



**European Commission**  
Justice

## Exchange of good practices in gender equality

### Reducing the gender pay gap

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## Discussion paper - Austria

# "Staff income-reports" – The Austrian approach to income-equality on company level

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## Description of the main elements of the good practice

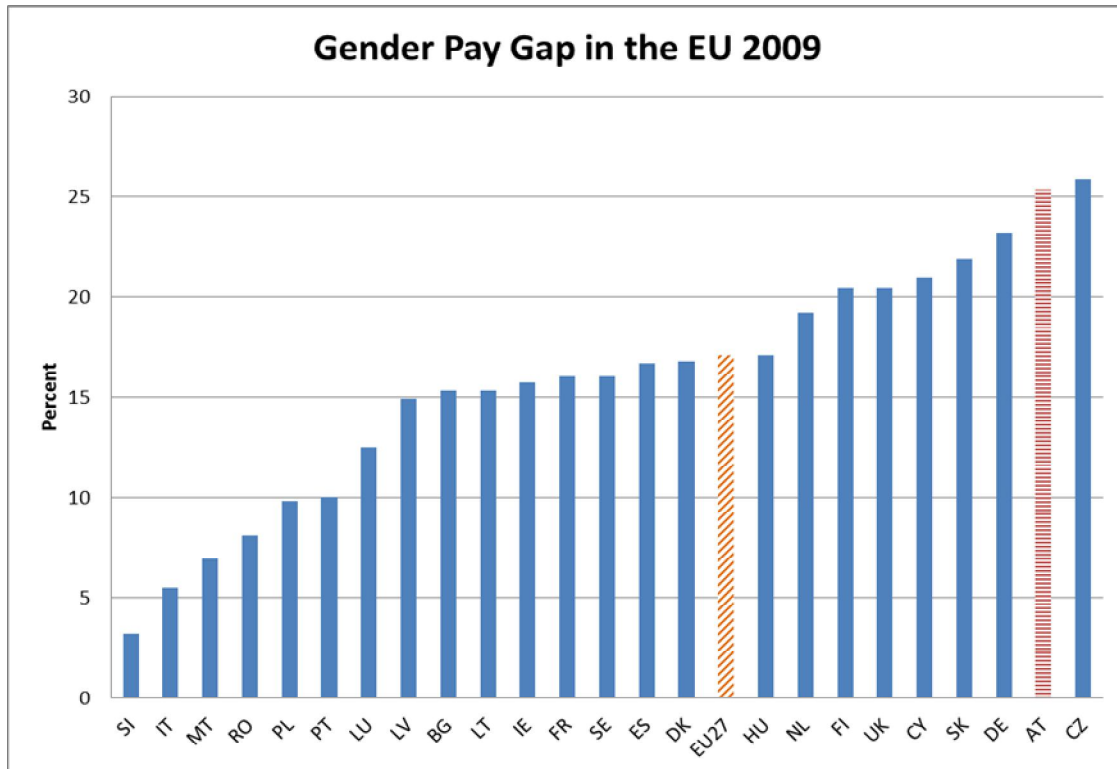
Tackling the rather large Gender Pay Gap in Austria was the main objective of the latest amendment of the Equal Treatment Law. Three new measures were introduced in order to achieve that goal, one of which are the staff income reports. Information about pay in job advertisements and better access to income data for the Ombud for Equality were also part of the package that strives to heighten transparency of pay.

## Background and general policy context

Austria is still among the few European nations that have very large Gender Pay Gap. Equally disturbing is the lack of progress over the last decade. In 1998 the yearly median gross income of female employees – including part-time-work - was only 60.4% that of male income - in 2009 the gap remained unchanged (Source: Wage Tax Statistics). The large share of part-time-work accounts for part of the difference, as in 2010 44% of all working women worked part-time, however, even on an hourly basis the Pay Gap is still as high as 25.4 % (Eurostat). That leaves Austria second to last in EU regarding pay inequity - only the Czech Republic has larger inequity.

This glaring inequity as well as other disadvantages women face in the labour market, were the reasons that a national action plan (NAP) for the Equality of Women and Men in the Labour Market was agreed upon and enacted in 2008. The objective was to develop an action plan for the next five years.

The action plan was formed through cooperation amongst the ministries, academics, NGOs and social partners. Among all the topics discussed, the Gender Pay Gap was highlighted. As a result, new measures to increase transparency in matters of income and helping foster equal pay for equal work and work of equal value were to be introduced.



Source: Eurostat, Indicator on the Gender Pay Gap, hourly median gross income

### The goals and target groups of the good practice

Even though the Austrian Equal Treatment Law provides employees with the legal tools to seek proper recourse only a few cases every year come before the Equal Treatment Commission (ETC). In 2008 and 2009 only 23 income discrimination cases were heard before the Equal Treatment Commission. Not surprisingly, this did not contribute to narrow the overall Gender Pay Gap.

With the 9th amendment of the Equal Treatment Law the subject "Income transparency" was included for the first time. The law introduces three new instruments to more effectively tackle the "Gender Pay Gap". The first instrument obliges employers of a certain size to produce a "staff income-report" every other year.

Second, when employers advertise vacancies they must indicate the collectively bargained minimum wage and state how much more they would be willing to pay. Should this rule be violated the district authority will first issue a warning, and if the employer does not comply a fine of up to 360 euros will be imposed (from 2012).

Third, the Ombud's quality of counselling is to be improved, as questions regarding discrimination are highly complex and require expert advice. Furthermore, procuring the necessary information to prove discrimination is rather difficult because the information is usually not accessible to complainants - the overwhelming majority of whom are women. Under the new law the Ombud for Equality (OmE) or the ETC can compel the Social Security Agency to provide income-data of an employee of the opposite sex with comparable characteristics.

The goal of these three instruments is to reduce income discrimination by increasing income-transparency within the labour market. The measures were introduced after intense discussion with the social partners and are embedded in the National Action Plan for Gender Equality on the Labour Market. The changes have become effective in March 2011.

### **The legal and financial provisions to implement the good practice**

Since March 2011, employers who permanently employ more than 1.000 employees are obliged to produce an "income-report" every other year. The first report has to cover the year 2010 and had to be forwarded to the Works Council (WC) by July 2011 at the latest. In companies without a Works Council, the report must be made accessible to all employees. The new instrument is to be introduced incrementally – depending on the size of the enterprises to which the obligation applies. From 2012 companies with more than 500 employees will be covered, while in 2013 and 2014 the limit is reduced to 250 and 150 employees respectively - companies with 150 employees or less are exempt.

### **Contents of the "income-report"**

The income-reports have to focus on the occupation groups according to the applicable Collective Agreements (CA) for each company. The approach was taken because CA's in Austria cover roughly 90 % of all employees. If the occupation groups in the CA's are differentiated by number of occupational years, the report has to use this differentiation as the basic structure.

If no CA is applicable, the income-report must follow the salary structure (pay levels) of the company. If there is no salary structure the employers must define occupational groups within the company.

As a basic requirement the report must include the following information:

- The number of women and men per occupation group (pay level),
- The average or median income of women and men in the given year by occupation group (pay level)

The income must comprise all forms of work remuneration, (i.e. including bonuses, premiums, extra hours, benefits in kind (value according to the tax law), commissions and other remuneration components). Mere reimbursements for work related costs (e.g. travel expenses) are excluded.

The employer can choose whether to use the average or the median income – or both. The average is the sum of all incomes of a group, divided by the number of the employees; whereas, the median is the central value, meaning 50% of the employees earn less than the median, and 50% earn more.

When cases of part-time and partial year employment come under review the salary has to be aggregated to make it comparable with full-time and full year employment.

The income-report has to be anonymous and may not form any conclusions on individuals. For reasons of data privacy, groups with three people or less are to be omitted for the concerned occupation group. This does not mean that the employees in that group are excluded in the report, but rather they are included at the next aggregate level.

## **Confidentiality**

### *Confidentiality for agents of the workforce*

The income-report should be used as a strategic instrument to close the Gender Pay Gap. Therefore, the (Central) Work Council (C)WC has the right to pursue all legal methods within the company to reach that objective without damaging the company's reputation. Ideally, the (C)WC and employer would present the income-report together in a joint event or give out an internal notice to all employees.

Without the participation of the employer, the information that the Works Council may pass on is limited by the rules of confidentiality of the Labour Relations Act. Accordingly, information coming from the report is to be treated with the same discretion as information about the company's internal financial statements and other "business secrets". Hence, the (C)WC must keep this information within the company, the Trade Union and/or the Chamber of Labour for consultation purposes.

If management is unwilling to cooperate and does not participate, the (C)WC should present only the approximate values and trends. Written documents (originals or copies) may not be passed on without the approval of the employer. Furthermore, the (C)WC should emphasize the importance of confidentiality of the income-report in all conversations – personal or otherwise.

### *Confidentiality for employees*

Employees are also subject to confidentiality. In case of a breach the employee may face dismissal. In addition, an administrative fine up to 360€ may be imposed.

Exemptions are made for consultations with statutory or voluntary bodies representing interests of employees (Trade Union, Chamber of Labour) or other authorised bodies like the Ombud for Equality. Naturally, the income-report may also be used in a lawsuit concerning the Equal Treatment Law.

Confidentiality applies in all cases regarding the public or other enterprises. However, as a general rule, an objective exchange of information and discussion within the company should not be a problem. Essentially, internal communication with the goal of closing the Gender Pay Gap is appropriate as long as the reputation of the company does not suffer. As such, public criticism of the enterprise with reference to the income-reports is strongly ill advised.

No financial provisions were necessary as no direct costs are to be expected. Some resources will be necessary within the enterprises, to draw up the reports. This will mainly concern the design of the report. Once this is completed, current accountancy software should be able to produce those reports automatically.

## **The role of the Works Council**

The main addressee of the report is the Works Council. The (Central) Works Council (CWC) is entitled to review the income-report along with other pertinent information.

Furthermore, the Council is within its competence to pass on relevant information from the income-report to each employee. The breadth and detail of that information is assessed on an individual basis. Information pertaining to the pay gap in the occupation group he or she belongs to is relevant information that can be passed on.

In case the employer does not comply with its obligation to produce the report, the Works Council can force the production in court within three years.

## **Rights of employees without Works Council**

In companies without a Works Council, the income-report must be made accessible to the employees by “publishing” it in a room that is open for all employees to view. Additionally it has to be announced within the company that the report is available.

In case the employer does not produce the report, every individual employee can compel their employer to produce it. The bill further underlines that an employee cannot face discrimination because he or she exercised their right to inspect the report. Should an employee experience retaliation, they can seek recourse for unjust discrimination.

## **Institutional arrangements and procedures of implementation**

The introduction of the income-reports was accompanied by several measures to support the effective implementation and good results. To that end, the Ministry for Women’s Affairs, with support of the social partners and the Ombud for Equality, provided a manual for drafting the report which consists of examples for tables and calculations. Furthermore, numerous seminars were offered and made free of charge in Vienna. Questions raised during the seminar were compiled in a FAQ and is published and constantly updated on the Ombud website.

Additionally, a calculator for wages was developed. This online-tool gives information about the customary pay - differentiated by qualification, occupation and other relevant factors. The tool should give employees an orientation of what pay they can ask for either for their current job or in job-interviews. Together with the income-reports and the information about wages in the job-ads, this is intended to bring more transparency into matters of income.

Furthermore, the Ombud for Equality, in cooperation with the Women’s Organisation of the Trade Union, also offers trainings for creating the income-report in all Austrian regions.

The Austrian Trade Union Federation (ÖGB) and the Chamber of Labour were strongly in favour of the introduction of income-reports. As a result, they actively participated in

the efforts to properly implement the new law. A large conference for the members of the Work Councils was held in February 2010 to inform and support their role in helping create the income-reports. A manual for Work Councils and a checklist were developed to help draft and analyse the report. A brochure was also sent to all members of the Works Councils ("AK Aktuell"). Subsequently, a short manual for the Works Council members on "Closing the Gender Gap – What can be done at company level" was also formed.

Furthermore, a leaflet was put together about giving the correct wage information in job-ads. Further events are in the planning to exchange experiences.

The business organisations participated in drawing up the Manual that was published by the Ministry of Social Affairs. They included the information in their websites and other media distributed it throughout their target groups.

## **Results of the good practice and its impact on achieving gender equality**

### **Key results in relation to the baseline situation and to the goals and target groups**

Given the Austrian tradition of treating all information about income as highly confidential, the amendment of the Equal Treatment Law was a huge step towards creating a more transparent culture. Due to political compromises the law was incomplete, but provides a basis for further developments. Despite its weaknesses, the new law is expected to have a number of positive effects. Possibly the most important one is to foster discussions about the Gender Pay Gap in companies among all participants, such as employees, the employers, Human Resources, the works council and social partners. Hopefully, these diverse discussions will lead to a cultural change, and raise awareness about gender pay inequity.

As for the employers, the intention is to raise awareness of their responsibility to ensure equal pay for equal work and work of equal value. The underlying assumption is that unwarranted differences in pay are often not intended, but rather gender-stereotypes and standard practices lead to unfair results. Awareness of a gender-bias is often lacking and as decisions on wage are very often taken one after the other, each decision seems plausible and the overall gender-bias never becomes visible. Additional pay like bonuses and premiums are especially prone to unequal distribution.

As long as no thorough analysis is made, the bias is hidden. With the income-reports the analysis creates an obligation to the employer and gives a clearer picture of what the pay structure actually looks like within the company.

Naturally, the income-reports are also meant to help show differences in income and fight structural causes for unequal pay. This includes the support of individuals who claim their right to equal pay.

Applicants for a job get better information and orientation on the kind of work and the wage connected to the advertised job - which is important for pay bargaining. This

information is also useful for people who are already employed, but are unsure whether their pay is just for their particular qualifications and occupation.

Lastly, the Ombud for Equality gets an instrument that will help to prove income discrimination more easily in individual law enforcements.

## Challenges, obstacles and constraints encountered

As mentioned above, the political compromise left the changes somewhat incomplete. Points of discussion certainly are:

- **No Action Plan to reduce unwarranted pay differences**

A relevant gap in the Austrian Equal Treatment Law regarding the income reports is the lack of any enforcement provisions in case unwarranted pay differences are shown in the report. In the Swedish model - on which the Austrian is loosely based – a plan of action has to be created that states the pay adjustments and other measures that are to be introduced. Also, this action plan has to include a timetable. The unwarranted pay differences have to be eliminated as soon as possible, but at the latest within three years.

In Austria, no such obligation exists. It is up to the Works Council and/or the individual employee to pursue the appropriate legal recourse that the Austrian Law provides (i.e. either calling upon the Equal Treatment Commission (that has no power to sanction) or go to court.

- **Sanctions for employees – not for employers**

While there are penalties for employees who violate confidentiality, there are no sanctions for employers who do not comply with the new obligations. In case of the income information in advertisements, sanctions against employers will only be imposed from the beginning of 2012 – from then on a fine of 360 Euros will have to be paid in case of ongoing violation. Although the sanctions are not in effect, the obligation is already in force. The experience so far was quite discouraging, as compliance was more the exception than the rule. Apparently, a large number of employers are not willing to comply with a law as long as they face no negative consequences.

Fortunately, employers are more compliant with the income-reports, as about two thirds of companies filed the report in time. Nevertheless, one third has not fully complied. Many companies argue that it takes time and resources to comply with the new regulations. However, it hardly seems comprehensible that large companies (over 1.000 employees), that have highly professional staff and use modern technology for their daily management are not able to produce an income-report in



the time given. If these problems persist the introduction of adequate sanctions must be seriously discussed.

- **Limited Access**

Increasing dialogue about income inequity is a main objective of the income-report, as such the question who can or cannot discuss the results is of great relevance. The proponents of introducing the income-reports argued for a broad access to the reports, as a meaningful discussion is only possible if a wide number of people have access to this information. In an effort to broaden discussions there were deliberations to publish the reports on the internet - thus allowing potential job seekers information on equal pay in a company before they apply for a job. In terms of a political agreement, this was never seriously deliberated. It became quite clear that if any solution was to be found, the access to the reports must be limited to the company. Furthermore, the actual compromise limited the scope even further and made the Works Councils the main target group of the reports.

Even though it was sensible to give the Works Council a strong role, the current situation is a paradox: if there is no Works Council in the company, every employee gets full access to the report. That way, employees in companies without WC are better informed than in companies with a WC. In the long run, a more sound approach should be taken that gives all employees in companies with an obligation to report on income an opportunity to review the income report.

- **Confidentiality**

Closely connected to the question of who learns about the report is the question of what may be passed on. This aspect was subject of intense discussions in the wake of the amendment. While the representative bodies of the employer-side argued strongly that too much publicity could cause unwanted disturbances and damage the companies, the employee-side made a strong case that a wide discussion about income and equality was the very objective of the income-reports.

The introduction of fines for employees is probably of more symbolic value than real impact. A dismissal is by far the harsher sanction if the employer wishes to castigate an employee for disregarding confidentiality. Nevertheless, the fine on breaching confidentiality does not exactly encourage employees to engage in a discussion about income matters.

Furthermore, some of the “technical” requirements” - like the conversion of part-time - caused a number of anomalies and may have to be defined more clearly.

## Assessment of the strengths and weaknesses of the good practice

Without a doubt, the Austrian approach towards more transparency is highly transferable. The income-reports as well as the obligation to include wages in job-ads can easily be implemented in other EU-member states. Certainly some adaptations would be necessary in most cases, depending on the national regimes. Each country would tailor their approach to their state. E.g. because of the extremely strong prevalence of the Collective Agreements, it made sense to base the reports on that structure in the Austrian context - whereas in countries with little coverage by CAs, alternatives have to be found (e.g. defining occupational groups within the company).

It may also be helpful to draw some inspiration from the Swedish model, on which the Austrian is loosely based. In Sweden, employers are to survey and analyse pay criteria and other terms and conditions of employment for their employees to determine whether they are gender-neutral and apply equally to women and men. All pay provisions that may be regarded as remuneration for work are to be scrutinised from a gender equality perspective. This may include such aspects as the wording of a collective agreement, fringe benefits, or criteria for assessing an employee's performance. Such reviews then serve as a basis for further analysis of differences in pay for equal work and work of equal value.

The logib-model was also discussed in Austria. Although it is also an interesting approach, the Austrian solution seemed to correspond better with the needs and expectations of the Austrian stake-holders. In the logib-model, calculation is done by means of a statistical regression analysis. The basis for this calculation is wage data, qualification data and job data of the employees that the employer provides. These can be imported from current wage data software into the, Logib' excel sheets provided or simply be filled in. The evaluation is based on three personal and two job-related criteria.<sup>1</sup>

In the discussion especially the complexity of regression as a procedure was viewed as disadvantage. The strength as a scientifically sound method seemed to be a weakness at the same time: the application requires advanced statistical knowledge, this runs counter to the intention of discussing the results widely. Furthermore, the interpretation of the results is susceptible to mistakes without statistical knowledge. There was also the argument that the complexity may easily cover up that the underlying criteria is not suited for making assertions about proper pay and produce therefore 'false' results. Especially the four criteria of the occupation were criticized as to undifferentiated and not suitable for evaluating the correct pay. A resourceful employer would be able to "feed" data in such a way into the tool, that in the end the result will be equal pay in any case.

The Austrian model is certainly more accessible and easier to understand for most potential users than the logib model, as you need no advanced statistical knowledge to use it. Nevertheless the Austrian model has weaknesses of its own – some of which are inherent to the system, while others could be dealt with through further developments like the ones mentioned above.

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<sup>1</sup> The discussion was based on the Swiss model, but the German model takes a very similar approach

## Main questions and issues for debate at the meeting

The new provisions of the Equal Treatment Law have only recently been implemented, so there is little experience about the effects. A continuous problem is how to implement and enforce these laws (e.g. procuring income reports in companies with fewer than 150 employees, applying sanctions for violating the obligatory income information when advertising jobs...). Eventually, it will be necessary to evaluate the whole package to see if the expected effects were actually achieved.

From the current feedback, an overhaul of the structure may be advisable. Originally, the discussion focused on the differentiation of all kinds of pay (wage, bonuses, premiums, etc.). This was to show where the possible differences come from. This approach was abandoned in order to keep the report as simple as possible. Now, it seems quite obvious that such a differentiation is applicable in all cases, as the employers are unable to explain even warranted differences without referring to all kinds of pay separately.

Finally, in the interest of creating more transparency and reducing pay inequity there are a number of issues to debate and questions to ask, such as the following:

- Is the Austrian approach a possibly useful one for other countries?
- How much transparency is reasonable for enterprises?
- Confidentiality: should it be allowed to talk about the report in the enterprise? Who should get access to the income report?
- What should be the role of the social partners and/or works councils?
- Should there be penalties for employees who violate confidentiality or for employers who do not comply with the new obligation?
- Is information on pay in job-ads a sensible approach to heighten transparency?

## Annex: Useful links

Ministry for Women's Affairs: <http://frauen.bka.gv.at>

Wage calculator: <http://www.gehaltsrechner.gv.at/>

Ombud for Equality: [www.gleichbehandlungsanwaltschaft.at](http://www.gleichbehandlungsanwaltschaft.at)

Manual and checklist of the Trade Union and the Chamber of Labour:  
[http://www.oegb.at/servlet/ContentServer?pagename=OEGBZ/Page/OEGBZ\\_Index&n=OEGBZ\\_Einkommenstransparenz.a&cid=1300445575077](http://www.oegb.at/servlet/ContentServer?pagename=OEGBZ/Page/OEGBZ_Index&n=OEGBZ_Einkommenstransparenz.a&cid=1300445575077)  
<http://www.arbeiterkammer.at/online/page.php?P=7798>

Income-reports - information for the Works Council:  
[http://www.arbeiterkammer.at/bilder/d153/AK\\_Aktuell\\_Nr.5a\\_Einkommensberichte.pdf](http://www.arbeiterkammer.at/bilder/d153/AK_Aktuell_Nr.5a_Einkommensberichte.pdf)

Closing the Gender Gap – What can be done at company level:  
[http://www.arbeiterkammer.at/bilder/d106/AKAktuell\\_Nr5\\_Einkommensschere.pdf](http://www.arbeiterkammer.at/bilder/d106/AKAktuell_Nr5_Einkommensschere.pdf)