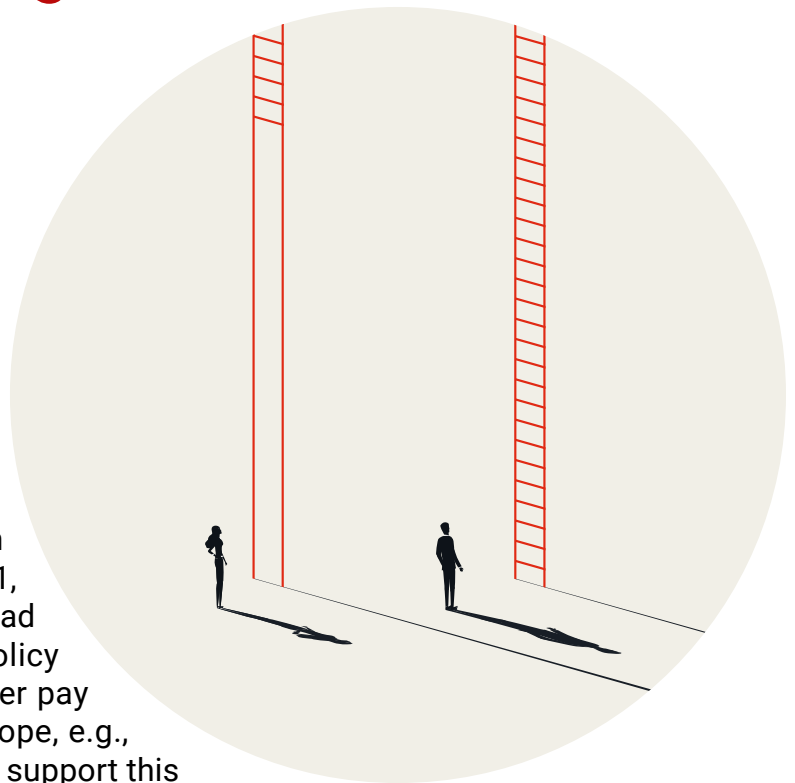


FAIR PAY A EUROPEAN RACE TO EQUALITY AND EQUAL OPPORTUNITIES FOR ALL

SUMMARY

Fair pay is discussed in many countries around the world – from the USA and Canada to New Zealand and to Europe. Many approaches have been practiced ensuring fair pay across organizations. Transparency, regular pay analysis, and neutral job evaluation systems have proven most successful. In 2021, the European Commission proposed a new road to fair pay in the EU combining all these policy instruments in a directive to drive the gender pay gaps down. Best practices from across Europe, e.g., from France, the United Kingdom, or Iceland, support this selection on policy instruments.

The discussion on policy instruments reveals also the challenges laying ahead: Iceland – as the first country – has enshrined an intersectional approach to fair pay in its legal requirements and the European parliament is stressing the intersectional nature of the issue. Additionally, the discussion on the value of work and how to measure jobs has been brought to a new level. With the COVID-19 pandemic, the value of mostly female-dominated jobs has been unfolded and the discussion on undervaluing has gained new impetus. Now is the time to trigger real change on fair pay – with binding measures and sanctions in case of non-compliance. And it is also the time to discuss systemic changes. Analyzing pay structures and implementing fair pay is the first step in starting this process. Paying everyone fairly is not only a women's issue but concerns everyone: ensuring fairness for all employees in every company has far reaching consequences and is key for equality and equal opportunities for all, no matter where they come from, who they love, or what they believe in, whether they have children or not, or how old they are.



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FAIR PAY
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FAIR PAY - A EUROPEAN RACE TO EQUALITY AND EQUAL OPPORTUNITIES FOR ALL

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Introduction

Although fair pay has been enshrined in the founding principles of the European Union (EU), the gender pay gap has narrowed only marginally within the past years. In 2019, the gender pay gap was 14 percent in the EU – being only at 16 percent in 2010.¹ The differences between the member states of the EU are remarkable – ranging from one percent in Luxembourg to 22 percent in Estonia.² However, none of the countries has managed to close their pay gaps entirely. The reasons behind these gaps are manifold, ranging from differences in labour market participation, differences in hours worked, segregation in occupations and among career ladders as well as an unequal share of care work.³ In addition, stereotypes about gender roles, discrimination based on gender among other grounds, or a lack of transparency regarding wages and corporate cultures persist.

The principle of equal pay for equal work and work of equal value was first mentioned in the Treaty of Rome in 1957. Thereby, it shall guarantee a level playing field among workers in the European Union⁴ and pays into the principle of free movement of workers. However, based on the data presented above, it can be questioned whether this intention is put into practice in the member states of the EU. Following the principle laid down in the Treaty of Rome, fair pay was transferred to the subsequent EU treaties

and can be found in Article 157 of the Treaty on the Functioning of the European Union. Article 157 reads:

“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.”

In application to this principle, several court cases have been decided upon by the European Court of Justice (ECJ) laying the foundation for the directive on equal pay in 2006 that also consolidated the Union’s directives on equal treatment and occupational social security.⁵ Based also on the court cases, the directive clarifies that the burden of proof for fair pay falls on the employer in cases that go before the court.⁶

Despite the legal principles and landmark cases by the ECJ⁷, the gender pay gap stays at a constant level and voices get louder that current provisions are either not strict enough, enforcement is too uneven, or legislative measures do not catch the root causes of the pay gap – or for all of these reasons combined, the need for improvement is expressed. President of the European Commission, Ursula von der Leyen, made the gender pay gap a top priority again and announced in her inaugurating speech to present a proposal to close the gender pay gap in the EU. The discussion based on this long-awaited proposal has just moved to the European Parliament (EP) and the member states.

1 Eurostat (2021). *Gender pay gap in unadjusted form*. Retrieved on October 25, 2021, from <https://ec.europa.eu/eurostat/databrowser/view/tesem180/default/table?lang=en>.

2 *Ibid.*

3 Leythienne, D. & Pérez-Julián, M. (2021). *Gender pay gaps in the European Union – a statistical analysis*. Eurostat Statistical Working Papers. Publications Office of the European Union, Luxembourg.

4 Then still the European Economic Community

5 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 (recast)

6 Craig, P. & de Búrca, G. (2020). *EU Law – Text, Cases and Materials*. 7th Edition. Oxford University Press.

7 For a collection of the landmark cases see European Union (2019). *Equal pay – Overview of landmark case-law of the Court of Justice of the European Union*. Publications Office of the European Union, Luxembourg.

On the Unequal Pay Day held across Europe on 10 November 2021, this policy brief will explore the current state of European policymaking as well as showcase already existing policies across Europe. As one thing is for sure: fair pay is the key to equal opportunities for everyone, no matter where they come from, who they love, or what they believe in, whether they have children or how old they are.

Learning from Others: Best Practices across Europe

The approaches to fair pay vary greatly among European countries. This section will showcase a few of these strategies and assess whether they prove successful.

Radical Transparency in the United Kingdom

In 2010, the government decided upon the Equality Act⁸ that brings together 116 different pieces of legislation protecting women and other groups from discrimination based on age, race, disability, and other factors. Among those statutes are two sets of regulations that require both private and voluntary-sector organizations as well as public bodies in England, Wales, and Scotland to publish data on their gender pay gaps if they have 250 or more employees. Among these data points are the gender pay gap as mean and median, the bonus gap as mean and medians as well the distribution of women and men in the different wage quartiles. Companies are given the freedom to choose

how to analyse their gender pay gaps and can select whichever tool best suits them. In a report, organisations have the chance to reflect on their data, and give an outlook on pay structures, hiring habits, or other factors influencing their number. In a final step, the organisation's data is published on a government website available to all.⁹

The first year of reporting has triggered a huge interest in the gender pay gap and companies' performance. Naming and shaming of those with the lowest and highest pay gaps have taken up a large amount of space in the media. It seemed that the discussion on high pay gaps has turned the coin – towards fair working conditions for all. The reporting also triggered further advancements regarding the measurement of pay gaps based on disability, LGBTIQ+ or intersectional grounds.

And then COVID-19 broke out. The reporting deadline has been moved giving the fatal signal that gender equality and fair pay is not so important in dealing with a global crisis. Just in October 2021, the last reporting deadline showed that pay gaps are breaking up again in a number of organisations and industries.

Learning from the UK, transparency is essential to drive pay gaps down and to stir the public debate on fairness. However, reporting requirements without sanctions in case of non-compliance or the lack of immediate legal consequences when discriminatory practices are detected will not be able to close pay gaps entirely. Naming and shaming can only be the first step.

8 Equality Act 2010: <https://www.legislation.gov.uk/ukpga/2010/15/contents>

9 See <https://gender-pay-gap.service.gov.uk/>

Regular Pay Analysis in Switzerland

With the effect of the Equality Act¹⁰ from 1 July 2020, businesses with 100 or more employees are given a deadline for checking their pay structures. By 31 July 2021, at the latest, they must carry out a pay analysis, and repeat the analysis every four years after that. The Swiss Federal Office for Gender Equality provides a standard tool for analysis, Logib¹¹, that allows companies from two employees onwards to run the analysis easily themselves. The results will be checked by an independent body, and in the private sector, they will be made available to employees and shareholders. The results for companies under public law will be published openly.

Following heated debates in the Swiss parliament, many women's rights organizations have expressed disappointment that the law does not contemplate any sanctions. Another weak point of this legislation is that there is no standard procedure or registry for companies falling under this regulation. Thereby, the real effect of this law remains hidden and unchecked. Adding further to this discussion are two aspects: First, companies are asked to check their remuneration systems every four years – leaving much room for gaps opening again. And second, the goal is to have companies with an adjusted of pay gap of less than five percent. However, an adjusted pay gap at this level may still hint to form of structural discrimination.

Standardizing Fair Pay in Iceland

In 2017, the Equality Act¹² has been updated and produced real momentum on fair pay. Article 19 introduced the Equal Pay Standard¹³. Modelled according to ISO standards 9001 and 14001, the Standard provides the basis for an audit and certification scheme for all companies with more than 25 employees, no matter the sector or composition of the company. Any entity that fails to comply must pay a fine for every day it remains uncertified. Currently, this fine is approx. EUR 400 per day. As certifications must be renewed every three years, business leaders and workers alike can be sure that fair pay continues to be accessible to everybody. Additionally, the Center for Gender Equality maintains a register of both companies with and without certification.¹⁴

By the end of 2020, Iceland moved another step forward. The Equality Act¹⁵ has been updated again – this time adding among other aspects the provision to ensure fair pay for all persons regardless of gender. This provision is revolutionary and unique in its design. Although the public debate on intersectionality and definitions beyond gender has gained focus in recent years, legal provisions have not been updated yet – except in Iceland. Thereby, the country demonstrates once again its leading position on equality and fair pay.

10 Bundesgesetz über die Gleichstellung von Frau und Mann (Gleichstellungsgesetz, GIG): <https://www.fedlex.admin.ch/eli/oc/2019/515/de> Verordnung über die Überprüfung der Lohngleichheitsanalyse: <https://www.fedlex.admin.ch/eli/oc/2019/516/de>

11 See <https://www.logib.admin.ch/home>
The tool can be used also outside Switzerland and is available in English, German, French and Italian.

12 Regulation on the certification of equal pay systems of companies and institutions according to the ÍST 85 Standard – No. 1030 of 13 November 2017: https://www.government.is/library/04-Legislation/Regulation_CertificatinOfEqualPaySytems_25012018.pdf

13 For further information on the Equal Pay Standard see <https://www.government.is/topics/human-rights-and-equality/equality/equal-pay-certification/>

14 See <https://www.jafnretti.is/is/vinumarkadur/jofn-laun-og-jafnir-moguleikar/listi-yfir-adila-sem-hlotid-hafa-vottun>

15 Act on Equal Status and Equal Rights Irrespective of Gender: <https://www.government.is/library/04-Legislation/Act%20on%20Equal%20Status%20and%20Equal%20Rights%20Irrespective%20of%20Gender.pdf>

Focusing on Individual Action in Germany

Germany went a somewhat different way. Although with the Wage Transparency Act¹⁶ companies with more than 500 employees were obliged to report on the share of women and men in the company and invited to review their pay structure, the major focus was laid on the individual right to disclosure. Employees in companies with more than 200 employees can now ask for a comparative wage – receiving the median of a group containing minimum six people of the opposite sex. Despite this right, no legal consequences come up when differences in pay occur. If unequal payments are discovered, employees can though sue for a corresponding salary adjustment. This option is rarely used, only a few court cases have been opened since the enactment of the law.

In 2019, the effects of the Wage Transparency Act have been evaluated for the first time with devastating yet promising results: Only four percent of the employees have used their rights to disclosure within two years making the law failing its intention. Nonetheless, around 40 percent of companies have analysed their pay systems although they are not obliged to do so.¹⁷

First an Index, now a Standard on Gender Equality in France

In 2018, France decided to create a legally binding Gender Equality Index¹⁸. Companies with more than 50 employees now are obliged to calculate the index with maximum 100 points and yearly publish their score. If companies fall under the value of 75 points, fines will be imposed, and changes are mandated to close the examined gaps. The following indicators need to be calculated:

1. The gender pay gap (max. 40 points),
2. The difference in the distribution of salary increases (max. 20 points),
3. The difference in the distribution of promotions (only valid for companies with more than 250 employees; max. 15 points),
4. the number of employees increased on their return from maternity leave, (max. 15 points), and
5. The number of people of the under-represented sex among the 10 highest paid positions (max. 10 points).

The scores of companies with more than 250 employees can be accessed via a government portal. It allows further to compare the index scores and shows how companies are performing over time.¹⁹ In general, the index combines various challenges women face in the labour market – not only the pay gaps. Thereby, the index allows for a more complete picture of equal opportunities that people can access.

16 Gesetz zur Förderung der Entgelttransparenz zwischen Frauen und Männern (Entgelttransparenzgesetz - EntgTranspG): <https://www.gesetze-im-internet.de/entgtranspg/BJNR215210017.html>

17 Bericht der Bundesregierung zur Wirksamkeit des Gesetzes zur Förderung der Entgelttransparenz zwischen Frauen und Männern: <https://www.bmfsfj.de/resource/blob/137224/79c7431772c314367059abc8a3242a55/bericht-der-br-foerderung-entgelttransparenz-data.pdf>

18 LOI n° 2018-771 du 5 septembre 2018 pour la liberté de choisir son avenir professionnel : <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000037367660/>

19 See <https://index-egapro.travail.gouv.fr/consulter-index/>

In 2021, another initiative was started in France – to create an international ISO standard on gender equality. With this standard hiring and promotion practices, pay structures as well as health sexual harassment can be assessed in a structured manner.

Holistic Approach in Sweden

The heart of Swedish policies is the individual: Since 1971, individual taxation is in place resulting in individual economic independence as a focal point in Swedish policymaking. The tax reform has motivated many women to work and to work full-time. Combined with a coherent strategy on day-care for children, a more egalitarian share of work and care does not remain a wish among many couples but is lived reality, as OECD data shows.²⁰

The Swedish picture is rounded up by transparency and fairness both enshrined in the Swedish way of life. Everybody can check the wages and taxes of others at the Swedish tax office. Already since 2016, companies with more than 25 employees are required to submit reports on the state of equality. If gaps are found, it is mandatory to close these gaps otherwise fines can be imposed on the respective company. By combining all these very targeted measures to achieve equality, Sweden follows the maxim: “Fix the system, not the women.”

The European Union and its Way Forward

In March 2021, the European Commission published a draft directive on pay transparency²¹. The proposal has been long-awaited and sets out a coherent framework for fair pay. The major points include:

- Setting a standard on pay transparency and reporting mechanisms;
- Requiring a gender-neutral job evaluation system;
- Establishing a right to information for workers;
- Shifting the burden of proof for fair pay on employers; and
- Setting sanctions and remedies in case of non-compliance;

With this selection, the European Commission has combined the best approaches – discussed above – currently practiced in Europe. Different approaches on transparency and reporting have been discussed in academia and across policy-makers. Those being evaluated most effectively create a holistic and systemic approach towards fair pay and promoting transparency. And this is exactly what the European Commission demands with its proposal. Already in 2013²² and 2014²³, different impact assessments have shown the potential of systemic analysis of fair pay and pay transparency: For every percentage point the gender pay gap closes in the EU, the GDP may increase by +0.1 percentage points.²⁴

20 See OECD: Time spent in paid and unpaid work, by sex: <https://stats.oecd.org/index.aspx?queryid=54757#>

21 Proposal for a Directive of the European Parliament and the of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms (COM(2021) 93 final)

22 European Added Value Assessment on the application of the principle of equal pay for men and women for equal work of equal value (EAVA 4/2013)

23 Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency (2014/124/EU)

24 European added value of applying the principle of Equal Pay for men and women for equal work or work of equal value – Annex II

The value and business cases for fair pay are crystal clear and the selection of suitable policy has been assessed. But how do others react to the Commission's proposal? Immediately after its publications trade unions and employers' organisations got into debate. The main challenging points are questions regarding the involvement of trade unions and workers' representatives in the job evaluation process. Furthermore, trade unions demand to be involved in negotiations with employers on action plans closing pay gaps. The threshold for companies to report on their pay gaps is currently also up for debate. Both employers' representatives and trade unions aim to strengthen the role of collective agreements to advance fair pay.

The European Parliament has taken the discussion on the draft to a new level: The Committees on Employment and Gender Equality have combined their human power and worked on a shared amendment that has proven to be ground-breaking on European action on fair pay.²⁵ The shared draft now heavily supports an intersectional approach to fair pay and includes non-binary persons as well. This would be a decisive novum in this matter. In addition, the new draft has lower thresholds for reporting and strengthens the positions of workers' representations and collective agreements. Already now a board majority of members of the parliament support the Commission's initiative on fair pay. The vote on the draft proposal developed in the EP is still pending and is expected in late 2021.

It is very promising that – besides the European Commission closely following the member states' policies on fair pay – research has shown positive effects on various transparency, reporting, and auditing instruments. A study conducted by Eurofound found that one in four companies implementing transparency measures went further than the legal requirements.²⁶ Other studies have concluded that especially calculating the gender pay gap and auditing exercises may cause effort for others.²⁷

Besides these encouraging research results and major positive effects fair pay has proven on companies, there are still opponents of new measures on fair pay who may be driven by fear and the lack of structured and traceable pay systems. Experiences from auditing requirements in Iceland have shown that many companies' fears did not match reality as their pay systems were often well structured. Those companies with the most efforts on fair pay were those with the least systematic structures. In this regard, fair pay can be compared with fair play in sports: It needs clear rules accessible and understandable for all, rules that are communicated transparently, and a referee that guarantees compliance and a fair game for all. While nobody would oppose this mindset in sports, people seem still willing to accept the lack of fairness in the world of work. To change this by implementing transparency is basically what is demanded by the European Commission, different states, or other stakeholders working on fair pay.

25 Draft Report on the proposal for a directive of the European Parliament and of the Council strengthening the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms (2021/0050(COD))

26 Eurofound (2020). *Measures to promote gender pay transparency in companies: How much do they cost and what are their benefits and opportunities?* Publications Office of the European Union, Luxembourg.

27 Eurofound (2018). *Pay transparency in Europe: First experiences with gender pay reports and audits in four Member States.* Publications Office of the European Union, Luxembourg.

Moving towards Fair Pay: Combining Best Strategies

Piling all these different approaches together – and yet this list is a curated selection of examples – transparency is key to achieving fair pay. Yet, transparency can have very different forms and it cannot stand alone. Transparency without guidance on what to analyse, on how to publish and compare data, and most importantly without sanctions or immediate legal consequences in case of noncompliance will not drive pay gaps down. The UK is a prominent example of this mechanism. When the first reporting deadlines came up, the noise could not be overheard. Today, companies with high pay gaps continue their business as usual without major consequences. In contrast, France and Iceland demonstrate how to trigger change through strict legal guidelines and clear sanctions when companies fail to follow the provisions.

The European Commission has published a bold draft directive in March 2021 learning exactly from these experiences – combining the best instruments for fair pay with sanction mechanisms. The committees in the European Parliament event sharpened this approach and drive very actively the discussion on pay and intersectionality. Following this attempt, the European Union now has the means at hand to position itself at the global forefront of fair pay and equal opportunities. Knowing that debates in the European Council can be tough on matters of equality, as being demonstrated in past years, the Commission and Parliament should close their ranks and build a strong alliance contemplating the founding values of fair pay.

At the same time, we all can learn from current legislative initiatives and debates and call for:

1. **Transparency and reporting:** As discussed in length in this policy brief, transparency is key. Yet, the form of transparency may vary. Internal transparency guarantees that employees know the rules of the game and the criteria to which they are paid. External transparency allows customers, or prospective employees, investors, or critical stakeholders to assess an organization's performance on the gender pay gaps.
2. **Sanctions and immediate legal consequences:** Without a clear set of remedies and sanctions, the drive for change will not be institutionalized. Without consequences in cases of non-compliance, organisations will discover that breaking the rules is too easy. Although fair pay is part of the European rules of the game since 1957, only marginal change has been witnessed making the pay gap a custom challenge for every single member state in the European Union.
3. **Moving beyond the binary:** Iceland has shown the way to an intersectional way to fair pay and the European Parliament has taken up the baton. There are pay gaps linked to age, tenure, ethnicity, LGBTIQ+ – that is known but way less measurable and researched than the dimension gender. If pay gaps are closed and a fair system is created, this works for everyone. Nonetheless, creating fair workplaces for all needs a shift away from gender, especially focusing on women, to a people-centred approach.
4. **Focusing on all organisations rather than solely on companies:** Employers, regardless of legal form, must have pay systems in place that can be unfair and biased. Currently, the focus is much more on companies but there are many other forms of organization, such as governments, public services, trade unions, associations, or not-for-profits. It requires a rigorous approach to include all organizations that employ people to drive pay gaps at the national, European, or international levels down.

5. **Following a systemic approach:** “Fix the system, not the women” is a phrase often heard but seldom put into practice. Iceland, Sweden, and France lead the way in transforming the system and recognize that men take up care duties more often, working hours are equalized and economic independence is lived reality. Creating fair pay systems benefits everyone – not only women. Fair and transparent pay systems also have a major impact on corporate cultures. By transforming systems long-discussed side effects pay on the gender equality budget and connect policy issues that have too long been seen only separately. As another consequence of systemic changes towards gender equality, companies are more profitable, and economies perform better measured against GDP.
6. **Changing the value of work:** This policy brief so far has dealt with transparent pay systems and reporting on the gender pay gap and under what circumstances these systems work most effectively or what legal approaches are effectively working. When analysing the gender pay gap within a corporate structure, questions regarding the value of jobs for the organization will arise automatically. Furthermore, questions on components in the pay system, such as tenure, will come up. The main question is

whether different values or what components are actually the basis for a system in which employees are paid fairly. Every organisation must find its own way to answer these questions to implement a fair corporate culture with a coherent pay system for all its employees.

However, the question of what value we attach to work can be posed on national levels as well. Especially the COVID-19 pandemic has shed a light on the fact that women-dominated jobs are highly undervalued and underpaid. Instruments to assess the value of work at national or higher levels are ready at hand – they just must be utilized to transform the world of work. If there is the will and decision for change, the transformation itself is easily implementable and not a revolutionary idea. These ideas have been there for years already, but now, we have the chance to change the nature of work. More importantly, if we miss this chance, the momentum will be lost as the nature of work continues to change rapidly.

Advancing on fair pay means automatically leapfrogging to equal opportunities for all: Following the European values and enshrined principles thoroughly has the potential to advance equality beyond gender and to create economic independence for all.

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Katinka Brose is a political scientist and an expert on Europe. She completed her master's degree at the Hertie School of Governance in Berlin. Since 2015, she has been researching European equality policy and equal pay. At the FPI, she analyses the causes and consequences of the gender pay gap and develops strategies to rectify it. Katinka collates an incredible wealth of facts, figures, and data at breath-taking speed, and can answer any question about pay equity and fair pay.

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Henrike von Platen founded the FPI Fair Pay Innovation Lab in 2017 to help companies and organizations achieve fair pay and recognition via the Universal Fair Pay Check. The multi-award-winning university council member and lecturer encourages the exchange of best practice between businesses, academia, and politics. As national President of Business and Professional Women, she was patron of the German Equal Pay Day campaign for many years and also authored the book "Let's talk about money".

About FEPS

The Foundation for European Progressive Studies (FEPS) is the think tank of the progressive political family at EU level. Its mission is to develop innovative research, policy advice, training and debates to inspire and inform progressive politics and policies across Europe.

FEPS works in close partnership with its 68 members and other partners, including renowned universities, scholars, policymakers and activists, forging connections among stakeholders from the world of politics, academia and civil society at local, regional, national, European and global levels.

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About Fondation Jean Jaurès

Fondation Jean-Jaurès is the leading French political foundation, which not only works as a think tank but also as a grassroots actor and a historical memory centre at the service of all those who defend progress and democracy in the world. The foundation, widely recognised for its public utility, pursues the objective of promoting society's general interest.

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About the FPI Fair Pay Innovation Lab gGmbH

The FPI ensures equal opportunities in every company and awards them the Universal Fair Pay Check. Our goal: fair pay for all people in the world.

We advise companies and show possible solutions how to implement a pay system that is fair for all employees. To develop the best strategies and find the most suitable measures and instruments, we constantly monitor the latest developments, collect diverse examples of best practices, and ensure a constructive exchange between companies. We connect people and think out of the box. We share our fair pay knowledge with decision-makers and experts in companies and institutions around the world: we are situated at the interfaces between economy, academia, and politics.

We are strongly convinced that equal opportunities are the key to achieving the international sustainability goals and that fair pay is key to equal opportunities for all people – no matter where they come from, who they love or what they believe in.

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