

30 June 2021

By email Committee.Executive@niassembly.gov.uk

Mr Colin McGrath MLA
Committee for the Executive Office
Room 375a
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Colin

Re: Article 2 of the Protocol on Ireland/ Northern Ireland and European Commission Proposal on Pay Transparency

Thank you for your letter of 18 June 2021 seeking our views on whether the European Commission's proposal for a Directive on Pay Transparency falls within the scope of Article 2 of the Protocol on Ireland/ Northern Ireland.

The Commission has been monitoring EU developments relevant to the Article 2 commitment, including the proposal for a Pay Transparency Directive. We have been alerting key stakeholders, including TEO officials, that there is the potential that this proposal may have implications in terms of the Article 2 commitment, and that we were considering this matter further.

We are aware that the EU Scrutiny Committee has recently raised a number of questions with the UK Government in order to understand the Government's position on the proposed Directive and its relevance to the implementation of Article 2(1) of the Protocol, how the proposed Directive might affect rights and equality protections in Northern Ireland, and whether changes to Northern Ireland's domestic law may be necessary to keep pace with the proposed Directive if it becomes EU law¹. We note that a response has been requested by the EU Scrutiny Committee by the end of June 2021 and the Commission will review this when published.

Implications of the proposal for a Pay Transparency Directive

As you will be aware, the proposal for the Pay Transparency Directive seeks to strengthen the application of the principle of equal pay through pay transparency and improved enforcement mechanisms. Proposed measures

¹ [Letter from Sir William Cash MP, Chair of the European Scrutiny Committee, to Robin Walker MP Minister of State for Northern Ireland, Article 2\(1\) of the Northern Ireland Protocol: Upholding human rights and equality standards—new EU proposal to strengthen the application of the principle of equal pay](#), 26 May 2021

would increase awareness about pay conditions, better enable both employees and employers to tackle pay discrimination and enhance access to justice for victims of pay discrimination².

In the Commission's view, the Annex 1 Directive of most relevance to the proposal for a Pay Transparency Directive is the [Recast Directive](#) on equal treatment of men and women in matters of employment and occupation, which includes provisions to implement the principle of equal treatment in relation to working conditions, including pay, and lays out specific provisions in relation to equal pay.

The Commission is currently considering the degree to which, if any, the proposal for a Pay Transparency Directive is covered by the Article 2 commitment. In particular, we are considering whether it is covered by the commitment by the UK Government to keep pace with any future changes to the EU equality laws which are set out in Annex 1 to the Protocol, including the Recast Directive.

The degree to which the Pay Transparency Directive, if adopted, is covered by this commitment to keep pace with any future changes, will depend on the legal basis of the Pay Transparency Directive, and the extent to which it can be considered to amend and/or update any of the relevant Annex 1 equality Directives, particularly the Recast Directive. The position may be different if it is a new and separate Directive that does not amend and/or update any of the relevant Annex 1 equality Directives.

The Commission is seeking legal advice on this matter and once this has been received, we will revert to the Committee.

In the interim, the Committee may wish to note that the proposal for a Pay Transparency Directive may be subject to amendment before final adoption by the EU, and also, indeed, that it may not be adopted at all. Therefore, any assessment by the Commission on the implications of the proposal will be provisional at this stage and may be subject to change, depending on any changes that may be made to the proposal and the exact text of the proposed Directive.

I hope this is helpful.

Yours sincerely



Geraldine McGahey OBE
Chief Commissioner

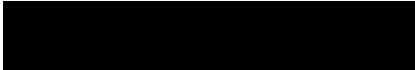


² Proposal for a [Directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms](#), 4 March 2021



Committee for the Executive Office

Geraldine McGahey OBE
Chief Commissioner
Equality Commission for Northern Ireland



18 June 2021

Dear Geraldine,

ARTICLE 2 OF THE PROTOCOL ON IRELAND/ NORTHERN IRELAND AND EUROPEAN COMMISSION PROPOSAL ON PAY TRANSPARENCY

At its meeting on 9 June 2021, the Committee for the Executive Office considered correspondence forwarded by the Assembly EU Affairs Manager to the Committee from the House of Commons European Scrutiny Committee to the Northern Ireland Office (NIO) in respect of a European Commission proposal for a Directive on pay transparency.

The Committee agreed that I write to you to ask whether the proposal under pay transparency will fall within the scope of Article 2 of the Protocol on Ireland/ Northern Ireland for consideration by the Dedicated Mechanism.

I would appreciate a response at your earliest convenience.

Yours sincerely



Colin McGrath MLA
Chairperson, Committee for the Executive Office

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