



Closing the GPG Guidelines for the Social Partners

provisional draft

June 2016



Explanatory Note

1. The Project «Close the Deal, Fill the Gap»: objectives and methodology

The project «Close the Deal, Fill the Gap» addresses the need to assess the interaction and interdependencies between two different EU policy targets: the involvement of the social partners in the reduction of the Gender Pay Gap (GPG), on the one hand, the prompting of higher level of de-centralisation in the bargaining process, on the other hand. In particular, the promotion of collective bargaining at company level is linked to the need of anchoring the setting of pay to productivity¹.

The approach adopted by the project included both theoretical and action/practice research, which was carried out firstly at macro level, with the reconstruction of the relevant legal and economic framework of each partner country involved, and then at micro level, with a focus on selected case-studies carried out on an interdisciplinary basis, which included legal, economic and sociological expertise.

The research was implemented across the three partner countries – Italy, the UK and Poland – chosen for their contrasting profiles in terms of differing models of industrial relations, systems of collective bargaining and collective agreements' coverage, and differing rates of the GPG, at least according to Eurostat's statistics.

The ultimate aim of the project is to disseminate good practices and to elaborate a set of guidelines that can usefully support trade unions, employers' associations and companies, which are the final beneficiaries of the project, in the negotiation of arrangements on GPG-related issues.

The partnership with the ETUC shall enable the research to transfer its findings to a wider level, so to contribute to the future actions of the European social partners.

2. Research findings and topics addressed by the guidelines

2.1 Lack of awareness and information

The meetings with the national social partners and the analysis of the selected case studies highlighted the need to raise the awareness of trade unions, employers and employers' organisations on the GPG. Not only is it often considered as a «women only» issue, moreover, there is limited awareness of the several possible aspects than can directly or indirectly relate to it. Therefore, while negotiation teams need to

¹ It might be worth noting that 'productivity' is not a gender-neutral concept – often, male work is considered to be more 'productive' than female work – the basis of gender stereotyping and equal value.

ensure an equal representation of women, this is not enough: stereotyped and indirectly discriminatory regulatory schemes must be identified, acknowledged and eradicated in collective bargaining.

In this process, **new alliances might add power and support** to the social partners. British trade unions, for example, have already started to work with some women's organisations such as the Fawcett Society to challenge the government on budget cuts that have disproportionately affected women's jobs and women's access to welfare and public services. Alliances of this sort will also help trade unions to widen their scope of representation of their women members beyond traditional collective bargaining agendas.

2.2. Stereotyping

Poor support for working parents reinforces traditional 'breadwinner' models where women work part time, refuse overtime or avoid occupations or promotion at work that demands longer working hours. At an organisational level gender stereotyping leading to gendered organisational cultures underpins both horizontal and vertical segregation.

Collective agreements can often perpetuate a gendered conception of work-life balance targets and arrangements. First of all, this occurs when parental leave is (re)named as «optional maternity leave»: this legal incorrectness unconsciously reveals the hidden assumption that work-life balance measures are meant to be used by women to balance work and family burdens and not to promote a perspective of equal roles and sharing of care between the parents. This unequal distribution of family burdens can be traced as one of the main factors resulting in a gender time gap and, consequently, result in a GPG (moreover, from a lifetime perspective, also in a gender pension gap). Secondly, the above-mentioned gendered conception is confirmed when there is no equal attention to the rights of working fathers, with specific reference to paternity leave or other rights provided to them. If work-life balance arrangements do not lead to an equal sharing of family burdens between men and women, they can hardly intervene in the «vicious circle» characterising women's career and the deriving gender time/pension/pay gaps. Besides, the impact of the gender time gap on the GPG is worsened if collective agreements choose work attendance as the sole or one of the criteria for the awarding of performance-related pay elements. This worsening is exponentially increased if – as in the Italian context – reductions of tax rates and/or of social security contributions are applied to such pay elements in order to incentivize a rise in the percentage of pay linked to productivity, in accordance with the EU policy guidelines.

2.3 Ambiguity and lack of regulation

Ambiguity in regulation is often the result of compromise in collective bargaining. However, ambiguity or gaps in the regulation of aspects that can potentially affect the GPG should be avoided, to prevent the introduction of informal/unwritten practices to the detriment of women.

The analysis of the **Polish context**, for example, showed that although the Labour Code directly establishes the prohibition of any discrimination and the obligation of equal treatment in all respects, also with regard to remuneration, this does not prevent employers from reducing the amount of bonuses depending on work attendance in the case of employees taking maternity/parental leave. The Polish judiciary has dealt with this issue in cases relating to public sector employees and underlined that the use of rights relating to pregnancy and raising of children (such as sick leave or maternal leave) cannot be considered as an objective and justified reason for reducing pay². However, the Polish case law on GPG-related discrimination in employment is relatively small.

Differently, in **Italy**, the Stability Law for 2016 explicitly forbade any reduction of productivity bonuses in the case of maternity leave. However, it is noteworthy that this Law does not mention any other caring leave, such as parental leave or paternity leave. Therefore, this does not prevent employers from reducing productivity bonuses in the case of such events.

2.4 Gender Bias in the setting of pay and in the awarding of performance/productivity-related pay elements

One of the major topics addressed by the research concerned the awarding of performance/productivity-related pay elements. In the Italian and Polish context, the analysis highlighted that the vast majority of company agreements use **work attendance** as the sole or one of the criteria for the awarding of the above-mentioned pay elements. Besides, it was observed that this occurs independently of the sector concerned or of whether it is a male-dominated sector or not.

The national social partners involved in the project explained that the employees themselves often request the criterion of work attendance as they reckon it is capable of measuring their performance impartially and objectively. The important point here

² Judgement of the Supreme Court of 8 January 2008, case ref. no. II PK 116/07. The Polish case-law on this subject resulted in the amendment of the Act of 12 December 1997 on additional annual salary for employees of the budget sphere to be in line with the constitutional right to the equal treatment. See also the judgement of the Constitutional Court of 7 July 2012, case ref. no. P 59/11, compare: Judgement of the Supreme Court of 7 January 2009, case ref. no. III PK 43/08.

is that all criteria used in the calculation of bonuses should not only be transparent and subject to negotiation, but also free of indirect gender bias.

In fact, the use of the criterion of work attendance can imply an indirect discriminatory effect to the detriment of women, due to the gender time gap deriving from the above-mentioned uneven distribution of family burdens.

Including some types of leave, such as maternity leave and parental leave, in the measurement of work attendance can be a **corrective measure** capable of reducing the discriminatory impact resulting from the use of such criterion. However, when taking this corrective action, social partners need to bear in mind that: 1. As shown by the Polish context, if only a short pre-maternity leave is provided (six weeks before the delivery only since 2013, increased from two weeks), women tend to use sick leave during the final months of their pregnancy if they are incapable of working because of their job's intensity. During their pregnancy, women are also prone to a more frequent use of sick leave. Therefore, a proper reflection on the extent to which **sick leave** needs to be included in work attendance should be considered depending on the specific characteristics of the national regulatory framework (Are women granted an anticipated/extended maternity leave in the case of risks in pregnancy? Are parents granted leave connected with childcare in the case of a child's sickness? Is it paid or unpaid leave?). 2. In order to foster an even distribution of family burdens, any **paternity-related leave** should also be taken into consideration in these corrective measures.

Besides, the economic analysis of the case studies demonstrated that the gender pay gap also derives from the **individual negotiation or awarding of bonuses**, given by the company on a discretionary basis, with a lack of transparency (see 2.6 below) with no room for the social partners to control and take action on them. Besides, the analysis of case studies revealed that, even when the company agreement regulates productivity bonuses, companies may use separate – and not negotiated – systems of productivity remuneration for the highest positions in the company hierarchy, based on a subjective assessment of the employee's expertise and capability of achievement specific targets. Confronting the secrecy around discretionary payment is a challenge for the social partners, yet discretionary pay accounts for a significant proportion of the pay gap in certain sectors, e.g. finance, and is intensified at higher levels of the hierarchy. Collective agreements should include transparent criteria on which individual productivity will be evaluated and bonuses will be paid, and push for equality audits with respect to bonuses.

In this regard, a previous evaluation of job requirements could also help in determining the criteria useful for evaluating workers' performance and workers' productivity on a transparent and more objective basis. This draws attention to the key importance of an **analytical job evaluation** carried out on a gender-neutral basis.

As shown by the British system, job evaluation is a key instrument for implementing the concept of «work of equal value», and it is therefore important for enabling a comparison between different jobs in context of intra-occupational gender-based

horizontal segregation, to the purposes of the principle of pay equality, as regulated by art. 157 TFEU and by dir. 2006/54/CE. As a second step of a process built on an analytical job evaluation, performance and productivity evaluations can be conducted on a gender-neutral basis as well, improving transparency and ensuring the awarding of productivity bonuses is clear of the indirect discriminatory effect deriving from the use of the criterion of work attendance. Key questions arise when identifying which level of collective bargaining should take action in this field of regulation. The UK model provides a good example for company-level decentralised systems, whereas the Belgian model can provide an example of good practice for member states characterised by a nationally centred system of collective bargaining (as well as a good example of legislative support of the social partners' action on this topic, see Loi 22 April 2012, «*Loi visant à lutter contre l'écart salarial entre hommes et femmes*»).

2.5 Vertical segregation

The economic analysis of the GPG carried out by the teams of the project in selected companies highlighted a reverse/negative GPG in low-pay job positions and an exponential increase of the GPG in high-pay positions. A closer investigation explained such reverse GPG as deriving from the fact that in low-pay positions women had almost twice as much length of service as men, with consequent twice as much length-of-service bonuses as men. On the contrary, as the presence of women in medium/high-pay positions became less and less frequent, this resulted in an increase of the GPG, particularly remarkable at the top of the company hierarchy.

More generally, the misleading impression given by the impact of vertical segregation on the measurement of wage differentials (that is a small or even reverse GPG) can be linked to the fact that, as in the Italian case, manual/repetitive job positions are more likely to be covered by basic pay rates set by national collective agreements and less affected by differences in bonuses.

On the contrary, as in the case of the UK financial service sector (which has one of the highest GPGs in the UK), discretionary payments increase proportionately in relation to the position in the hierarchy, where women are increasingly underrepresented.

2.6 Transparency

Transparency in pay is one of the key aspects in the fight against the GPG. On the one hand, employees should be able to understand payments schemes, compensation strategies and practices. They should be able to compare their salaries and to understand where the possible differences may come from. Only the

awareness of the existence of pay differences between men and women can result in actions undertaken by the employees and by the social partners themselves.

On the other hand, public policies should incentivize and support employers' virtuous practices to the purpose of encouraging transparency by: 1. requiring GPG mandatory reports; 2. granting specific benefits (such as tax reductions, or additional points in public procurement procedures) for companies that meet certain targets in the assessment of the GPG carried out in accordance with the regulations on mandatory reporting.

In **Italy**, despite being introduced in 1991 and currently stated by Art. 46 Delegated Decree 198/2006, mandatory reporting on men and women employment conditions for public-owned and private companies with 100+ employees has proved to be ineffective to the purpose of detecting an actual GPG: as the wage data that companies are required to present are too aggregated, any assessment on the GPG and its causes can hardly be carried out.

While there are no legal requirements for employers to publish reports on gender pay equality in **Poland**, the **UK** is discussing draft legislation on this topic that can provide a useful example also for the other member states, Italy included. In fact, the UK draft regulations require companies (with 250+ employees) to publish detailed information on pay. Specifically, a relevant employer must publish: the difference in mean pay between male and female; the difference in median pay; the difference in mean bonus pay; the proportion of male and female relevant employees who received bonus pay during the period of 12 months preceding the relevant date; and the numbers of male and female relevant employees employed by the relevant employer. Each calculation needs to be based on the specific measurement methods stated by these regulations.

Alternative sources of pay data might be sought when the GPG is persistently obscured. Trade unions should attempt to independently collect pay data as a comparison. Social partners should be encouraged to produce equality audits.

In the case study «Transport and Salaried Staff Association /Network Rail», analysed in the project by the UK team, a trade union membership questionnaire that asked members for their pay details indicated specific grades in which the GPG was the greatest. This data led to equal pay cases which persuaded Network Rail to complete a gender pay audit and restructure pay grades accordingly. Also the UK Financial Services case study identifies the potential of crowd sourced pay data to highlight GPGs.

2.7 The use of proactive and reflexive forms of legislation



The enforcement of equal pay legislation cannot be left in the hands of retrospective and reactive remedies for pay discrimination: such approach – which is typical in the UK context, while poorly developed in other countries such as Italy and Poland – is individualistic, adversarial, lengthy and costly for all parties. Greater emphasis should be made of using the law as a proactive *lever* to further negotiation.

In the UK, the case of the Transport and Salaried Staff Association offers an example of a trade union campaign that used the law as a catalyst to ensure that the largest employer in the UK rail sector conducted an equal pay audit that made pay inequality more transparent and resulted in grade restructuring that lowered the GPG in the four highest grades. The Equality Act 2010 has given rise to some examples of reflexive legislation that could be used proactively to 'mainstream' pay equality into organisations, thereby potentially reducing the amount of pay discrimination and subsequent legal cases. The first example is s. 149 the Public Sector Equality Duty, which offers some alternative pathways to negotiating equal pay on a collective basis that does not require individual legal cases to be taken to Employment Tribunal. However this pathway is more clearly defined in Wales and Scotland than in England. The second example is s.78 on mandatory GPG reporting. One problem is that the government's pledge to report on the data uploaded to its database will not happen until 2023. Since employers must publish information every year from April 2018, the TUC could develop an alternative database and conduct its own report much sooner. This can be used to 'name and shame' employers that indicate that women in their organisations are likely to suffer pay inequality. It may also press the government to act more speedily than 2023.

Guidelines

Preamble

- having regard to Articles 2 and 3 of the TEU that establish the right to equality between women and men as one of the essential values and tasks of the EU;
- having regard to Articles 8, 10 and 19 of the TFEU that establish that the EU shall aim to eliminate inequalities, to promote equality between men and women and to combat discrimination based also on sex;
- having regard to Article 157 of the TFEU that establishes that each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied;
- having regard to Article 23 of the Charter of Fundamental Rights of the EU, which provides that equality between women and men shall be ensured in all areas, including employment, work and pay;
- having regard to Directive 2006/54/EC of the European Parliament and the Council of 5 July 2006 “on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)”, which provides that for the same work or for work of equal value, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated;
- having regard to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement, which in the 98th Recital provides that contract performance conditions might also be intended to favour the implementation of measures for the promotion of equality of women and men at work, the increased participation of women in the labour market and the reconciliation of work and private life; and to the Guide on Socially Responsible Public Procurement (SRPP) “Buying Social - A Guide to Taking Account of Social Considerations in Public Procurement”, published by the European Commission in 2011;
- having regard to the Communication from the Commission of 18 July 2007 “Tackling the pay gap between women and men (COM(2007) 424 final)” that encourages to give a new impetus to the fight against the pay gap, in particular with an active support of all stakeholders, social partners included;
- having regard to the European Economic and Social Committee Opinion “Pay gap between women and men” of 22 April 2008, which encourages the fight against the gender pay gap, in particular in collective agreements with the social partners, and through the use of specific measures, such as gender-neutral job classifications;
- having regard to the European Parliament Resolution of 18 November 2008 “with recommendations to the Commission on the application of the principle of equal pay for men and women (2008/2012(INI))” and the European Parliament Resolution of 24 May 2012 “with recommendations to the Commission on application of the principle of equal pay for male and female workers for equal work or work of equal value (2011/2285(INI))”, fostering the introduction of wage transparency measures and gender-neutral job evaluation and classification systems;



- having regard to the European Commission Communication of 5 March 2010 “A Strengthened Commitment to Equality between Women and Men – A Women’s Charter – Declaration by the European Commission on the occasion of the 2010 International Women's Day in commemoration of the 15th anniversary of the adoption of a Declaration and Platform for Action at the Beijing UN World Conference on Women and of the 30th anniversary of the UN Convention on the Elimination of All Forms of Discrimination against Women (COM (2010) 78 final)” and the European Commission Communication of 21 September 2010 “Strategy for equality between women and men 2010-2015 (COM (2010) 491 final)”, which strengthen the EU efforts to build a gender perspective into all its policies with some specific fields of action for equality between women and men and with some key action, in particular equal pay for equal work and work of equal value with an improvement of the transparency of pay, and equality in decision-making with the provision of targeted initiatives to improve the gender balance in decision-making;
- having regard to the European Economic and Social Committee Opinion of 17 March 2010 “on the roadmap for equality between women and men (2006-2010) and follow-up strategy (SOC/350)” which calls some priority areas for political action for gender equality, in particular with regard to work-life balance, equal participation of women and men in decision-making and elimination of sexist stereotypes;
- having regard to the “European Pact for Gender Equality (2011-2020)” adopted by the Council of the EU on 7 March 2011 (2011/C 155/02), which highlights measures to close gender gaps and combat gender segregation in the labour market, in particular to promote women's employment in all age brackets and close gender gaps in employment, eliminate gender stereotypes and promote gender equality at all levels of education and training, ensure equal pay for equal value and encourage the social partners and enterprises to develop and effectively implement initiatives in favour of gender equality;
- having regard to the European Commission Communication of 20 February 2013 “Towards Social Investment for Growth and Cohesion – including implementing the European Social Fund 2014-2020 (COM(2013) 83 final)” that calls on Member States to take efforts to close the gender pay gap, to address other barriers to women’s participation in the labour market and to encourage employers to address workplace discrimination;
- having regard to the European Commission Recommendation of 7 March 2014 “on strengthening the principle of equal pay between women and men through transparency (C (2014) 1405 final)”, which highlights that the Member States should encourage public and private employers and social partners to adopt transparency policies on wage composition and structures and they should put in place specific measures to promote wage transparency; in particular, these measures are the right of employees to obtain information on pay levels and a reporting on pay and pay audits, with an involvement of collective bargaining;
- having regard to the European Parliament Resolution of 10 March 2015 “on progress on equality between women and men in the European Union in 2013 (2014/2217(INI))”, which highlights the imperative need to reduce gender gaps in pay and pension also by addressing the persistent concentration of women in part-time, low-pay and precarious work; furthermore, the European Parliament calls on the Member States, employers and trade union movements to draft and implement job evaluation tools to help determine work of equal value and ensure equal pay between men and women;
- having regard to the European Parliament Resolution of 20 May 2015 “on maternity leave (2015/2655(RSP))”, which highlights the key importance of the sharing of family and domestic

responsibilities between women and men is essential in order to achieve gender equality; in this regard, the European Parliament reiterates its willingness to draft a separate directive establishing paid paternity leave of at least ten working days and also encouraging other legislative measures;

- having regard to the European Parliament Resolution of 9 June 2015 “on the EU Strategy for equality between women and men post 2015 (2014/2152(INI))”, which calls on the Commission to draw up and adopt a new separate strategy for Women’s Rights and Gender Equality in Europe aimed at creating equal opportunities with a view to ending all forms of discrimination suffered by women in the labour market, with also respect to wages; in particular, the European Parliament calls on the Member States to strengthen and enforce the full exercise of collective bargaining in all sectors, as an indispensable tool for fighting wage discrimination;

- having regard to the European Parliament Resolution of 8 October 2015 “on the application of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation” (2014/2160(INI))”, which underlines that vocational training is key to prevent all forms of gender-based discrimination. Furthermore, the Resolution encourages the social partners to play a more active role in fostering equal treatment, underlining that job evaluation and classification systems should preferably be based on collective agreements;

- having regard to the European Parliament Resolution of 3 February 2016 “on the new Strategy for Women’s Rights and Gender Equality in Europe post-2015 (2016/2526(RSP))” which calls for the European Commission to adopt a Communication on a new Strategy for Gender Equality and Women’s Rights 2016-2020;

- having regard to “Framework of Action on Gender Equality” adopted by European Social Partners (CEEP, UNICE/UEAPME and ETUC) of 1 March 2005 that recognizes four priorities that the social partners had to tackle in order to advance gender equality at the work place: addressing gender roles, promoting women in decision-making, supporting work-life balance, tackling the gender pay gap;

- having regard to the ETUC Executive Committee Resolution “Reducing the gender pay gap” adopted by the ETUC Executive Committee on 25 June 2008, which highlights the supporting role of collective bargaining in reducing inequalities - including the gender pay gap – and in promoting equality clauses in public contracts;

- having regard to the ETUC “Strategy and Action Plan 2011-2015” adopted at the ETUC 12th Statutory Congress, Athens on 16-19 May 2011, which encourages a stronger legal framework to close the gender pay gap and promotes all forms of good practice likely to trigger changes in the framework of job classification negotiations;

- having regard to the ETUC “Action Programme on Gender Equality” adopted by the Executive Committee on 6-7 March 2012, that stresses the importance to achieve equal pay between women and men with some key actions, in particular putting the gender pay gap on the agendas of the collective bargaining;

- having regard to the recent ETUC Resolution “Collective bargaining – our powerful tool to close the gender pay gap” adopted at the Executive Committee Meeting of 17-18 June 2015, which encourages, in particular, the collective bargaining to reduce pay inequalities between women and men at all level, especially at the sectoral level.

* * *

Guideline no. 1: *Meeting the experts, improving awareness and knowledge, building networks and alliances, testing experimental cases*

Social partners can raise their awareness and improve their knowledge on the topic of pay equality between men and women. A first step would be to recognise that it is not a «women only» issue. It ought to include men as well: a change can be achieved only if gender stereotypes are overcome and the role of men in family and caring burdens is highlighted, fostered and increased. Moreover, this topic implies a reflection on innovation, change and productivity in new forms of work organisation that has an all-encompassing impact on employers and employees.

To this purpose, social partners should organise training and sensitising activities with experts, including experimental pilot cases to be analysed and promoted as best practices. Other stakeholders such as labour inspectorates, company managers, and civil society groups could also participate in the training. The main goals of such training shall be: 1) raising awareness on the GPG and indicating its hidden symptoms; 2) convincing the social partners of the necessity to include the GPG issue into negotiations with employers and into company policy; 3) indicating methods of preventing the GPG that extend beyond the workplace.

The methods of training could include interactive seminars and workshops conducted by experts in human rights and human resources as well as by labour lawyers and social psychologists. Firstly, the training program should outline the concept of the GPG, and provide a definition, statistics and examples. During the workshops, special attention should be paid to the issue of stereotyping and searching the effective remedies against it. It is important to stress that the full extent of the GPG is only recognised when the lifetime earnings of men and women are taken in to consideration. An hourly GPG does not take into consideration the part-time penalty, the maternal penalty, the precarious penalty, the promotion penalty, and the pensions penalty. Focusing on equal pay or even equal value for women only when they are in work does not take in to account the broken career patterns that women have in comparison to men and does not take into account the loss of deferred pay (pensions) as a result of broken and halted career patterns. Therefore, training and campaigning should also include data on sex differences in lifetime earnings. The topic of women's pay should also be broadened out to include the perspective of intersectional differences between women by, for example, age, ethnicity, disability. Other topics to be covered by the training are non - discrimination law (international, European, as well as internal laws) and human rights in business (taking into account the concept of responsibility to respect). Key elements of the training are also systems of job evaluation, providing answers to questions of why and how to compare/evaluate jobs, the work-life balance concept and gender mainstreaming in organisational decision-

making. In this regard, specific attention should be given to improve the knowledge on the different types of care-related leave, focusing on their different purpose, and moreover on paternity leave and other rights specifically provided to working fathers. The training should also have a practical dimension. The participants should work on good and bad practices provided to them, categorise/label them as either good or bad, and be able to identify the causes of the GPG. It is planned that the final result of the training is working out a model of a “GPG – free” company.

Finally, when appropriate, and with no overlapping of roles, social partners should also build **networks** with organisations promoting gender equality (e.g. civil society groups). Alliances of this sort will help trade unions to widen their scope of representation of women employees beyond traditional collective bargaining agendas.

Guideline no. 2: *Mainstreaming pay equality in collective bargaining by training negotiators, disseminating information and promoting leading cases*

There is a need for greater articulation between equal pay and legal expertise at national levels with local negotiators who are increasingly responsible for decentralised pay negotiations.

Social partners could **enhance the quality of company agreements** that directly or indirectly deal with pay equality by adopting mainstreaming actions aimed at sensitising on the topic (for example, organising a day devoted to pay equality in negotiation), training negotiators and supporting them with specific instruments of harmonisation, such as glossaries, models, best practises. In this regard, social partners could test the following guidelines in pilot cases, and promote these experimental company agreements as leading examples.

The social partners should require a proper and **balanced representation of women** to be ensured on both sides in the negotiation of company agreements.

Social partners need to ensure that negotiating teams are fully versed in complex ways that the GPG and occupational segregation are formed and reproduced. At least one member must be an expert in gender discrimination although all team members should be fully trained and alert to the gendered consequences of negotiated decisions.

At local level the support and recruitment and training of equality representatives helps raise awareness of equality issues and sustain social partners’ organisation.

Guideline no. 3: *Ensuring legal correctness and avoiding gender stereotypes in terminology*

When negotiating (or revising previous) company agreements, the social partners should give specific attention to the use of a legally correct and gender-neutral terminology as well as to an equal promotion of paternity-related rights. In this regard, a gendered naming of professions is to be avoided. Parental leave must not be (re)named as «optional maternity leave»: this not only raises a question of legal correctness, but it can perpetuate a gendered social image of work-life balance that eventually confirms the gender time gap. The same effect results when there is not an equal support of paternity-related leave. This occurs, for example, when the company agreements that use work attendance as a criterion for awarding performance-related pay elements does not include paternity-related leave in the measurement of work attendance among the gender corrective measures aimed at preventing gender bias (v. *infra*).

Guideline no. 4: *Avoiding ambiguity and gaps in the regulation of the criteria for the awarding of performance-related pay elements*

Ambiguity and regulatory gaps are often the conscious result of compromise in the negotiation of a collective agreement, and therefore a means for reaching such agreement. However, they can leave room for unilateral and informal company practices that can eventually introduce indirect or direct discriminatory measures. For example, if a company agreement provides an all-round distribution of a productivity bonus, this does not prevent the company from reducing the amount of this bonus in the case of employees taking parental leave. This situation could be avoided if the company agreement included a specific provision on this aspect. Also previous agreements should be verified and possibly revised in accordance with this guideline.

Guideline no. 5: *Avoiding (or minimising the impact of) work attendance in the choice of criteria for awarding performance-related pay elements*

First of all, the choice of work attendance as the sole criterion or one of the criteria for the awarding of PPEs is anachronistic: the development of new forms of work organisation makes it less possible to measure workers' performance and productivity by merely referring to the length of time worked and to the amount of hours or days actually worked. Tele-working, smart working and the digitalisation of work require reflecting on and selecting other criteria of measurement, such as workloads and performance standards. Besides, the choice of work attendance hardly seems to be a driver for an increase of productivity, as shown by the Italian context.

Secondly, but not less important, the choice of work attendance can have a crucial indirect discriminatory impact on wages to the detriment of women, who are affected by a gender time gap deriving by an uneven distribution of family/care burdens. Such impact is intensified by the legislative actions aimed at fostering and incentivising the

increase of the percentage of pay linked to productivity by reducing the applicable tax rate and/or social security contributions.

This indirect discriminatory impact can be partially limited by gender corrective measures aimed at excluding maternity and parental leave from the calculation of work absences (and also paternity leave, in order to overcome the abovementioned gender stereotypes and promote a sharing in caring burdens). As highlighted in the Guideline no. 2, the company agreement should clarify this aspect with a specific provision: in fact, even if a company agreement lists the types of absences to be calculated in the measurement of work attendance, without including parental leave in this list, this does not necessarily ensure it is not included by the company through informal, unilateral, and unwritten practices.

Another aspect that company agreements could specifically clarify is a distinction between short-term sick leave and long-term sick leave. Specifically, they could provide an inclusion of the former in the measurement of work attendance when it is proportionally taken by women to a greater extent, for example in the case of pregnancy-related sickness or to the purpose of childcare. However, this depends on whether the national legal framework provides an anticipated/extended maternity leave in the case of risks in pregnancy and/or a paid leave connected with childcare in the case of a child's sickness.

Guideline no. 6: *Ensuring equal treatment between long-term/full-time employees, on the one hand, and fixed-term/part-time employees, on the other*

In accordance with the EU and national framework enshrining the principle of non-discrimination between part-time workers/fixed-term workers and full-time/permanent workers, company agreements cannot provide separate and different criteria for these categories of workers as far as the regulation of the awarding of PPEs is concerned. For example, company agreements cannot provide an all-round distribution of the bonus for permanent full-time workers and an awarding of such bonus proportionally with the hours actually worked for fixed-term and/or part-time workers. Not only is such distinction inconsistent with the above-mentioned principle of equal treatment set by the EU directives 97/81/EC and 99/70/EC; in the case of part-timers, it can also imply an indirect discrimination on grounds of gender.

Guideline no. 7: *Negotiating a gender-neutral job evaluation system*

The undervaluation of job requirements typically connected to female skills and abilities results in an underpayment of those jobs that in a company are mainly carried out by women. If, on the one hand, a gendered horizontal segregation is to be avoided when based on occupational stereotypes, on the other hand, it can be

neutralised as a driver for the GPG by re-scaling job positions on the basis of a gender-neutral job evaluation.

Job evaluation is a key instrument for implementing the concept of «work of equal value», and it is therefore key for enabling a comparison between different jobs in context of intra-occupational gender-based horizontal segregation.

Job evaluation could be implemented through a collectively negotiated process, which could include an agreement and the establishment of a bilateral and gender-balanced committee responsible for monitoring its implementation and follow-up.

In nationally centred collective bargaining systems, this might require a process of review of the job classification system adopted by national sectoral collective agreements (and possibly a cross-sector dialogue of the social partners at national level).

The clarity associated with a gender-neutral job evaluation system will provide a firm foundation for the development of transparent bonus systems (see guideline no. 8 below).

Guideline no. 8: *Negotiating the criteria for measuring and evaluating workers performance and productivity, for awarding performance-related pay elements*

Social partners should address the complexity and potential dangers of discretionary bonus systems and ensure that 'objective' criteria are free from bias. On the one hand, the questionable criterion of work attendance is often requested by the employees themselves as a means of measuring their performance impartially and objectively, and by trade unions, in order to have the employer accountable to them. On the other hand, the GPG often derives from the individual negotiation or awarding of bonuses, given by the company on a discretionary basis, with no room for social partner involvement.

Performance and productivity criteria need to be spelt out clearly so that favouritism and/or unconscious bias is removed from bonus/productivity decisions. Ideally such clarification should be determined by the social partners so that discretion at the level of the individual manager is reduced. On the basis of these considerations, an evaluation of job requirements, as mentioned in Guideline no. 7, could also help to determine the criteria useful for evaluating workers' performance and workers' productivity on a transparent and more objective basis.– Transparency and joint determination of bonus/productivity criteria would lead to greater sense of fairness in the allocation of reward as arbitrary discretion would be reduced. As for job evaluation, a joint determination of productivity criteria could also imply a collectively negotiated process and the establishment of a bilateral gender-balanced committee responsible for monitoring the agreement's implementation. This could lead to three main positive outcomes: 1. the company would be accountable, e.g. to the abovementioned bilateral committee, for the awarding of any productivity/performance-related bonus; 2. such awarding would not be exclusively

based on a measurement of work attendance but would nevertheless be transparent and impartial. When the type of work organisation allows it, performance and productivity targets could be set at team/group level; 3. greater transparency and fairness may finally result in better employee morale/productivity.

Guideline no. 9: *Breaking the promotion barrier: negotiating criteria for career progress, taking action on job design, providing training and specific conditions for women returning from maternity leave, setting targets*

Vertical segregation can be overcome by similarly providing gender-neutral criteria for career progress. Once again, they could be introduced by collective agreement, with a bilateral gender-balanced committee responsible for monitoring its implementation.

Job design should be considered a means to challenge existing occupational segregation and facilitate opportunities for women to move through job hierarchies. It is recognised that this is particularly important in sectors, such as financial services, where men dominate the more lucrative (both with respect to base pay and to bonuses) jobs.

Linked to job design, it is crucial that women are encouraged to access training and skills development to enable them to break into better-rewarded positions. Alone, this is not sufficient. Social partners must promote access to development resources and for all jobs to be advertised with job flexibility in hours and conditions as a means to break the dominant male culture in some jobs, that acts as a barrier to women's application and acceptance.

In order to break the entrenched nature of gender segregation and the gender pay gap across hierarchies, social partners should promote targets for women's representation at higher levels of organisations. Targets alone are not sufficient and should be linked to equality audits, skill development and flexible work.

Guideline no. 10: *Fostering Transparency in the Company and along its Supply-Chain*

Social partners should negotiate a procedure aimed at providing company level reports with very detailed information on pay, such as the difference in mean and median pay between male and female workers, the difference in mean bonus pay, the proportion of male and female employees who received bonus pay during the period of 12 months preceding the relevant date, and finally the numbers of male and female employees employed. Each calculation should be based on a specific measurement method stated by the company agreement. If law requires a mandatory reporting, a negotiated process could extend the applicability of such duty beyond its scope and/or improve the applicable regulatory legal framework. Alternatively, trade unions could attempt to independently collect pay data – for example through a trade union

membership questionnaire asking members for their pay details – as a comparison with the data reported and published by the company in accordance with the law (if present and applicable). This can be used to persuade employers to negotiate better pay structures where data indicate that women in their organisations are likely to suffer pay inequality.

Social partners could ensure such transparency is granted also along the supply-chain of the company by negotiating «social clauses» in company agreements making the respect of certain transparency standards (or of certain low GPG rates), as defined in the above-mentioned guidelines on reporting, a condition of sub-contracting.

Guideline no. 11: *Use proactive, reflexive forms of legislation as a lever for negotiation*

The law, specifically reflexive legislation, should be used as a proactive *lever* to further negotiation, to 'mainstream' pay equality into organisations, thereby potentially reducing the amount of pay discrimination and subsequent legal cases. Specific duties required in the public sector could play a pivot role to this purpose.

In the meantime, social partners should lobby the government for improvements in the regulatory framework and for making the law effective in reducing the GPG. In this regard, they should call for the government to deal with the topic from a lifetime perspective, thus comprising the issue of the gender pension gap deriving from the intertwining of all the gender bias hereby considered, i.e. the time gap, vertical and horizontal segregation, and the pay gap.