarised as follows:

For the first time we are able to document, that pay-transparency really works. A 7% reduction in the pay-gap may not sound impressive, but given the fact that only a limited number of firms in Denmark are governed by this legislation the effect is significant. We can even prove the effect amongst firms, that were not required to provide gender segregated pay-statistics. We know now that wage-transparency works and it is a measure that can be applied nationally as well as internationally.^[67]

64. Sørensen et al. (2020) and Sørensen, Skriver Jørgensen and Meiland Hansen (2021).

65. Larsen, Verne and Højgaard Mikkelsen (2020).

66. Bennedsen et al. (2019).

67. <https://www.insead.edu/news/wage-transparency-works-reduces-gender-pay-gap-7-percent>.

Finland

In Finland, equal pay programmes have been in place since 2006, based on cooperation between the Government and social partners. The latest in the series is the *Likalönsprogrammet 2020–2023* (Equal Pay Programme 2020–2023), which sets out a number of concrete measures to reduce gender pay differentials.^[68] The programme notes that the design of collective agreements is important in this context, as is the work on gender equality plans and pay surveys in individual businesses. Attention is also drawn to the issue of facilitating the interaction between paid work and parenthood. The programme states that the Government has initiated a number of research projects linked to the theme of work of equal value and the gender-segregated labour market.

Ökad lönetransparens genom ändring av jämställdhetslagen (Greater pay transparency through changes in the Equality Act) is the final report produced by a working group appointed by the Ministry of Social Affairs and Health, which operated from 21/08/2020 to 31/08/2021.^[69] The task was to consider amendments to the Equality Act based on the pay transparency objective of the Equal Pay Programme. The working group's report proposes strengthening the rights of staff, staff representatives and employees who suspect the existence of pay discrimination. It is also proposed that the enforcement of the prohibition on pay discrimination be made more effective and that employees who suspect pay discrimination on the basis of gender be given the right to obtain pay information on other employees from the employer. The rights of staff representatives to receive information during pay surveys, and the possibilities for employees to receive information about workplace gender equality plans and pay systems, should be strengthened. The report did not result in any concrete proposals for legislative amendments, as the employer representatives opposed any legislative changes and workers representatives demanded more extensive changes than those proposed by the Ministry.

The report *Projekt likvärdigt arbete, slutrapport* (Project Work of Equal Value, final report) from 2022 describes a research and development project that examined pay systems and assessed work requirement levels and how the principle of equal pay for work of equal value has been addressed in collective agreements and in some individual organisations.^[70] The final report makes the following recommendations, among others:

68. Government.fi (2021:1).

69. Government.fi (2021:2).

70. Jämsén, Hietala and Maaniemi (2022).

The review of work of equal value at workplaces can be promoted through locally agreed pay systems that apply to the whole organisation. Such a model needs to be supported in agreements concluded at the central level. Workplaces need to prioritise work on equality plans and pay surveys. Employees should also be provided with more information on pay systems and the bases for setting pay. The current legislation could be clarified, for example with regard to the definition of work of equal value and the role of collective agreements in this context. Cooperation between labour market organisations is seen as a precondition for improving gender pay equality.

The report *Kollektivavtalens effekter utifrån ett könsperspektiv* (The impact of collective agreements from a gender perspective) was published in 2023.^[71] The report is based on previous findings that gender pay differentials can be linked to indirect rather than direct discrimination and to differentials in pay between work of equal value. The report takes a specialised look at one public sector agreement area (land surveying) and one private sector agreement area (the chemical industry). Among other things, it is noted that companies often follow several collective agreements or that the same collective agreement may have annexes relating to different groups of employees. Overall, it is common that the pay of all employees is not determined within the framework of a single pay system.

The report highlights a contradiction in labour market organisations' declarations at a general level that they are committed to promoting gender equality and that they evaluate the gender impact of their own collective agreements. In practice, these declarations rarely seem to lead to specific actions that bring about change. When the organisations surveyed for the project were asked if they had taken any actions related to gender equality, the actions seem to relate to surveying the situation rather than making immediate changes in the content of collective agreements.

In their recommendations, the authors of the report refer to a large extent to the Pay Transparency Directive, which is expected to be adopted. This implies a need to better align the terminology of collective agreements with concepts arising from EU law. Another conclusion is that there is a need to coordinate the methods and tools used to evaluate work requirements. These valuations in turn influence pay structures and pay hierarchies. In this context, the authors refer to the section of the Directive that now constitutes Article 4.2. This provision underlines the responsibility of Member States to ensure that analytical tools and methods for assessing and comparing the value of jobs are made readily available. According to the authors, the development of analytical tools should be carried out in cooperation with social partners. Such a model could also be adapted to specific conditions within an individual sector. Other recommendations concern the need to specify pay criteria and their application, so that, for example, a collective

71. Nousiainen et al. (2023). The report is only available in a Finnish version.

agreement makes clear the relationship between the proportion of pay linked to work demands and the proportion of pay linked to an individual's work performance. Furthermore, it is pointed out that under EU law an employer cannot rely on a discriminatory collective agreement to justify discriminatory practice. Instead, it would be reasonable for the penalties for discriminatory provisions to be borne primarily by the parties to the collective agreement when the individual employer has complied with the provisions of the agreement in good faith.

The report *Statsrådets redogörelse om jämställdhetspolitiken* (the Council of State's Report on gender equality policy) from 2022 is structured around seven gender equality policy objectives.^[72] Goal 4 is entitled '*Ett ekonomiskt jämställt Finland*' (An economically gender equal Finland), and the phrase 'equal pay for work of equal value' is central. It is worth noting that the report refers to a structural pay gap, which is established in the fact that work in sectors and occupations dominated by women is on average paid less than work in sectors and occupations dominated by men. The report points out that pay discrimination can occur when women and men do the same work but especially when the tasks are different but equally demanding.^[73] According to the Council of State, achieving Goal 4 requires tackling pay discrimination, correcting pay structures that increase inequality and comparing pay across collective agreements. Furthermore, the requirements of work traditionally performed by women could be better taken into account than at present. Therefore, if necessary, the undervaluation of this work should be addressed. Structural change can be accelerated by promoting pay transparency. The report notes that the practice of tripartite cooperation, as advocated, among other things, by ILO Convention No. 100, has proved problematic in gender equality matters. It notes that the primary task of labour market organisations is to promote the interests of the groups they represent. Against this background, it will be difficult to gain acceptance for a permanent change in pay relations between different occupational groups. For this reason, the State needs to take greater responsibility for international human rights obligations.

Two research papers have addressed issues of pay setting from a gender perspective. *Wage politics and feminist solidarity* from 2021 describes a struggle among preschool teachers to raise their pay.^[74] The background to these actions was a revelation in the Finnish media that several municipalities had secret agreements not to compete with each other in terms of pay despite a major shortage of preschool teachers. *Implementing Equal Pay Policy*, published in 2021, focuses on the nurses' strikes for higher pay in 2007.^[75]

72. Government.fi (2022).

73. This refers to a study from Larja (2019): *Maahanmuuttajanaiset työmarkkinoilla ja työmarkkinoiden ulkopuolella*. In the work: *Kotoutumisen kokonaiskatsaus 2019: Tutkimusartikkeleita kotoutumisesta*. Arbets- och näringsministeriets guider och övriga publikationer (Guides and other publications of the Ministry of Economic Affairs and Employment) 2019:10, pp. 28–42.

74. Koskinen Sandberg (2019).

75. Saari, Kantola and Koskinen Sandberg (2021).

Iceland

The reports or studies referred to here largely pertain to experiences with the gender equality standard ÍST 85.

In 2021, building on Iceland's commitments under ILO Convention No. 100 on equal remuneration for work of equal value, the Government established a working group based on tripartite cooperation. The work of the group is summarised in the document *Recommendations on the Re-evaluation of Women's Work* (translated from Icelandic).^[76] The document assumes that it is possible to assess and compare the demands of work for different occupations in the Icelandic labour market. Based on such an ambition, it might be possible to correct the pay gap between women and men. The following tasks were assigned to the working group:

- Diagnose the problem. Establish a development project to assess the value of different occupations and thus identify the factors that typically lead to the undervaluation of women's labour.
- Develop tools. Together with the analysis, develop tools that capture and support the objectives of the Gender Equality Act and make it easier for employers to comply with the requirement of equal pay for work of equal value.
- Together with social partners, develop negotiation procedures when issues of equal pay are raised. Examine the extent to which different employment relationships and outsourcing have an impact from a gender equality perspective.
- Increase knowledge and awareness of the Gender Equality Act's principle of equal pay for equal work, including through training, advice, and increased dialogue.

In 2024, the above working group produced the report *Job Evaluation*.^[77] The report shows that the project's ambitions could only be realised to a limited extent. The working group did not agree on all the conclusions of the report. This is reflected in a separate statement from the Confederation of Icelandic Enterprise (SA). It is noteworthy that joint work on developing a 'toolkit' and related educational material for job evaluation will continue and that the State is seen as a key player in this work.

The article '*Equal Pay for Work of Equal Value? Iceland and the Equal Pay Standard*' was published in the journal *Social Politics* in 2022.^[78] The study is based on in-depth interviews with key actors in the government office, employer organisations,

76. Government.is (2021).
77. Government.is (2024).
78. Wagner (2022).

trade unions, HR managers and people with specific expertise in international HR standards. The article provides an initial insight into the development process of the Icelandic standard. The study shows that there has consistently been a field of tension between different actors' expectations of the standard. From the employer perspective, the standard is typically seen as primarily a technical aid to improve the pay-setting process itself. Other actors in research and some trade unions see a need to revise prevailing values of work dominated by women and those dominated by men. The interviews show that societal values coloured by gender stereotypes seem to indirectly influence job evaluations carried out in individual workplaces.

One issue that has not received much attention in the implementation of the equal pay standard is how work on pay surveys and certification interacts with the traditional bargaining system on pay setting. Experience so far shows that work on the standard within organisations is primarily based on dialogue between the employer and the certification body. This means that in many cases, the interaction with trade union representatives is fairly limited.

An article titled *'Tailoring the tool to the reality or the reality to the tool? On the equal pay standard and the abolition of gender-based pay'* (loosely translated from Icelandic) was published in the Icelandic Review of Politics and Administration No. 2022:2.^[79] It examined whether the equal pay standard could be said to have contributed to closing the gender pay gap. The study was based on interviews with staff from four certification bodies involved in the implementation of the standard. It also analysed changes in the gender pay differentials based on official statistics on pay over the period 2012–2020, comparing pay developments for women and men in individual organisations before and after participation in the certification process. In the study was shown that the introduction of the standard cannot have had more than a marginal impact on the gender pay gap. The differential in pay progression between those organisations that had implemented certification and those that had not was only 1 per cent. The gender pay gap across the country had narrowed by almost 8 per cent over the period. Furthermore, the survey revealed serious gaps in support or guidance from the authorities.

The Icelandic Government also recognises the limitations of the standard to influence the pay gap at a national level:

It is first and foremost a management requirement standard; an administrative tool designed to establish and maintain gender equality in pay systems within a company or an institution. It is not promoted and designed to tackle wage differentials between companies and institutions and the implementation of the Equal Pay Standard does therefore not address [the] gender-segregated labour market.^[80]

79. Haraldsdóttir, Rafnsdóttir and Jónsdóttir (2022).

80. Page 2 of *Report from Government of Iceland to the ILO on C 100, 24-02-07*.

A working paper from Statistics Iceland, *Icelandic gender pay gap analysis 2008-2020*, analyses a number of variables to provide a better understanding of the figures underlying the official gender pay gap.^[81] One interesting variable used in the Icelandic report is the gender composition of an occupation (dominated by men, balanced and dominated by women). When this variable is included in the model, it significantly favours the pay of both women and men in occupations that are gender balanced, although more so for women than men. However, the results of this variable are not statistically significant.

Norway

Lønnskartlegging: et verktøy for et mer likestilt arbeidsliv? (Pay surveys: a tool for a more equal labour market?) is a report published in 2024. It first describes the legal framework around pay surveys and the mandate of the supervisory authorities involved.^[82] Then is examined how pay surveys are handled in practice in different organisations and how the results of the surveys are perceived and explained. The data used consists of 75 annual reports from major employers. An account of the work on pay surveys is included in these reports and all annual reports are made available via a link in a separate annex. The interviews conducted show that reporting is perceived to be resource intensive, and in some cases it may require an initial cost to implement due to a lack of procedures. The interviews also show that the work on pay surveys has led to new ways of analysing pay differentials and that in a number of cases it has led to corrections that would otherwise not have occurred. Opinions are divided on the value of analysing pay differentials based on the concept of work of equal value. Critics point out that the cause of these pay differentials is largely beyond the control of individual employers. In a final chapter various digital options are discussed, both to facilitate the work of analysing pay and to compile experiences of conducting local pay surveys at a national level. References are also made to similar projects outside Norway.

Buudir is the authority whose remit includes providing advice and developing tools and methods for pay surveys. One of the reports reproduced in [Chapter 6](#) is based on a commission from Buudir. The following clickable document, which provides a template for analysing gender pay differentials, comes from the agency's website: *Likestillingsredegjørelse. Eksempelvirksomhet* (Gender equality statement. Example business).^[83] It should be noted that the template for analysing gender pay gaps contains separate items for basic pay, irregular supplements, bonuses, and overtime pay. It also requires gender-disaggregated data on employee numbers with regard to fixed-term contracts, parental leave, actual part-time work and

81. Calian (2021).

82. Brandal Mykelbust, Teigen and Tica (2024).

83. Buudir, 'Likestillingsredegjørelse, lønnsforskjeller' (Equality statement, pay differentials), extract from document, 28 February 2024.

involuntary part-time work. It is clear from the template that a good gender equality analysis should be based on a combination of data on pay and working conditions.

An article from 2021, *'Lønnsforskjeller mellom kvinner og menn – hvilken rolle spiller bedriften?'* (Pay differentials between women and men – what role does the company play?) analyses gender pay gaps in the Norwegian private sector.^[84] The study pays particular attention to whether the size of the company, i.e. the number of employees, has an impact. The material analysed shows that the gender related pay differentials are greater in small companies than in medium-sized companies. The largest gender related pay differentials are found in the largest companies. The study also shows that the size of enterprises has an impact on pay levels in general. One of the conclusions of the study concerns the reasons for the statistically unexplained gender pay differential of 9–10 per cent identified across the total material examined. This unexplained pay differential cannot be related to the fact that women and men typically work in different types of companies with different pay levels. Instead, the material indicates that the cause of the pay differentials lies within individual companies.

The report *Likelønn og det kjønnsdelte arbeidsmarkedet. Individuelle preferanser eller strukturelle begrensninger?* (Equal pay and the gendered labour market. Individual preferences or structural constraints?) from 2020 consists of two parts.^[85] The first is devoted to detailed analyses of national statistics on the pay differentials between women and men. Among other things, it finds that the income gap between women and men, calculated on an annual basis, is between 20 and 30 per cent depending on level of education. The differential in hourly earnings is 10.8 per cent for the entire labour market and 16.5 per cent among those with a university degree. The differentials in the unexplained pay gap are much smaller, 7.7 per cent for the whole labour market and 7.5 per cent among university graduates. The main factors explaining the pay gap are related to women's and men's choices to work in different sectors, industries and occupations.

The second part of the report is devoted to analysing explanations and strategies concerning the gender pay gap in two government inquiries and in a number of governing documents from the Norwegian Trade Union Confederation (LO). The report finds that there is a consensus that the pay gap is linked to the gender-segregated labour market. It is also noted that the two reports, NOU 2008:6 and NOU 2013:13, draw different conclusions regarding the so-called frontline labour model.^[86] The 2008 report concludes that parties' pay bargaining systems under the frontline labour model contribute to reproducing and maintaining pay relations between women and men. The latter report emphasises the positive impact of the

84. Misje Østbakken and Frisell (2021).

85. Wagner et al. (2020).

86. Regeringen.no (2008) and Regeringen.no (2013).

model on the Norwegian economy. Within LO, the issue of equal pay between women and men has tended to be treated as a question of raising low-pay groups, which has not necessarily benefited occupations dominated by women in the public sector. The basic material for the 2020:4 report also resulted in an English publication in 2021, *Egalitarian inequality: Gender equality and pattern bargaining*.^[87]

Sweden

In the early 2000s, the Gender Equality Ombudsman carried out extensive reviews of employer pay surveys. When the authority was disbanded and its responsibilities integrated under the new Equality Ombudsman with supervision of seven grounds of discrimination, the nature of the monitoring of pay surveys changed. The report *Tio år med Diskrimineringsombudsmannen. En rapport om nedmontering av diskrimineringsskyddet* (Ten years of the Equality Ombudsman. A report on the dismantling of discrimination protection) from 2020 describes how supervision was reduced to an advisory function and provides examples of sanctions or follow-ups no longer being applied when employers submitted inadequate pay surveys.^[88] The report also states that the Equality Ombudsman has not pursued a single case on work of equal value.

Inadequate compliance with pay survey provisions has been a long-standing issue and one of the reasons the Government initiated an inquiry in 2018 with the aim of making the Ombudsman's supervision more effective. The inquiry resulted in two different reports, *Effektivare tillsyn över diskrimineringslagen* (More effective supervision of the Discrimination Act) and *Ett utökat skydd mot diskriminering* (Increased protection against discrimination).^[89] Both reports have been submitted for consultation, but so far the Government has chosen not to put forward the legislative amendments proposed by the inquiry.^[90]

A study published in 2022, *Decoupling gender equality from gender pay audits in Swedish municipalities*, describes how the work with pay surveys is carried out in five municipalities.^[91] The researchers found that the municipalities' work with pay surveys resembles a bureaucratic exercise, with no practical significance for closing the gender pay differentials. The analyses on which pay surveys are based are rendered inconsequential for pay policy. Municipalities do not consider themselves to have the financial resources to change existing pay structures.

87. Wagner and Teigen (2021).

88. Svanæus (2020).

89. Regeringen.se (2020) and Regeringen.se (2021:2). The studies also address issues other than the supervision of pay surveys.

90. The only exception is a proposal to extend protection against discrimination in public services.

91. Salminen-Karlsson and Fogelberg Eriksson (2022).

The Swedish National Audit Office published report 2019:16 *Diskrimineringslagens krav på lönekartläggning – ett trubbigt verktyg för att minska löneskillnader mellan könen* (The Discrimination Act's pay survey requirements – a blunt tool for reducing gender pay differentials) on the theme of pay surveys.^[92] A key finding of the report was that the provisions had limited ability to influence the pay differentials between women and men in the labour market as a whole. The methodological approaches in the report, and thus the basis for the Swedish National Audit Office's conclusions, came to be questioned in the memorandum *En kommentar till Riksrevisionens rapport 2019:16 om lönekartlägningsbestämmelser* (A commentary on the Swedish National Audit Office's report 2019:16 on pay survey provisions).^[93] The Government responded to the National Audit Office's report in *skrivelse 2019/20:48* (Communication 2019/20:48).^[94] The Government concluded, among other things, that the legislative amendment that entered into force in 2017, as well as additional strengthening measures introduced at that time, must be given time to have an impact. The communication made a number of proposals on how to improve the interaction between the collective bargaining system and legislation. Some of these proposals, such as improved pay statistics at the employer level or other appropriate levels, were included in the mandate to the Commission on Equal Lifetime Earnings (Kommissionen för jämställda livsinkomster).

This Commission's work is summarised in its final report *Minska gapet. Åtgärder för jämställda livsinkomster* (Reducing the Gap. Measures to equalise lifetime incomes) SOU 2022:4. The report provides a detailed description of the state of knowledge regarding job evaluations, pay surveys, pay statistics from a gender equality perspective and initiatives to increase pay transparency in the EU, Iceland and various Anglo-Saxon countries. A specific background report, *Likalönelagar i Kanada* (Equal pay laws in Canada), was instigated by the Commission.^[95] One of the Commission's suggestions is to clarify the conditions under which the market pay situation constitutes an acceptable reason for departing from the principle of equal pay. The Canadian report gives examples of how such legislation is organised in the provinces of Ontario and Quebec. Furthermore, the Commission calls for new regulation that combines effective enforcement and active dissemination of information to those affected, i.e. both local and central labour market parties. The Commission also favours a requirement for pay reporting, but states that reported pay data should be the result of a collaborative process at the local level. The Icelandic model is considered to have both advantages and disadvantages. One advantage compared with the system that applies in Sweden is that there are considerably more checks on pay surveys carried out by Icelandic employers. A disadvantage is the lack of a requirement to cooperate with local employee

92. Swedish National Audit Office, report 2019:16.

93. Rickne and Stüber (2019).

94. Regeringen.se (2019).

95. Svenaeus, Lena (2021).

representatives. With regard to existing pay statistics, a review of existing occupational codes is recommended, as many occupations dominated by women have broader classifications than those dominated by men. The Commission also sees the need for a broader discussion on different methods of analysing and calculating horizontal and vertical pay segregation in the labour market, in order to better understand the extent of different forms of discrimination.

The Swedish Confederation of Trade Unions (LO) emphasises that the trade union movement plays an important role in putting pressure on politics. It is a matter of living up to the gender equality policy goal of women and men having the same opportunities and conditions in terms of power, influence and economic independence. The report *LO:s jämställdhetsbarometer 2023* (LO's Gender Equality Barometer 2023) emphasises LO's goal of ending value discrimination against professions dominated by women.^[96] The way to achieve this is for social partners to take joint and long-term responsibility for equal pay throughout the labour market. Special efforts to raise the lowest pay in labour occupations must continue. In order to equalise the differentials, minimum pay must on average increase by a higher percentage than the average pay for workers.

In 2023, the Swedish Gender Equality Agency published the report *Likvärdiga yrken – likvärdiga kollektivavtal* (Professions of equal value – collective agreements of equal value).^[97] The review of a number of employment conditions in collective agreements for organisations providing welfare services compared with equivalent conditions in a number of male-dominated industries shows that the differences are not particularly large and do not have a clear direction. To identify obstacles to equal treatment at a local level, it is proposed that the active measures in the Discrimination Act be expanded in scope or that meanings be specified. For example, it is only clear from the preparatory work, but not from the legal text, that active measures by employers should include the distribution of full-time and part-time employment and of fixed-term and permanent employment. It is also noted that a general strengthening of active measures could be achieved by introducing procedural rules on forms of cooperation between employers and employee representatives. Such rules could be included both in legislation and in collective agreements. Similar rules exist today in the Co-determination Act and the Work Environment Act. Another prerequisite for both current and future legislation on active measures to be effective is that the rules are enforced by means of supervision and sanctions.

Every June, the National Mediation Office publishes a report analysing the development of the pay differentials between women and men over the previous year. The latest report, *Löneskillnaden mellan kvinnor och män 2022* (Pay differentials between women and men 2022),^[98] shows that between 2007 and

96. Bergold, Lorentzi and Löfgren (2023).

97. Calleman (2023).

98. Medlingsinstitutet (Swedish National Mediation Office; 2023:1) *Löneskillnaden mellan kvinnor och män 2022* (The gender pay gap in 2022).

2019, the average pay differential fell from over 16 per cent to less than 10 per cent. Over the last three years, the pay differential has remained more or less stable. The standardised weighted differential, which takes into account, among other things, the fact that women and men work in different occupations and sectors, has even shown a slight increase. In June 2023, the National Mediation Office presented the results of a government commission with a broader remit, *Inkomstskillnader mellan kvinnor och män* (Income differentials between women and men).^[99]

Summary and a Nordic perspective

The studies and reports presented in this chapter make it clear that the principle of equal pay for work of equal value, which at its core is based on comparisons within an individual employer activity, is linked to structural and societal perspectives. When pay differentials is measured at the national level, the main contributory factor to the pay gap is differentials in pay levels between occupations and sectors dominated by women and those dominated by men. When applying a structural perspective, the responsibility for these differentials in pay also shifts from representatives of social partners to the state. The potential for policy to influence the rules of the game for social partners is seen in a number of ways: through decisions to expand or reduce specific parts of the public sector, through the design of conditions for childcare, elderly care, parental leave and care of close relatives or by contributing to frameworks that promote a 'frontline labour model' that has potential to change pay relations between different sectors.

The Nordic Council of Ministers' report *Gender-equal pensions in the Nordics* illustrates how differentials in pay between women and men can be balanced through different strategies to promote equal pension levels.^[100] The table below comes from this report:

99. Medlingsinstitutet (Swedish National Mediation Office; 2023:2) *Inkomstskillnader mellan kvinnor och män* (Income differentials between women and men).

100. Andersson (2023).

Total gender pension gap 65+ year 2019 ^[101]

	Denmark	Finland	Iceland	Norway	Sweden
Total gap 65+	8%	24%	5%	23%	28%
Public pension	-5%	23%	-21%	22%	18%
Occupational pension	23%*	**	20%	19%*	48%
Private pension	-	34%	54%	-	25%

The figures show the pension gap of each type of pension for average female and male pensioners in each country. In Denmark and Norway public pensions distribute more income to women than to men, therefor the negative figures.

* Includes occupational and private pensions.

** Occupational pension is very rare in Finland and cannot be separated from the rest of the data. It could be included in both public and private pensions.

ILO Convention No. 100 is ultimately about state responsibility. At the same time, this chapter recognises that the issue of work of equal value lies in a field of tension between different arenas and actors, such as:

- Representatives of employers and employees in individual organisations with the ability to conclude collective agreements *at the local level*. Local representatives may also have obligations to cooperate on pay surveys based on equal work and work of equal value.
- Employer and trade union organisations *at the union or central level* with the ability to conclude collective agreements.
- Reporting, analysing and publishing pay statistics related to the *national level*, preferably within the framework of Agenda 2030.
- *National* human rights body that supervises discrimination legislation and can represent individuals in discrimination disputes.
- *The ability of politicians to steer the agenda* by setting up inquiries or commissions and to change framework conditions by means of statutes, defining budgetary frameworks at the national or regional and municipal levels, etc.

101. Nordic Council of Ministers (2019, p. 13).

There are striking differences between countries in the way the theme of work of equal value is treated. The **Danish** reports tend to focus on the issue of structural pay differentials at a general level, without explicitly addressing the issue of work of equal value. The fact that judicial reviews of equal pay issues are rare led the Pay Structure Committee to conclude that there are no significant problems regarding compliance with equal pay legislation. The conclusions of the **Finnish** *Statsrådets bedömning om jämställdhetspolitiken* (the Council of State's assessment of gender equality policy) differ.^[102] The report states that pay discrimination can occur when women and men do the same work, especially when their tasks are different but equally demanding. The Council of State considers it necessary to intervene in pay discrimination and to correct pay structures that increase gender inequality. Furthermore, there should be a reassessment of the demands of work in different sectors and a comparison of pay across collective agreements.

At the centre of **Iceland's** reporting are various assessments of the application and impact of the ÍST-85 standard. Amendments to the Gender Equality Act, which came into force in 2018, made the standard mandatory for employers with at least 25 employees. Trade union organisations have argued that too little attention has been paid to pay analyses and corrections due to ÍST-85 and to the interaction with the traditional bargaining system for pay setting. The standard favours interaction between employers and certification bodies, to some extent at the expense of traditional forms of interaction with trade union representatives. The study *Skräddarsy verktyget efter verkligheten eller verkligheten efter verktyget* (Tailoring the tool to the reality or the reality to the tool) has attracted some attention as it shows that the introduction of the standard has not had more than a marginal impact on the development of the gender pay gap. In Iceland too, there is a call for better support measures from authorities to carry out analyses at the operational level.

Reporting from **Norway** characterises developments as being in their start-up phase, with requirements for pay surveys introduced in 2018. The agency Bufdir is a driving force in initiating both research on gender pay differentials and developing templates and tools for social partners' work on pay surveys. The report *Likelønn og det kjønnsdelte arbeidsmarkedet. Individuelle preferanser eller strukturelle begrensninger* (Equal Pay and the Gendered Labour Market. Individual preferences or structural constraints) notes that two government inquiries have come to opposing views on the frontline labour model and the extent to which it contributes to reproducing and maintaining pay relations between women and men. Issues surrounding the frontline labour model from a Nordic perspective are discussed in more detail in [Chapter 10](#).

102. The Council of State is a central part of Finland's political system and the body with the highest executive power in Finland. The Council of State is responsible for day-to-day administration and decision-making in Finland.

The content of documents from **Sweden** are distinctive in two ways. Firstly, the link between equal pay and equal income is a theme in three of the Swedish reports: the Swedish Gender Equality Agency's report 2022:2 *Ekonomisk jämställdhet* (Economic equality), the report SOU 2022:4 from the Commission for Equal Lifetime Earnings, and the National Mediation Office's report *Inkomstskillnader mellan kvinnor och män* (Income differentials between women and men). Secondly, a number of problems with applying the pay survey provisions are highlighted, largely related to a lack of supervision and shortcomings in advice and support for representatives of social partners. There is also a perceived difficulty in assessing which work is of equal value and a lack of guidance on this issue in collective agreements.

There are examples of conflicting conclusions on whether pay transparency and gender pay statistics can be said to have an impact on the pay gap between women and men at the national level. A **Danish** study from 2019 identified a 7 per cent reduction in the gap over a five-year period. The authors of an **Icelandic** study from 2022 came to the opposite conclusion. Using pay data from 2008 to 2020, they found that the introduction of the equal pay standard had only a marginal impact on the national gender pay gap

Country reports on the implementation of ILO Convention No. 100 and ILO comments on these reports reveal that there are tensions over the meaning of the term *samma källa* (single source).^[103] The issue relates to different conceptions of the external boundaries for comparing pay differentials between work of equal value. The final report of the **Finnish** *Project work of equal value* makes an interesting observation on the extent to which centralised or decentralised pay formation affects progress towards equal pay at the operational level. The report concludes that analyses of work of equal value in the workplace should be promoted by locally agreed pay systems that apply to entire organisations. In such a situation, there need never be any ambiguity about the 'source' of pay determination. Such a model, according to the authors, would in turn need to be supported through agreements concluded at central level.

Something that can be seen as **common from a Nordic perspective**, is that tripartite commissions dealing with the issue of equal pay have all established. In Denmark *Lönestrukturkommittén* (the Pay Structure Committee), in Finland *Likalönsprogrammet* (the Equal Pay Programme) and in Iceland the *Task Force on Pay Equity and Equality in the Labour Market*. With regard to the achievements of these commissions, either there was no mandate to specifically address gender imbalances in the labour market, as was the case in Denmark, or where such a mandate was more explicitly formulated, as in Finland and Iceland, the results in terms of concrete measures were extremely limited. In Finland, the work of the

103. Cf. ILO comments *Direct Request – adopted 2023, No. 100 Norway* and the response from *Regeringen.no* (2023:1) *ILO report C 100, 23-05-31*.

Commission did not result in any concrete proposals for legislative changes. The reason for this was that employer representatives were opposed to any legislative changes and employee representatives demanded more extensive changes than those proposed by the Commission. What the Icelandic parties were able to agree on was the State's responsibility to develop pay analysis tools and provide necessary information to facilitate the application of the equal pay standard.



8. EU Pay Transparency Directive 2023/970 and work of equal value

This chapter opens by providing the background to the Pay Transparency Directive. This is followed by a review of pay reporting and publication requirements to enable comparisons between employers, sectors and regions. It then gives examples of how comparisons of equal work and work of equal value have been interpreted under the current pay survey provisions and the change brought about by the Directive. Finally, the issue of Member States' responsibility for developing templates and analytical tools is addressed. It recognises the need to limit additional costs and administrative burdens.

The voluntary track has been abandoned – not just in the EU

On 10 May 2023, the EU Pay Transparency Directive 2023/970 was adopted. The design of the Directive is based on the realisation that, exceptional cases aside, litigation has been an unsuccessful route to correcting pay inequalities. At the same time, realisation of the need to develop new proactive approaches has grown not only in the EU, but also in countries such as Australia, Canada, Iceland and New Zealand. The development of legal regulations on pay transparency has thus been observed on a global scale.

The Directive must also be seen in the context of the objective of closing the gender pay gap in the European Union by 2020. To achieve this objective, the European Commission adopted recommendations in 2014 for Member States to take voluntary measures to increase transparency in pay structures and pay setting

from a gender perspective.^[104] The 2014 recommendations can be described as a toolbox consisting of four key measures: individual rights to information on pay setting, reporting at company level, pay audits and equal pay in collective agreements.^[105]

The adoption of the Directive means that the voluntary route has been abandoned. The new binding regulation is fairly comprehensive. It aims to strengthen the application of the principle of equal pay in various ways compared to how it has been expressed until now in Directive 2006/54. Examples of changes include the right to information for individual job applicants or employees, requirements for company- or establishment-based pay analyses related to the concepts of equal work and work of equal value, requirements for employers to report key figures on gender pay differentials to a national supervisory body and for parts of this data to be compiled and published. To improve the conditions for applicants in pay discrimination disputes, there are amendments concerning the limitation period and the burden of proof. In addition, the Directive also lists new forms of sanctions, makes links to public procurement and provides a legal definition of intersectional discrimination. The examples given here are far from exhaustive. The Directive is to be implemented in the EU Member States by 7 June 2026, although it has not been possible to obtain official information on the extent to which Iceland and Norway are following this timetable. At the end of May 2024, the Swedish commission presented its proposal for the implementation of the Pay Transparency Directive, SOU 2024:40.

Reporting and publication requirements

In the context of this report, commentary is provided on the Directive focused on the theme of work of equal value. Firstly, it should be noted that this is the first time that EU legislation has specified the criteria on which to assess if two jobs are of equal value. The criteria set out in Article 4.4 are skills, effort, responsibility and working conditions.

Employers with at least 100 employees are affected by a number of detailed provisions. For example, reporting key performance indicators on pay differentials to a monitoring body (Article 9.7), which is then tasked with publishing parts of this data. Employers have an obligation to inform employees about pay differentials based on the categories of equal work and work of equal value (Article 9.9 and 9.10). There are also requirements for consultation (Article 9.6) and joint pay assessments with employee representatives (Article 10). In Sweden, which has just over 10 million inhabitants, about 5,500 employers are affected by the '100 limit'

104. European Commission, Commission Recommendation on strengthening the principle of equal pay between men and women through transparency, COM(2014)1405 final.

105. Fransson and Stüber (2019) *Nya metoder för jämställda löner – insyn, rapportering och certifiering* (New approaches to equal pay – transparency, reporting and certification).

and in Norway, which has just over 5 million inhabitants, about 4,000 employers are affected.^[106]

Pay data, or rather key figures, which are made publicly available via a website under the responsibility of a monitoring authority, are not related to the concepts of equal pay and work of equal value. Instead, the data relates to pay differentials categorised as basic pay and various allowances or variable remuneration (Article 9.1.a-f). The publication of these pay differentials by the supervisory body is not only linked to the individual employer but also consists of summaries linked to sectors or regions (Article 29.3.c).

Work of equal value – reporting requirements but no publication requirements

The reporting requirement applicable to employers with at least 100 employees also includes the compilation of gender pay differentials broken down by basic pay and bonuses or variable remuneration, based on the categories of equal work and work of equal value. This is set out in Articles 9.1.g and 9.7. However, there is no requirement to publish this pay data, which is, in contrast, set out in Article 29.3.c. Employers with between 100 and 249 employees are required to report every three years (Articles 9.2-9.4).

Member States shall ensure that the information, analysis, and reporting obligations are combined with effective sanctions for non-compliance (Article 23.1). Non-compliance with reporting requirements should be easy to verify. The Directive proposes the use of sanctions or penalties as corrective tools.

Experience from Finland, Norway and Sweden shows that compliance with pay survey provisions has so far been very limited. Against this background, the Directive could bring about a qualitative change, provided that states make use of the ability (or requirement) to impose penalties for non-reporting. The reporting requirements to the monitoring body include providing data on pay differentials for equal work and work of equal value.

A key task for the monitoring body will be to develop easily accessible reporting tools and templates to minimise additional costs and administrative burdens. This will affect both individual employers and the work of the supervisory body in compiling pay data and statistics for publication.

106. <https://www.ssb.no/virksomheter-foretak-og-regnskap/virksomheter-og-foretak/statistikk/virksomheter>

Future supervision and research on work of equal value at establishment level

Pay data related to work of equal value at the establishment level is not subject to the mandatory publication requirements in Article 29.3.c. In countries where the principle of public access to information has a strong position, this means that, for example, researchers, labour market parties or journalists will be able to request documents received by the supervisory authority. According to Articles 9.1.g and 9.7, these documents include information on pay differentials for work of equal value at the establishment level.

To summarise, the Directive allows opportunities for individuals to access a wealth of new data on equal pay. How these opportunities will materialise in practice will depend on national legislation on public access to information and secrecy.

A comparison with existing pay survey provisions

As mentioned earlier, all the Nordic countries except Denmark have provisions on pay surveys. The basis for these surveys is the pair of concepts of equal work and work of equal value. The pay survey provisions in these countries are fairly similar in that the legal text is less detailed than the corresponding provisions in the new Directive. The level of detail in the Icelandic equal pay standard, on the other hand, is greater than in any other Nordic legislation. Only in Iceland is there a requirement to report pay differentials for equal work and work of equal value to a supervisory body. In Norway, employers are required to publish the results of pay surveys. A common denominator of the existing legislation on pay surveys is that there is no detailed description of the methodology for conducting pay analyses for work of equal value. Similarly, there are no percentages indicating more or less acceptable pay differentials in the existing legislation.

From the text of the Directive, it is possible to infer a two-step proactive procedure aimed at addressing unjustified pay differentials between women and men.

1. Step one is set out in Articles 9.6, 9.9 and 9.10. The employer must produce information on the gender pay differentials in consultation with workers' representatives (Article 9.6). Subsequently, results showing pay differentials for equal work and work of equal value must be presented to all workers (Article 9.9). Furthermore, it states that the employer has an obligation to remedy, within a reasonable time period, pay differentials that cannot be objectively justified, i.e. on the basis of clear pay criteria or the provisions of collective agreements (Article 9.10). This step does not set a threshold for an unjustified pay differential to be corrected.

2. The second stage, also called 'joint pay assessment', is only triggered if all three conditions of Article 10.1 are met, namely
 - there is a differential in the average level of pay of at least 5 per cent in any category of workers (i.e. equal work or work of equal value)
 - the employer has not been able to justify the pay differential on the basis of existing pay criteria
 - the pay differential is not remedied within six months from the date of submission of the pay report

Overall, a joint pay review under Article 10 (step 2) entails a more extensive undertaking from the employer's perspective than if the pay differentials had been addressed under the procedure set out in Articles 9.6, 9.9 and 9.10 (step 1). In the case of a joint pay assessment, there are additional obligations, including providing information to the monitoring body.

In the Nordic countries, there are no provisions corresponding to the Directive's 5 per cent rule. To illustrate the change from how existing pay mapping provisions have been interpreted,^[107] the first two pictures below use examples used by the Swedish Equal Opportunities Ombudsman and the Equality Ombudsman. In the company 'Fictitious', five different levels of work requirements are identified, with level 1 indicating the highest requirements and level 5 the lowest requirements. The first figure illustrates the pay analysis for equal work and the second figure illustrates the analysis for work of equal value. The third figure is based on the same pay data but linked to the new Directive's threshold of a pay differential of at least 5 per cent.

107. The example is likely to be valid not only for Sweden but also based on equivalent legislation in other Nordic countries.

Comparison – equal work									
Require- ment level	Work	Gender distribution				Average pay			
		Number		Per cent		Women	Men	W+M	W's pay as % of M's
		W	M	W	M				
1	Department Head	1	2	33	67	31000	35000	33700	89
2	Supervision	1	2	33	67	21000	24000	23000	88
3	Information officer	2		100		19000		19000	
3	Engineer		2		100		22000	22000	
3	Sales-person	2	2	50	50	20500	19500	20000	105
3	Economist	1	1	50	50	21000	22000	21500	95
4	Assembly	2	24	8	92	17500	19000	18900	92
4	Repairer		5		100		18500	18500	
4	Secretary	2		100		18000		18000	
4	Laboratory staff	8		100		17000		17000	
5	Driver		2		100		16000	16000	
5	Ware-house worker	1	3	25	75	15000	15000	15000	100
5	Cleaner	2	1	67	33	13500	13500	13500	100
5	Receptionist	1		100		16000		16000	

In **Figure 1** above, equal jobs performed by both women and men are marked in red. The green markings indicate women's pay as a percentage of men's pay for each different job. Pay data is compared across each row, i.e. for each job separately.

Work of equal value	Requirement level	Work	Gender distribution				Average pay			
			Number		Per cent		Women	Men	W+M	
			W	M	W	M				
→	1	Department Head	1	2	33	67	31000	35000	33700	
	2	Supervision	1	2	33	67	21000	24000	23000	
	3	Information officer	2		100		19000		19000	
	3	Engineer		2		100		22000	22000	←
	3	Sales-person	2	2	50	50	20500	19500	20000	←
	3	Economist	1	1	50	50	21000	22000	21500	←
	4	Assembly	2	24	8	92	17500	19000	18900	←
	4	Repairer		5		100		18500	18500	←
	4	Secretary	2		100		18000		18000	
	4	Laboratory staff	8		100		17000		17000	
	5	Driver		2		100		16000	16000	←
	5	Warehouse worker	1	3	25	75	15000	15000	15000	←
	5	Cleaner	2	1	67	33	13500	13500	13500	
	5	Receptionist	1		100		16000		16000	

Figure 2 above focuses on pay differentials between jobs of equal value. The starting point is to draw attention to the existence of structural undervaluation of occupations dominated by women, regardless of whether women or men are doing the work in the individual case. This is shown in the rightmost column, which indicates the average pay for women and men together. Jobs in which the share of women is more than 60 per cent are marked with a red arrow on the left, and darker shading. The pay levels for these jobs should be compared with the pay levels for jobs not dominated by women, marked with green arrows on the right.

Article 9.1g Pay differentials by employee category + art. 10.1a with max 5% diff. as limit value

Existing Jobs (equivalent jobs)	Number		Average pay		Category of workers (Requirement level of work of equal value)	Total pay in category of workers		Women's pay as a percentage (%) of men's pay in the category of worker
	Women	Men	Women	Men		Women	Men	
Department Head	1	2	31 000	35 000	1	31 000	70 000	
Total in category	1	2				31 000	70 000	
Average pay in category						31 000	35 000	89%
Supervision	1	2	21 000	24 000	2	21 000	48 000	
Total in category	1	2				21 000	48 000	
Average pay in category						21 000	24 000	88%
Information officer	2		19 000		3	38 000		
Engineer		2		22 000			44 000	
Salesperson	2	2	20 500	19 500		41 000	39 000	
Economist	1	1	21 000	22 000		21 000	22 000	
Total in category	5	5				100 000	105 000	
Average pay in category						20 000	21 000	95%

Existing Jobs (equivalent jobs)	Number		Average pay		Category of workers (Requirement level of work of equal value)	Total pay in category of workers		Women's pay as a percentage (%) of men's pay in the category of worker
	Women	Men	Women	Men		Women	Men	
Assembly	2	24	17 500	19 000	4	35 000	456 000	
Repairer		5		18 500			92 500	
Secretary	2		18 000			36 000		
Laboratory staff	8		17 000			136 000		
Total in category	12	29				207 000	548 500	
Average pay in category						17 250	18 913	91%
Driver		2		16 000	5		32 000	
Warehouse worker	1	3	15 000	15 000		15 000	45 000	
Cleaner	2	1	13 500	13 500		27 000	13 500	
Receptionist	1		16 000			16 000		
Total in category	4	6				58 000	90 500	
Average pay in category						14 500	15 100	96%

Figure 3 above: As mentioned earlier, the Directive is based on a two-step model aimed at proactively addressing unjustified pay differentials for equal work and work of equal value. The novelty of introducing these steps is that individual workers do not have to initiate a legal process against their employer for pay discrimination. The above provides the necessary analysis to assess whether the pay differential within a category of workers is at least 5 per cent.^[108] In the example, this is the case in all equivalent levels except level 5 (bottom). In this case, the differential between all women's pay and all men's pay is 4 per cent. Conversely, women's pay is 96 per cent of men's pay. Such an analysis becomes necessary if local parties have not addressed the unjustified pay differential under Step 1 (i.e. Article 9.10).

To summarise, Figure 3 highlights the new form of analysis introduced by the Directive, which can be described as a combination of the methods in Figure 1 and Figure 2. The pay differentials for levels 1 and 2 are exactly the same in Figures 1 and 3. As regards the calculation of the pay differentials for levels 3, 4 and 5, there are differences between Figure 2 and Figure 3, i.e. when there are several jobs of equal value for which pay is to be compared.

Responsibility of Member States – analytical tools and methods for analysing pay

Article 4.2 clarifies that Member States have a responsibility to develop analytical tools and methods for analysing pay from a gender perspective, with the aim of preventing pay discrimination. The text of the Directive recalls that each Member State has an obligation under the Treaty on the Functioning of the EU to ensure that the principle of equal pay is applied. It also emphasises the need to limit additional costs and administrative burdens for employers, with particular regard to micro, small and medium-sized enterprises. Article 29.3.b also refers to "tools" for assessing pay inequalities and in this context is linked to the tasks and needs of the monitoring body. The same article refers to the fact that guidance or specific help can be obtained from the analytical work and tools of EIGE. EIGE is the EU expert body on gender equality issues. In addition, Article 11 states that Member States shall provide support, in the form of technical assistance and training, to employers with fewer than 250 employees and to the workers' representatives concerned.

The use of the term *tool* in the Directive is vague and can be assigned a number of different meanings. This is not helped by the fact that EIGE, referred to in Article 29, has not yet developed any form of pay analysis tool. According to email

108. The meaning of the concept of a category of workers is set out in Articles 3.1.h and 9.1.g.

communications between the Swedish Gender Equality Agency and EIGE in January 2024, development work on such a tool was planned to start in late spring 2024. According to EIGE, the aim of such a tool would be to support the work of local parties. Consequently, the results of EIGE's work cannot form the basis for the ongoing national implementation processes, as the work of preparing legislative proposals has already started in several of the Nordic countries.

The administrative support that employers will need is not just about guidance on the assessment of work requirements and the comparison of work of equal value. Support or templates are also needed for the reporting of a range of pay data, as described earlier. This pay data from thousands of employers must then be scrutinised by the supervisory body, compiled, transformed into statistics and in some cases published. Overall, therefore, there is a need to develop analytical tools and templates for use at the establishment level (local level), to deliver data to the central level (the monitoring body), among other things, and tools for analysing pay differentials and producing statistics carried out at the central level, i.e. by the monitoring body. These different analytical tools and templates for use at the local and central levels need to be developed in parallel and harmonised with each other.

Equal work and work of equal value – two concepts gaining importance

In summary, the Pay Transparency Directive aims to strengthen and clarify the principle of equal pay under EU law, which is based on comparisons of equal work and work of equal value. Employers with at least 100 employees need to apply these concepts when formulating their pay criteria and pay policy statements. Furthermore, these employers must be able to account for gender pay differentials linked to equal work and work of equal value – to their own staff, in consultation procedures with trade union representatives and in mandatory reporting to the monitoring body. In all the Nordic countries that already have pay survey provisions, the thresholds for written documentation are between 10 and 50 employees. Compliance with existing provisions is likely to be strengthened as a result of the implementation of the Directive.



9. Interaction between pay surveys, ISCO codes and collective agreements

Assessment of work demands is a key element for the classification of work of equal value. Work requirements also play a role in the fulfilment of employers' obligations to classify workers according to a system of national occupational codes. The concept of work requirements is also regularly used in the drafting of collective agreements when describing the basis for pay setting. It is commonly stated that pay should relate to the demands of the work and to an assessment of the employee's ability, performance and/or skills. The concept of work requirements thus appears in three different contexts that are important to social partners: in discrimination legislation, indirectly in legislation on statistics and collective agreements on the reporting of pay statistics, and in recurring formulations in collective agreements on pay that state that work requirements should constitute a basic reference point when setting pay.

With reference to the conditions on the Swedish labour market, this chapter draws attention to the fact that the concept of work requirements is applied in an uncoordinated manner by labour market parties. This has resulted in recurring objections from employers that the concept of work of equal value is difficult to apply with regard to pay surveys and that it leads to duplication of effort. The problems described below are relevant, in principle, to all the Nordic countries.

Classification linked to ISCO codes, an established and accepted practice

The requirements of the Pay Transparency Directive on reporting pay and statistics are new only in part. A long-established practice of reporting pay statistics is mentioned in Article 31 of the Directive. Member States are required to provide these statistics to the European Commission, i.e. Eurostat, with data on pay differentials in unadjusted form.^[109] These statistics are based on the International Standard Classification of Occupations (ISCO) codes. It is on the basis of this classification that official calculations of the pay gap between women and men are conducted. The same statistical basis is stated in Agenda 2030 to form the basis for indicator 8.5.1, which is said to describe progress towards the goal of equal pay for work of equal value. The problems of compiling statistics on work of equal value at the national level have been highlighted in [Chapter 6](#).

In Sweden, the country with the longest history of pay survey provisions in Europe, there has been widespread criticism from employers over the years over perceived requirements for duplication of effort. These objections, particularly from the public sector, are linked to the requirements to classify workers under the national ISCO system. In the public sector, the requirement to assign occupational codes to workers applies to all employers. The reporting requirements in the private sector are based on a sampling system. In the following text, reference is made to the Swedish variant of ISCO codes, called SSYK.^[110] The corresponding designation in Denmark is DISCO and in Norway STYRK. Similar national standards exist in Finland and Iceland.^[111]

Employer organisations' objections to duplication of effort and two parallel processes

The obligation of Swedish employers to produce statistics is regulated by statute.^[112] The coding of work is often done with reference to industry-specific variants of SSYK, such as BESTA^[113] in central government or AID^[114] in municipalities and regions. SSYK is structured around different occupational areas (first digit), main groups (second digit), occupational groups (third digit) and subgroups (fourth digit).

109. The preamble of the Directive, p. 62, refers more specifically to EU Regulations 530/1999 and 223/2009.

110. <https://www.scb.se/dokumentation/klassifikationer-och-standarder/standard-for-svensk-yrkesklassificering-ssyk/>

111. The interplay between Danish equal pay legislation and classification in DISCO codes is also noted on pages 21 ff. in the 2017 Report *Hvad tjender du? Åbenhed om løn på arbejdspladsen* (What do you earn? Transparency about pay in the workplace).

112. See more details in the Ordinance (2001:100) on official statistics and in Medlingsinstitutet's (the Swedish National Mediation Office) documents with quality declarations regarding pay structure statistics for different sectors of society and in documents describing the production of statistics for different sectors of society.

113. www.bestawebben.se/klassificering-steg-for-steg

114. <https://skr.se/arbetsgivarekollektivavtal/lonebildning/arbetsidentifikationaid.157.html>

The application of the concept of work requirements to define work of equal value under the Swedish Discrimination Act and the application of the concept of work requirements for classification according to SSYK/ISCO differ in a number of crucial ways:

- The concept of work in the Discrimination Act and its detailed definition in preparatory works is not the same as or harmonised with the definition in Statistics Sweden's guide to SSYK 2012.^[115] However, the different definitions are relatively close.
- Work with the same grouping level within SSYK-related systems generally represent a wider range of work than represented by the classification equal work and work of equal value. Thus, work with the same SSYK-related grouping level may be judged to have different requirement levels in subsequent pay surveys. It is not unusual for a pay survey to identify more requirement levels than the levels on which the SSYK system is structured.^[116]
- Another difference between the two systems, or regulatory frameworks, is that the Discrimination Act presupposes that different types of work can be compared. Thus, an assessment of work requirements under the Act is made 'factor by factor', i.e. all work under the same employer is assessed (or scored) in terms of educational requirements, and thereafter professional experience requirements, responsibility requirements, etc. In this way, the same assessment scale is used for all work under the same employer. The SSYK system (and ISCO codes), on the other hand, does not provide compatibility between different occupational groups. The Discrimination Act is thus based on a horizontal comparison, factor by factor, at the establishment level. The SSYK system is based on a vertical comparison (to get to the right level) within a system of occupational fields, main groups and occupational groups related to a uniform and national scale.
- A further difference between the two systems for assessing work requirements is that the SSYK system is based on a template that should be applicable to all employers throughout the country. It is thus a top-down system. Pay survey provisions are based on the opposite logic, i.e. bottom-up. Equal work and work of equal value is based on the individual employer's pay policy positions and specific organisational structure.

The concerns of employer organisations over duplication of effort arises when employers do not understand how to link the wording in their own collective

115. Cf. prop. 1999/2000:143, p. 70, and communications on coordination issues for Sweden's official statistics (MIS) 2012-1, p. 13.

116. See, for example, *BESTA-vägen 2019* (BESTA Road 2019, pp. 3-4). It states that the system is not designed to make comparisons across labour market areas for work of equal value. The AID coding manual (2020) states that "AID inte är avsett för att identifiera lika och likvärdiga arbeten. AID behöver i så fall kompletteras" (AID is not designed to identify equal work and work of equal value. In this case, the AID needs to be supplemented; p. 4).

agreements, which states that pay should be related to work requirements, to the legal definition in the Discrimination Act. In the everyday pay policy environment in which both local and central parties find themselves, the concept of work of equal value does not have a specific point of reference.

Discussion on pathways for possible solutions

In its 2008 annual report, the Swedish National Mediation Office states that more than 90 per cent of the country's workers are covered by collective agreements that include local pay formation. It goes on to state that "the vast majority of union agreements that specify local pay formation contain principles to be observed when determining pay. The starting point is the degree of work demands and how well the work is performed."^[117]

Given that pay setting should primarily be related to the concepts of *what* (the requirements of the work) and *how* (the individual's ability and skill), there is no contradiction between, on the one hand, existing collective agreements based on local pay formation and individual pay setting, and, on the other hand, classification requirements for equal work and work of equal value. The latter requirements follow from pay survey provisions or Article 9.1.g of the Pay Transparency Directive. Collective agreements at union level generally require employers to have a documented the pay policy.^[118] Such documentation should show the basis on which the requirements for different work are assessed, evaluated, and handled in terms of pay.^[119] Thus, in practice, an employer will make a judgement on *which work is considered to be of equal value*. The very purpose of a pay policy is that it should express the organisation's desired pay structure for existing jobs. For example, the pay policy should be able to serve as a guide so that new employees are paid at a level appropriate within the organisation.^[120] The purpose of a pay policy is generally to describe the expected pay ranges for different groups of work (of equal value). In addition, the pay policy should be able to specify pay criteria, and their application, *to differentiate the pay of individuals performing equal work*. The requirement of objectivity in pay survey provisions thus does not mean that all work of equal value should be paid the same, but that the pay should be justified on the basis of the local pay criteria applied. Given the existence of individual performance assessment criteria, the application of these criteria should be able to explain pay dispersion within given (equal) work. Thus, if pay survey provisions are correctly applied, when analysing a given pay structure, both the difficulty level of

117. Medlingsinstitutet (Swedish National Mediation Office; 2008) *Avtalsrörelsen och lönebildningen 2007* (Collective bargaining and pay formation 2007), quote from p. 165.

118. Here, 'pay policy' refers to the following terminology in the Pay Transparency Directive: pay structure and policy (p. 39), pay setting policy (pp. 51 and 57) and pay progression policy (Art. 6).

119. This point is also covered by the Transparency Directive; see paragraph 39 of the preamble, which refers to employers' pay structures and pay policies.

120. Cf. Article 5.1.a of the Pay Transparency Directive regarding "ingångslön och ingångslöneintervall" (initial pay or its range).

the work (regardless of who performs the work) and the way the work is performed (by individual employees) must be taken into account.

Given that Sweden has a system in which local pay formation is completely dominant, the possibilities for finding solutions for a better interaction between the pay survey provisions and the collective bargaining system are particularly favourable. As a general rule, in Sweden the employer's responsibility to ensure that pay is not gender discriminatory coincides with the actual level at which pay is defined. The transport sector is the main exception. The situation is different in countries with a high degree of collective bargaining systems, by which individual pay levels are defined in collective agreements that apply to an entire industry. In such situations, specific solutions are required to address gender pay differentials that are identified at company level, but which stem from the application of centralised pay scales. The previously referenced Finnish report *Kollektivavtalens effekter utifrån ett könsperspektiv* (The impact of collective agreements from a gender perspective) points out that under EU law an employer cannot invoke a discriminatory collective agreement to justify a discriminatory practice. According to the report's authors, it would be reasonable for the penalties for discriminatory provisions to be borne primarily by the parties to the collective agreement when the individual employer has complied in good faith with the provisions of the agreement.

Collective labour agreements based on local pay formation, which require pay criteria to be defined locally, apply the same methodology as the pay survey provisions. Interaction with the centralised job classifications of the SSYK/ISCO system can be improved by first developing clear pay criteria and a clear pay policy. As part of this work, the range of existing jobs needs to be identified (equal work) and categorised in terms of their different requirement levels (work of equal value). Once the pay policy positions have been established, in accordance with the principles of collective agreements and including an assessment of which work is equal and of equal value, the next step is to consider how the unique jobs in a particular workplace can best be classified according to the more general definitions of the SSYK/ISCO system. A bottom-up approach, which assigns SSYK/ISCO codes as a final step, can prevent fixation and lock-in at the grouping levels of the ISCO system. The ISCO system lacks in-built compatibility between occupational groups. Comparison between different types of work is at the heart of the concept of work of equal value.

In conclusion, it is important that local parties are made aware that the concept of work requirements can be interpreted in different ways and that the concept is more or less strongly linked to two sets of rules with completely different purposes: on the one hand, regulations or legislation on reporting wage statistics, and on the other hand, legislation on discrimination. It would be desirable for this risk of confusion to be recognized in collective wage agreements. It should also be clear

from collective agreements that the starting point for determining the value of work and the associated 'job requirements' has a precise legal meaning. This definition is now contained in the Pay Transparency Directive. Clarification of collective agreements on these points does not affect the parties' ability to conclude agreements on pay.



10. On pay formation and the existence of frontline labour models

This chapter begins by describing some common features of the Nordic labour market models. The core of the chapter highlights the existence of frontline labour models in the individual Nordic countries. Under this model, the manufacturing industry, characterised by a high degree of competition, has a normative role for pay formation in other industries and sectors. The model can be based on agreements between the central parties or on specific instructions to the national bodies responsible for mediation in labour disputes. In conclusion, the following examples illustrate possible points of contact between the frontline labour model and the theme of equal pay.

The Nordic labour market models are all characterised by both a high degree of collective bargaining coverage and a high degree of unionisation. The models are described as self-regulating in the sense that they are characterised by a high degree of autonomy for social partners, with the State essentially excluded from the pay formation process. However, State intervention does occur in various ways. For example, legislation in Finland, Norway and Iceland allows for the largest collective agreement in a particular sector to be declared universally applicable. This extends the collective agreement to employers who have not signed a collective agreement. Universal declaration is particularly important for setting minimum wages in different sectors. In the majority of EU Member States, including Germany and France, minimum wages are set by the State, which generally means that the minimum wage is a national standard that applies irrespective of the conditions or profitability of different sectors.^[121] In Denmark

121. For a more detailed review of the Nordic labour market models, see Kjellberg (2023), *The Nordic model of industrial relations comparing Denmark, Finland, Norway and Sweden* and *De Nordiske Arbejdsmarkedsmodeller – i Global Konkurrence* (The Nordic Labour Market Models – In Global Competition), Foreningen Norden (2015).

and Sweden, pay level and working conditions set out in collective agreements apply only to the parties covered by the agreement.

The Nordic countries are similar in that they are relatively small and export-oriented industry is given a special status in the countries' pay formation processes. This chapter provides a brief overview of how this is administered and comments on the role of the various institutions for mediating labour market disputes in each country. From a gender equality perspective, the issue of the pay-setting power of export-oriented manufacturing industries is of some importance, as industries dominated by women are primarily comprised of companies, public authorities or organisations that serve the domestic market. The limited format of the report does not allow for detailed reference to the variety of discussion topics to which the frontline labour model regularly gives rise.

In **Denmark**, it has been an established tradition since the 1990s for export-oriented industry to be the first to conclude agreements on pay and working conditions for the private sector. These agreements largely do not include figures. However, the agreement signed between *Dansk Industri* (Confederation of Danish Industry) and *CO-industri* (the negotiating organisation for LO trade unions in the industrial sector), which applies to workers, does include figures. It indicates a minimum pay level as well as the level of pay increase for apprentices. This also serves as a guide for the appropriate rate of pay increase for other contractual areas. Second is the transport sector, which is subject to the largest *normallønsoverenskomst* (standard pay agreement), with pay levels defined within the agreement itself. This is followed by the other sectors. *Lønstrukturkomitéens hovedrapport* (the Wage Structure Committee's main report) shows that pay developments in the private sector provide the overarching framework for the overall rate of pay increase in the public sector.^[122] The role of Danish *forligsmænd* (mediators) is limited to reaching agreements between opposing parties.^[123]

In **Finland**, there has so far been no institutionalised bargaining system implemented by which a particular sector serves as a standard for the rest of the labour market. At the beginning of 2024, Finnish trade union organisations carried out widespread strikes for a number of reasons. One of these was that the Government intended to restrict the ability of the *Riksförlikningsmannen* (National Conciliator's Office) to negotiate. The purpose of these restrictions was to prevent future mediation bids above the so-called *allmänna linjen* (general line). This would mean that no pay rises could exceed those within the export industry.^[124] The largest Finnish-Swedish daily newspaper *Huvudstadbladet* reported at the end of

122. Andersen et al. (2023).

123. See also, *Så medlar man i Danmark* (Conducting Mediation in Denmark), Medlingsinstitutet (Swedish National Mediation Office) 02/04/2024.

124. See also: Yle 24.01.31, *Varför strejkar facken mot regeringens politik? Vi förklarar i tre punkter* (Why are unions striking against government policies? We explain in three points) as well as *Detta handlar de finska strejkerna om* (What the Finnish strikes are all about), Medlingsinstitutet (Swedish National Mediation Office) 13/03/2024.

November 2023 that "discontent is brewing against industry setting the level carers and teachers could end up in a pay trap".^[125]

In **Iceland**, there is no established bargaining system that corresponds to the models in Denmark, Norway or Sweden. One of the reasons is the lack of anything resembling the Danish *hovedavtal* (main agreement). According to information received from the *Ríkissáttasemjari* (State Conciliation and Mediation Officer), broad agreements in the private labour market tend to prompt the government to adopt certain 'action packages'. These government measures mean that other areas within these agreements also have to relate to general arrangements on pay. The State Conciliation and Mediation Officer has no instructions to maintain any specific pay level in its mediation activities. In 2019, the study *A new model for wage formation in Iceland* was published.^[126] The study suggests that Iceland should introduce something similar to a frontline labour model. According to the study, such a model could be a stabilising factor for the Icelandic economy as a whole. The report provides an overall picture of how the frontline principle has been applied in other Nordic countries. A news article dated 8 March 2024, *New Wage Agreement Aims to Stabilise Iceland's Economy*, states that a four-year agreement has been reached.^[127] Behind this 'stability agreement' is a broad coalition of social partners. Neither of the documents referenced above links to the issue of pay equity.

Norway's negotiation system shares some similarities with the Danish and Swedish systems in that the manufacturing industry, characterised by a high degree of competition, sets the level of pay increases that other parties to the labour market are expected to follow. More specifically, this concerns *Industrioverenskomsten* (the Industrial Agreement) signed between *Fellesforbundet* (the United Federation of Trade Unions), a member of the trade union umbrella organisation LO, and *Norsk Industri* (the Federation of Norwegian Industries), a member of *Næringslivets Hovedorganisasjon* (NHO; the Confederation of Norwegian Enterprise). In the private sector, agreements on the level of pay increases are only made for blue-collar workers. Pay formation for white-collar workers takes place at the local level. The level of pay increase in the Industrial Agreement is calculated on the basis that pay increases for salaried employees relate to the norm established in local negotiations, without serving as either a floor or a ceiling. The mark set for other sectors is based on the overall level agreed in central and local agreements through the frontline labour model. *Riksmekleren* (the State Conciliator of Norway) has the sole task of mediating disputes between labour market parties in collective bargaining negotiations. Unlike the Swedish National Mediation Office, the State Conciliator of Norway does not have a specific mandate to promote well-functioning pay formation from a broader societal perspective.^[128] A report on the

125. Lindroos, 27/11/2023, <https://www.hbl.fi/artikel/bde65826-08ff-5a2d-a752-82a949853623>.

126. Holden (2019).

127. Tómas (2024).

128. *Så går medling till i Norge* (How mediation works in Norway), Medlingsinstitutet (Swedish National Mediation Office) 17/05/2023.

possible impact of the frontline model on the gender pay gap is briefly reviewed in Chapter 7, *Likelønn og det kjønnsdelte arbeidsmarkedet. Individuelle preferanser eller strukturelle begrensninger?* (Equal Pay and the Gendered Labour Market. Individual preferences or structural constraints?).^[129]

For the **Swedish** National Mediation Office, the socio-economic mission is paramount to the mission of avoiding labour market conflicts. It is therefore not part of the mediators' task to seek to achieve industrial peace at all costs. This means that mediators appointed by the National Mediation Office do not participate in agreements that conflict with well-functioning pay formation, which is interpreted to mean that the competitive sector sets the standard for rates of pay increase and other labour costs. The first agreement reached by industry serves as the norm, i.e. the 'benchmark' (*märket*) for the rest of the labour market.^[130] Two agreements comprise the leading collective agreement. One is the Technology Agreement for blue-collar workers, between *Teknikarbetsgivarna* (the Technology Industries of Sweden) and *IF Metall*. The other is the Technology Agreement for white-collar workers, between the Technology Industries of Sweden and the three trade unions *Unionen*, *Sveriges Ingenjörer* (Engineers of Sweden) and *Ledarna*. The standardisation of the benchmark is also consolidated through a series of negotiation agreements.^[131]

In addition to the above-mentioned tasks, the work of the National Mediation Office includes analysing pay development from a gender equality perspective, monitoring the issue of discrimination in pay setting on grounds other than gender and, in its deliberations with labour market parties on upcoming and ongoing collective bargaining negotiations, drawing attention to the importance of constructing central collective agreements in such a way as to promote labour market parties' work on pay issues from a gender equality perspective..

Discussion

As indicated in the introduction, the debate on the legitimacy of frontline labour models is ongoing and highly complex, with the gender perspective being only one of many aspects. Here, we refer very briefly to three recent contributions to this debate from Norway and Sweden. In each case the authors point out that the country's frontline labour model allows for considerably more flexibility in its application than mainstream interpretations claim. This is particularly true with regard to pay developments in the public sector, which is dominated by women.

On 29 December 2023, the Norwegian newspaper *Dagens Næringsliv* published a contribution to the debate by Lise Lyngsnes Randberg, leader of *Akademikerne* (the

129. Wagner et al. (2020). See also *Den norske forhandlingsmodellen i et likelønnsperspektiv* (The Norwegian negotiation model from an equal pay perspective) by Misje Nilsen and Schøne, Institutt for samfunnsforskning (Institute for Social Research) 2007:5.

130. See Medlingsinstitutet (National Mediation Office; 2024) *Avtalsrörelsen och lönebildningen 2023*, pp. 31–32.

131. This is described in detail in Medlingsinstitutet (National Mediation Office; 2015) *Avtalsrörelsen och lönebildningen 2014* (Pay negotiations and pay formation), pp.161–164.

Federation of Norwegian Professional Associations), Lønn er en del av løsningen på bemanningskrisen (Pay is part of the solution to the staffing crisis). The Federation of Norwegian Professional Associations is a trade union organisation that claims to defend the frontline trade union model. Criticism has been levelled at the fact that frontline trade union agreements have been interpreted as a strict precedent instead of serving as a reference point. According to Lyngsnes Randberg, the frontline model leaves room to make necessary adjustments to specific economic conditions in different contractual areas. It is highlighted that pay levels in the public sector in no way jeopardise the ability of the private sector to recruit labour. On the contrary, the pay gap between the public and private sectors has increased over time. Today, there are major problems in recruiting skilled staff to publicly funded welfare services. Part of the solution to the staffing crisis is for the public sector to be able to better adjust pay levels.

On 20 March 2024, the Swedish newspaper *Lag & Avtal* published an opinion piece by Kurt Junesjö, who previously worked as a trade union lawyer at *LO/TCO Rättsskydd*, entitled Märket och kejsarens nya kläder (The benchmark and The Emperor's New Clothes). Mr Junesjö points out that Regeringens instruktion till Medlingsinstitutet (the Government's instruction to the Swedish National Mediation Office) does not prescribe a practical application in the sense that the competitive manufacturing industry's pay agreement should be perceived as a binding norm. This is evident, according to Junesjö, from the wording that the National Mediation Office is to promote a consensus among social partners. There is no such consensus regarding how the normative role of the 'benchmark' has been handled. The authority thus fails to fulfil the constitutional requirement of impartiality. Junesjö points out that the instructions allow the National Mediation Office to raise any problems based on statistical analyses and socio-economic conditions, such as gender equality problems, in its discussions with labour market parties.

In a report published in 2018, Industrins lönenormering kan och bör reformeras (Industry wage standardization can and should be reformed), Lars Calmfors identifies a number of reasons for reforming the current practice regarding the industry benchmark. The need for future relative wage changes is linked both to the issue of equal pay and to the need to address severe imbalances in different labour market segments.

To summarise, the frontline model is most clearly observed in Denmark, Norway, and Sweden. The Swedish model is distinguished by the fact that the economic mission of the National Mediation Office has been interpreted as being of greater importance than its mission of promoting labour harmony. The State thus takes a more active role in the Swedish frontline model. Reports following the Finnish strikes at the beginning of the year show that a similar model to the Swedish one is being considered by the Finnish government.



11. Concluding discussion

At the centre of this summary discussion is the question of the implementation of the Pay Transparency Directive and how this might affect the Nordic social partner model. The extent to which further measures may be necessary, either through legislation or collective agreements, is also discussed. As the Nordic Council of Ministers has expressed an ambition to strengthen exchanges in the area of equal pay, equal work and job evaluation and to build alliances in the Nordic countries, some proposals for such further work are presented in this conclusion.

The concept of work of equal value and the importance of the Pay Transparency Directive

It appears from the report that the concept of work of equal value is by no means new. It has been established since the ILO was founded in 1919 and has since been clarified in ILO Convention No. 100 and by the case law of the Court of Justice of the EU. It should be noted that the Nordic Council of Ministers issued a publication on the subject in 1992. The ILO Convention states that the State has a special responsibility to implement the principle of equal pay for work of equal value. The report describes the involvement of the State in tripartite commissions on equal pay, as in the Finnish, Danish and Icelandic examples. In Sweden, a commission on equal lifetime earnings has submitted a comprehensive report. What these commissions have in common is that the eventual proposals presented have all too rarely resulted in specific measures to address gender-related imbalances in the labour market. Social partners have generally shown little ambition to integrate the concept of work of equal value within their own collective agreements and to approach it as a concept that requires practical application. This is specifically described in Chapters 5, 7, and 9. An observation in one of the Finnish reports serves as an example: It is noted that labour market organisations generally declare that they are committed to promoting gender equality and that they evaluate the

gender impact of their own collective agreements. However, there is a contradiction in the fact that these declarations rarely seem to be translated into specific actions that lead to change.

The realisation that the voluntary route has been regularly used to avoid taking action leading to change is the basis for the adoption of the Pay Transparency Directive 2023/970. The adoption of the Directive was preceded by a nine-year phase in which the motivation to take voluntary action was tested. The meaning of these different recommended actions, also referred to as a 'toolbox', is set out in the 2014 European Commission Recommendation.^[132]

The Pay Transparency Directive as a threat to the Nordic social partner models

The transposition of the Directive into national legislation will require changes both on the part of government supervisory authorities and social partners on local and central level. A much more active approach to the concept of equal work and work of equal value will be necessary than has been the case to date. However, the process of implementing the Directive is likely to meet with resistance, not least from social partner representatives on central level. A joint statement from Danish and Swedish social partner representatives on central level exemplifies the resistance to streamlining the application of the EU principle of equal pay for equal work.^[133] The key sentiments expressed are that the Directive must allow for interaction with existing labour market rules, that the rules must be clear and predictable and that the rules must not interfere with the autonomy of social partners and their right to negotiate and conclude collective agreements. As a comment on these supposed threats to the Nordic labour market model, the following can be said:

A court ruling is required to overrule collective agreements that have been concluded. The likelihood that the implementation of the Directive would lead to a wave of lawsuits by Nordic workers alleging that their employers are guilty of pay discrimination seems unlikely, especially in light of the fact that cases of successful pay discrimination litigation have so far been extremely few. This is one of the reasons the main focus of the Directive is on proactive commitments that do not require the involvement of the courts. There is also no mention in the Directive of equality bodies or supervisory bodies taking over the role of labour market parties in negotiating and concluding collective agreements. Instead, the core of the

132. European Commission, *Commission Recommendation on strengthening the principle of equal pay between men and women through transparency*, COM(2014)1405 final.

133. *Svenskt Näringsliv* (Confederation of Swedish Enterprise; 2021) *Lönetransparendirektiv direkt hot mot de svenska och danska arbetsmarknadsmodellerna* (Pay Transparency Directive a direct threat to the Swedish and Danish labour market models). Statement 30 November 2021 from the Chair of the trade union confederations LO and PTK (Sweden) and FH (Denmark), together with the MD of the Confederation of Swedish Enterprise and Dansk Arbejdsgiverforening (Confederation of Danish Employers).

Directive is about transparency and setting clear rules. Such clarity relates to the use and application of pay criteria that are either based on collective agreements or reflect unilateral decisions by employers. Clarity should also be reflected in the framework set for the behaviour of equality bodies and supervisory bodies. Such clarity can be achieved by means of a statutory text that specifies the framework for the authorities' behaviour.

There is one provision in the Pay Transparency Directive that is likely to affect parties' agreements on pay setting. The provision states that a maximum pay differential of 5 per cent within a category of workers can be subject to 'joint pay evaluation'. This provision is described and exemplified in [Chapter 8](#). At the same time, it is important to remember that the ILO Convention is based on a tripartite agreement. This means that the principle of equal pay for work of equal value is an obligation for the social partners. Firstly, the rule means that social partners on local level need to pay attention to the fact that the determination of pay for individual workers must be objectively justified on the basis of documented pay criteria. Secondly, local parties must ensure that the application of these criteria is not discriminatory. The question is whether this is a real problem? What employer would want to apply unfair and discriminatory pay criteria? The reality is that this rule is only relevant for employers with at least 100 employees. In such a large organisation, there is always a professional HR department that is expected to be well versed in applicable laws and collective agreements.

As a result of the efforts of the Swedish Equal Opportunities Ombudsman, the pay of several thousand employees was adjusted in the early 2000s. The average pay increase in one of these reviews was close to SEK 1,300, according to the ten monetary value.^[134] There is no evidence that these pay adjustments have affected or threatened the Swedish pay formation model. It therefore seems unlikely that any pay adjustments that can be expected in the future, as a result of the implementation of the Pay Transparency Directive, would threaten the established partner models.

The state's responsibility to counteract bureaucracy and to develop templates and tools

The implementation of the Directive means that large amounts of payroll data need to be compiled and analysed at the establishment level, reported to a monitoring body, analysed at the authority level and compiled to be made available to the public and for further reporting to the European Commission. The number of

134. See, for example, *Miljongranskningen - Resultat av etapp 2 och slutrapport*, (The Million Audit – Phase 2 results and final report). From the report, the following is apparent, p. 26: "The 177 employers whose cases were closed as of 8 October 2008 have a total of 96,000 employees. The pay adjustments detected up to 8 October 2008 cover at least 1,528 workers, representing 1.6% of all employees. Of these, 1 027 are women and 66 are men. For 435 persons, gender has not been disclosed." According to the report, the average pay rise was about SEK 1,280 per person per month.

employers affected by the reporting requirement in Sweden, with just over 10 million inhabitants, is estimated to be 5,500.^[135] In Norway, it is about 4,000 employers.

There is reason to criticise the Directive's wording on the requirements for the collection and compilation of pay data as having been prepared with insufficient care. This can be exemplified by the wording of Article 29.3.c, which states that the work of Member States in analysing the causes of the gender pay gap, in this case referring to the work of the monitoring body, shall be supported "in particular of the analytical work and tools of the EIGE."^[136] The problem in this context is twofold. As previously mentioned, EIGE has still not started to develop a pay analysis tool more than six months after the adoption of the Directive. Moreover, the planned development of a pay analysis tool does not provide for analysing pay data at the national level, as envisaged in Article 29. Instead, the aim is to develop a tool for assessing job requirements that can be applied at the single establishment level, as implied by the word *tool* in Article 4.2.

As described in Chapter 8, employers will need extensive guidance and administrative support. Analytical tools and templates need to be developed for use at the operational level (local level) for the purpose of, among other things, submitting data at the central level (the monitoring body). Tools are also needed for analysing pay differentials and for the production of statistics at the central level, i.e. by the monitoring body. These different analytical tools and templates need to be developed in a coherent and harmonised way. The development of tools under Article 4.2 to analyse pay differentials between work of equal value, which may cut across the boundaries of collective agreement, cannot be seen as a primary task of either an individual trade union organisation or an employer organisation. The need for these tools and templates arises from demands for action at the state level.^[137] Therefore, the responsibility for this development work should rest with the state. To reduce employers' costs, simplify administrative burdens and ensure that all reporting and evaluation at the government level are carried out as efficiently as possible, it is essential that the state take overall responsibility in this area. The actual development work, with the possibility of sector-specific variants, should preferably take place in consultation with labour market parties. If the state does not take this responsibility, it is at hand that large salary consulting companies step in to sell in-house developed solutions. In such a scenario, the country's employers may pay all or part of the bill for the development work of necessary tools that follow from the requirements of the Pay Transparency Directive.

135. These employers consist of about 4,950 private companies, 160 government agencies, 21 regions and 290 municipalities.

136. EIGE is an acronym for European Institute for Gender Equality.

137. This follows from the wording of Article 4.2. However, a Member State may delegate responsibility for developing such tools if there is an established practice to do so (Article 33). However, this is not the case in any Nordic country.

Statements from the ILO, quoted here in 2013, emphasise the responsibility of the State in this area:

Where the Government is not in a position to influence levels of remuneration it must nevertheless promote the application of the principle of equal remuneration for work of equal value. Where remuneration is determined by collective agreements or individual contracts in the private sector as well as in the informal economy this should occur. In promoting the application of equal remuneration, the State cannot be passive, and needs to take proactive measures. Key elements of ensuring and promoting the application of the principle of equal remuneration in accordance with the Convention are the obligations to promote objective methods for the evaluation of jobs and to cooperate with workers' and employers' organizations.

(*Equal Pay, an Introductory Guide*, s. 60.)

A Finnish report on the impact of *Kollektivavtalens effekter utifrån ett könsperspektiv* (The impact of collective agreements from a gender perspective) recognises the need to complement general legislation on pay surveys. In this context, sector-specific tools and methods resulting from collective agreements can be of value, as pay structures, labour force composition and other conditions can vary widely between different contractual sectors.

Needs for action not directly addressed by the Pay Transparency Directive

Importance of supervision for compliance with legislation

A key issue for the enforcement of equal pay for work of equal value is effective and adequately funded supervision. In this area, the overall Nordic experience is disappointing, especially given how long pay survey provisions have existed in Sweden. The Pay Transparency Directive risks becoming a paper tiger if the reporting requirement is not combined with an effective system of penalties. This is recognised in the Swedish report SOU 2024:40.^[138] It is also necessary that the authority responsible for reviewing pay surveys has a high level of knowledge of the construction of collective agreements. Feedback on pay surveys that show deficiencies, or need to be supplemented, must be formulated in an initiated manner that provides guidance for social partners at local level.

138. See the draft legislative proposal 3a chapter. § 16 ("data on pay differentials between women and men performing work that is considered equal or of equal value") in combination with 3a chapter. § 18 ("shall be ordered to pay a penalty").

The Directive's 5 per cent rule and the 'Murphy case'

The 5 per cent rule described earlier in the Directive imposes specific requirements to address pay differentials within a 'category of workers' of work of equal value. In previous reviews carried out by the Swedish Equal Opportunities Ombudsman, it has been noted that some employers wishing to maintain existing pay ratios thought they had found a way to minimise the number of jobs that need to be compared within the same level or group of work of equal value. This approach entails creating many different levels of work of equal value and conducting subsequent comparisons only within each level of equivalence. As described in [Chapter 5](#), this issue was the subject of a judicial review in Sweden in a case concerning *Holmen Paper*. The Board rejected the Ombudsman's argument that a category with lower work requirements, but which nevertheless had a higher pay level, needed to be included in the comparison and analysis of work of equal value. The Board considered that this requirement was only evident from the preparatory statements and not from the text of the law itself. The law was subsequently amended, and it was emphasised in this context that this issue had already been clarified by the ECJ in Case 157/86 *Murphy*.^[139] A similar clarification to the one introduced in the Swedish pay survey provisions currently does not exist in the other Nordic countries.

The market pay situation as a reason for deviating from the principle of equal pay

Another loophole that has been frequently used as an argument in favour of maintaining existing pay structures is to refer to the somewhat vague concept of market pay situation. This issue is discussed in more detail at the end of Chapter 5. This theme is not touched upon either in the text of the Directive or in its introduction, also known as the preamble. There is therefore a risk that this well-documented problem will be forgotten, as instructions have been given in several Nordic countries not to propose legislation beyond what is necessary for the implementation of the Directive. In view of the purpose of the Directive, it is necessary for this issue to be addressed by both legislators and social partners. In the latter case, this can be done in the context of drafting collective agreements, or jointly prepared comments, aimed at facilitating interaction between legislation and collective agreements. It is important that documented difficulties in retaining and recruiting staff are distinguished from situations in which reference to market forces reflects a desire to avoid critical scrutiny of an organisation's pay policy positions.

139. The current wording of the Swedish legislation is as follows [here](#) as well as in the English version, [extract from the Discrimination Act \(2008:567\) Chapter 3, § 9](#).

Aligning collective agreements with the terminology of EU law

The Finnish report, *Kollektivavtalens effekter utifrån ett könsperspektiv* (The impact of collective agreements from a gender perspective), mentioned in [Chapter 5](#), emphasises the need for the terminology used in collective agreements to be better adapted to the concepts arising from EU law. Similar reasoning follows from the summary in [Chapter 9](#), which emphasises that the concept of work requirements can be interpreted in different ways and that the concept is more or less closely linked to two sets of rules with completely different purposes. On the one hand, work requirements have an indirect meaning with regard to the implementation of occupational classifications according to the ISCO standard and, on the other hand, the concept of work requirements has a precise legal meaning, as is evident from the Pay Transparency Directive. It is important that collective agreements are designed to facilitate interaction with various regulations that impose requirements on local parties. An example of such a requirement is reporting gender pay differentials between regarding equal work and work of equal value, broken down according to basic pay and complementary or variable components.

Forms of consultation and interaction between local parties

Article 9.6 of the Pay Transparency Directive provides wording on consultation with employee representatives. Article 10.1 requires employers to cooperate with employee representatives in listed circumstances. In the normal course of duties, trade unions are tasked to represent their own members. Can employee representatives be expected to abandon this role in the context of a pay survey? Unfair pay differentials are by definition a violation of an individual's human rights.^[140] Is the group conducting these negotiations expected to take joint responsibility in relation to the pay of all employees, regardless of union affiliation? If so, there are many similarities with the role of a safety representative in health and safety matters. There is therefore reason to pay particular attention to the formulation of procedural rules with regard to consultation and cooperation under the Pay Transparency Directive. This may involve clarifications both in the legal text and in collective agreements at central or local levels.^[141]

Knowledge and experience in analysing a pay structure from a gender perspective

Analysing a pay structure from a gender perspective requires knowledge and experience. Such knowledge is not automatically acquired by completing a human

140. "The right not to be discriminated against on grounds of sex is one of the fundamental human rights whose observance the Court has a duty to ensure." United cases C-270/97 and C-271/97 *Deutsche Post AG*, items 56 and 57.

141. The implications of dealing with pay issues in two separate systems are described in more detail in the article '*Samverkan och lönekartläggning*' (Cooperation and pay surveys), Fransson and Stüber (2004).

resources programme, holding a position of trust as a trade union representative or working for an anti-discrimination authority. If there is a lack of knowledge to critically review pay surveys, the implementation of the Directive risks reinforcing the legitimacy of existing pay structures. Article 11 of the Pay Transparency Directive recognises the need for Member States to provide support in the form of technical assistance and training. The issue of imparting the necessary knowledge needs to be addressed at a number of different levels, including in the content of human resources training programmes, by social partners in the development of joint training materials and specific guides adapted to each sector and in internal training for public officials with supervision responsibilities regarding the equal pay principle.^[142]

Work of equal value – the individual is linked to the structural

The scope for addressing the gender pay gap at the national level under the Pay Transparency Directive is limited. This has been observed in several of the referenced reports. The Directive does not provide a mechanism for closing pay differentials between different occupations, sectors or industries. Its operational focus is on closing pay differentials between women and men at the level of an individual employers. At the same time, the reporting and publication requirements open up new avenues for bringing the issue of structural pay differentials into the public discourse. This in turn can increase pressure on both politicians and social partners to take further action.

The requirements for equal pay for equal work and work of equal value cannot be seen in isolation from other preventive provisions in Nordic discrimination legislation. These include, for example, requirements to reconcile work and parenthood, working time issues or requirements for preventive measures to counteract sexual harassment. The issue of equal pay is thus linked to the question of how unpaid domestic work is organised or to the theme of men's violence against women, both at a structural and an individual level. Different provisions on proactive measures thus have a mutually reinforcing effect.

On issues related to sexual harassment, there has been a tangible norm shift. Following #metoo, there is an apparent consensus on zero tolerance of sexual harassment in the workplace in the Nordic countries. This norm change, compared to the situation in the 1990s before sexual harassment became a legal concept, is also an expression of the development of an individual-based human rights perspective.

142. See Stüber (2021) on *Integrering av jämställdhetsperspektiv i personalvetarutbildningar* (Integration of gender perspective in human resources specialist programmes).

So far, the same individual rights-based perspective does not seem to be as evident when it comes to gender pay differentials. An approximate pay differential of 5 per cent, as shown by the aggregate statistics for Denmark and Norway, may seem small in terms of various gender pay gap indices in international comparisons.^[143] From an individual perspective, such small pay differentials, when accumulated over time, amount to a loss of lifetime income in the millions.^[144]

Byrial Bjørst, who also served as a reference person for this report, has in an earlier text captured the connection between the structural level and the everyday life of individuals as follows:

The pay gap has a direct impact on the opportunities for women and men – not only in everyday life when we shop, but also when we buy a house, when we choose whether to live alone, get into a relationship or stay in a relationship. The pay gap affects couples' decisions about who should take leave with the children or which of our careers should take precedence. The pay gap also leads to differences in our options when we retire. The pay gap is not just an expression of the inequality in the incomes of men and women. It is also a cause of inequality in all aspects of life. Improving equality between men and women requires a reduction in the pay gap. It is not whether the pay gap is illegal or whether it is explained or unexplained that matters. What matters is that it is closed.^[145]

The Nordic Council of Ministers' (continued) project on work of equal value

This report is part of an initiative by the Nordic Council of Ministers that aims, among other things, to strengthen exchanges in the area of equal pay, work of equal value and job evaluation and to build alliances in the Nordic countries. This will take the form of meetings and events as well as documentation of work carried out.

This report has described a number of different aspects of the issue of work of equal value. It is suggested that further exchanges on work of equal value could be organised around the following themes:

- Development of **statistics and indicators** aimed at better describing progress towards equal pay for work of equal value at the national level and development of complementary control variables to describe the gender pay gap.

143. See, for example, statistics from the OECD based on data from 2022, <http://www.oecd.org/gender/>.

144. This calculation is based on people with an average pay level and an assumption of a constant pay differential of 5–6 per cent over 40 years.

145. Bjørst (2019, p. 11).

- The development of **tools and templates** to meet the various analysis and reporting requirements of the Pay Transparency Directive. Methods for assessing labour requirements as well as measures to reduce costs and the administrative burden for employers fall within this field.
- Sharing experience on **how the new information** resulting from the reporting requirements of the Transparency Directive is **used and compiled**. This could include media coverage as well as the publication of reports by public authorities and social partners or academic research.
- **Linking** work of equal value **to the broader gender equality policy context** and thus the interplay of the issue with other gender equality policy objectives.
- **Legal issues** related to the principle of equal pay; for example, whether the Pay Transparency Directive is transposed in all Nordic countries, how this is done and following the development of case law.
- The **role of collective agreements** in promoting the principle of equal pay. Are there changes as a result of the Pay Transparency Directive and if so, how are these reflected?

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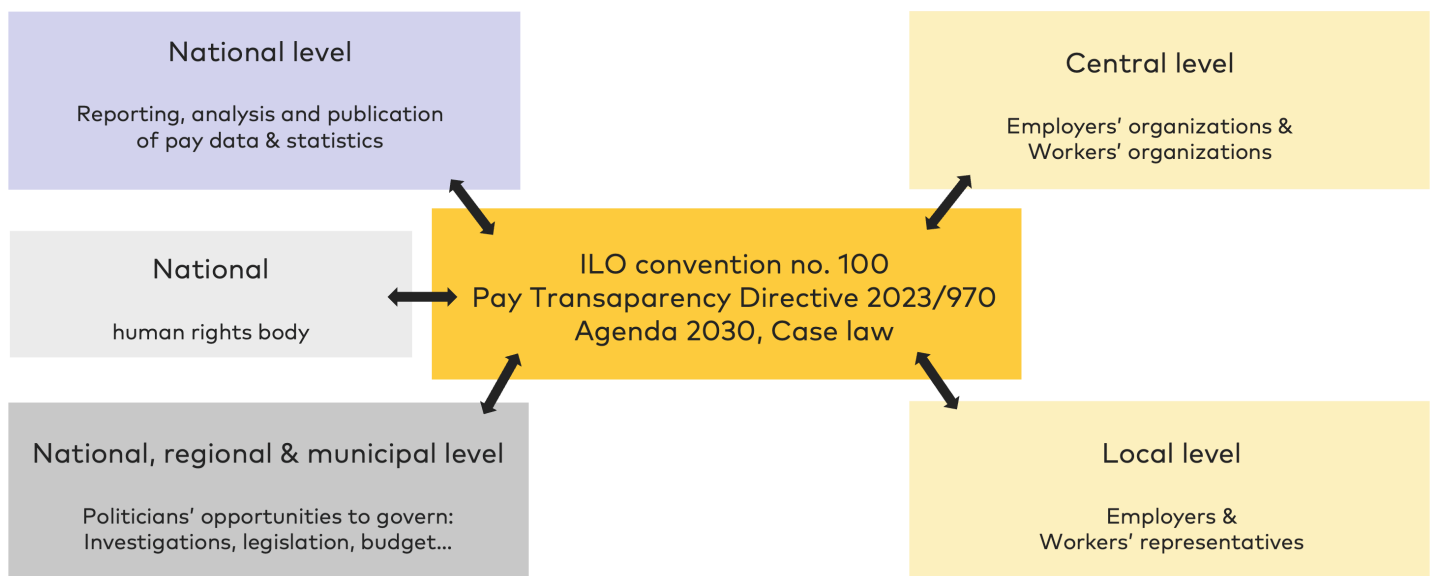
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Work of equal value – different arenas and actors (graphic)

Equal pay for work of equal value a field of tension with different arenas and actors



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