ITALY, POLAND, UNITED KINGDOM: NATIONAL FRAMEWORKS

TEMPLATE NO. 1: The Principle of Pay Equality between Men and Women The Legal Framework

TEMPLATE NO. 2: The model of industrial relations

PROVISIONAL DRAFT

TEMPLATE 1

The Principle of Pay Equality between Men and Women

The Legal Framework

I. Regulatory framework.

1.1. As far as your national legal system is concerned, what are the regulatory sources concerning the promotion of pay equality between men and women at work?		
Italy	**Poland**	**UK**
In the Italian legal system, the principle of pay equality between men and women at work is enshrined by Art. 37 Const., which states that «working women are entitled to equal rights and, for equal work, equal pay as working men». According to settled case-law, i) Art. 37 Const. is directly enforceable against both individual employment contracts and collective agreements; ii) «equal work» has to be interpreted as «equal job position and tasks» and not as «equal performance»; iii) assessment of gender pay gaps needs to take into account the overall compensation, not just the minimum wage granted in accordance with the principles of proportionality and sufficiency set by Art. 36 Const. (*see template 2*). At legislative level, the effectiveness of the principle of pay equality between men and women is ensured by Art. 15 Law 300/70 – which contains a general prohibition of discriminations on grounds of different risk factors, gender included – and especially by Art. 28 Delegated Decree 198/2006 (so called Equal Opportunities Act), former Art. 2 Law 903/77, which states that «1. Any direct	The principles of equality and non-discrimination are embedded in the Constitution of the Republic of Poland of 1997. The general clause is contained in its Article 32 stating: "*1) All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. 2) No one shall be discriminated against in political, social or economic life for any reason whatsoever.*" The ban on discrimination due to one's gender is covered by "any reason whatsoever". The next provision, Article 33, is to develop and refine the content of the general anti – discrimination clause. It states: "*1) Men and women shall have equal rights in family, political, social and economic life in the Republic of Poland. 2) Men and women shall have equal rights, in particular, regarding education, employment and promotion, and shall have the right to equal compensation for work of similar value, to social security, to hold offices, and to receive public honours and decorations*." Article 33 develops Article 32 but it has also its own independent and autonomous character. It proclaims a	The main provisions for equal pay between men and women in the UK are now contained within the **Equality Act 2010** (EqA 2010) under 'Equality of Terms' (Chapter 3 ss 64-80). The Act entitles women doing work of equal value with a man in the same employment to equality in pay and other terms and conditions. The Act implies an equality clause into the employment contract meaning that contractual terms can be no less favourable on the grounds of sex (s 66). To enforce the equal pay provisions women and men must compare themselves to one or more employees of the opposite sex (s 79) doing same work, like work or work rated as equivalent (s 65) with the same employer to establish that pay inequality exists. The burden of proof then switches to the employer to show that the difference in pay is not directly or indirectly the result of sex discrimination. As Fredman (2008:196-198) has pointed out, the 'myopic' focus on pay equality within the same employer and contradictory case law that has resulted means that the law is limited in addressing the gender segregated nature of the UK labour market and may have encouraged employers to out-source and/or use agency labour. Some parts of the EqA 2010 were subject to secondary legislation and were not brought into force

or indirect discrimination concerning any pay aspect or condition, with regard to equal work or work of equal value, is forbidden. 2. Job classification systems aimed at determining pay are required to adopt common criteria for men and women and be designed so as to remove discriminations». This provision was specifically reinforced by delegated decree no. 5/10, aimed at implementing Directive 2006/54/EC, which introduced: i) a specific reference to direct and indirect discriminations as well as to any aspect or condition of pay; ii) the need for job classifications setting to enable removing pay-related discriminations. Delegated decree 5/10 also introduced a specific reference to gender-related pay discriminations in sanctions regulations. In particular, in case of discrimination, the following sanctions may be applied: withdrawal of public financial supports, incentives or benefits, exclusion from public procurements, and financial penalty from 250 to 1.500 euros. The effectiveness of the principle of pay equality between men and women is ensured also by: i) the promotion of equal opportunities programmes by the «National Committee for the implementation of equality between men and women», in accordance with Art. 8 Delegated Decree 198/06. These programmes can also be proposed as a solution for removing collective pay discriminations (art. 10, par. 1, let. g), although such competence is one of the less implemented by the Committee.	subjective right, which means that it may be an exclusive basis for a claim to the Constitutional Court. It is easy to notice that Article 33 sec. 1 indicates, *expressis verbis,* the spheres where the equality is of special importance. Remuneration for work is among them. Article 33 sec.2 stresses guarantees of equal remuneration for work of equal value. Article 33 is addressed to the authorities in the law – making process but the scope of its application should by no means be restricted to public sector only. It also creates an obligation of equal treatment of men and women for non-state actors (e.g. the employers). Such an interpretation has been confirmed by the Constitutional Court's jurisprudence. As far as the principle of equity is concerned, the Labour Code provides expressly that employees, regardless of their sex, have the right to equal remuneration for the same work or for work of identical same value. The remuneration includes all components of remuneration, regardless of their name or characteristic, as well as other work-related benefits granted to employees in cash or non-cash form. Work of identical value means work that demands from employees not only comparable professional qualifications, certified by documents set forth in separate provisions of the law or by practice and professional experience, but also comparable responsibility effort (Article 18 3c of the	when the Act was passed. One such section in relation to equal pay is s78, which requires employers with more than 250 employees to publish gender pay gap information "relating to the pay of employees for the purpose of showing whether, by reference to factors of such description as is prescribed, there are differences in the pay of male and female employees." (s78(1)). The information should be published every 12 months (s78(4)). The current status of this section of the EqA 2010 is 'prospective', which means the government has yet to enact the regulations required to bring it in to law. There has been a considerable civil society campaign to push for the enactment of these regulations before the current session of Parliament is dissolved in March 2015 prior to the general election in May. The campaign resulted in a Private Member's Bill being voted on in the House of Commons in December 2014 which was passed by 258 votes to 8. A second reading was heard on 27th February 2015. The amendment below was tabled and agreed in the House of Lords on 11th March 2015: "1) The Secretary of State must, as soon as possible, and no later than 12 months after the passing of this Act, make regulations under section 78 of the Equality Act 2010 (gender pay gap information) for the purpose of the publication of information showing whether there are differences in the pay of males and females (2) The Secretary of State must consult such persons as the Secretary of State thinks appropriate on the details of such regulations prior to publication." It is expected that this amendment will be included in the 'wash up' of legislation prior to the General Election on 7th May 2015 and will be in force by April 2016.

ii) survey on gender pay gaps carried out by (national, regional or provincial) Equality Bodies (so called Equality Counsellors) in accordance with Art. 15 par. 1, a). To this purpose, Equality Bodies can ask the competent territorial offices of the Ministry of Labour to collect relevant data in workplaces (art. 15, par. 4). Like any form of discrimination on grounds of gender, pay discriminations are granted the specific judicial protection provided by delegated decree 198/2006, which includes: i) the possibility for equality bodies to engage in judicial procedures either on behalf or in support of the complainant or also in case of collective discriminations; ii) specific judicial actions and proceedings and rules of evidence. Finally, in accordance with Art. 46 Delegated Decree 198/2006, public-owned and private companies with more than 100 employees are required to deliver a report on men and women employment conditions, pay included, every two years and send it to the competent Regional Equality Body as well as to the union representatives in the workplace. After the amendments introduced by delegated decree 5/10, the Regional Equality Body is required to analyse and process this data, and send it to the National Equality Body, the Ministry of Labour and the Equal Opportunities Department of the Presidency of the Council of Ministers. If this requirement is not fulfilled, after a 60-day warning notice, companies are sanctioned with a financial administrative fine (100-500 euros). In the	Labour Code). Remuneration systems are usually introduced by either collective agreements or regulation on remunerations. According to article 9 of the labour code, The provisions of collective labour agreements and other collective agreements, regulations and statutes based on the law and determining the rights and duties of the parties to an employment relationship, are not binding if they violate the principle of equal treatment in employment. There are no legal requirements for employers to publish reports on gender pay equality	The government opened the consultation on gender pay gap reporting on the 14th July 2015, which closed on 6th September 2015. The government published an impact assessment on s.78 on 23rd July, which provides a useful assessment of the options the government are considering. Both documents are available at: https://www.gov.uk/government/consultations/closing-the-gender-pay-gap#history

most severe cases, a one-year suspension of social-security contributory benefits may be applied.		

- **1.2. What are the legislative techniques? For example, reflexive legislation, top-down vs bottom-up approach…**		
Italy	**Poland**	**UK**
Legislation makes use of both reflexive and command-and-control techniques. As regards the former, since Law 125/1991, now Articles 43-44-45 Delegated Decree 198/2006, legislation has fostered company-based self-regulatory solutions by providing financial support to affirmative actions programmes. These programmes are adopted by companies voluntarily in order to remove those obstacles that prevent women from accessing equal employment conditions, equal pay included. It is noteworthy that if an affirmative action programme is negotiated by employers with the trade unions that are the most representative at national level, it is entitled to priority access to financial supports (Art. 44 par. 3). While affirmative actions programmes are adopted by private companies on a voluntary basis, they are mandatory in public administrations (Art. 48). However, in 2006 the legislative provision imposing a specific sanction in case of non-fulfilment and requiring a three-year term for public administrations to present such programmes was repealed. As a result, this requirement has become much less effective ever since (*see template 2*). As regards the latter, specific sanctions can be	The Constitution in its preamble refers to the social dialogue ("*…we set up Constitution […]as a basic laws for the state based on respect for freedom and justice, co-operation of authorities, social dialogue and rule of subsidiarity consolidating the rights of citizens and theirs communities*…). Moreover, the social dialogue is discussed in its Article 20, which provides that the social market economy is based, among others, "*on dialogue and co-operation of social partners*". However, it is stressed that this provision does not guarantee the social dialogue as a tool of governing. It is recognized as a drawback of the Polish system, because as a result, there is no such dialogue in practice or at least it is in crisis. On the one hand, there is a failure of social dialogues but, on the other hand, paradoxically, there are diverse instruments giving the basics of various types of consultative processes on various levels and in all social matters (which GPG belongs to). What is more, rules of procedures of the main State and local authorities contain the requirement of public consultations. In effect, the particularly large implementation gap between the formal requirements for consultation and the reality has been diagnosed.	In relation to the public sector, there is some provision for gender pay equality in the **Public Sector Equality Duty (s 149 of the EqA 2010)**. The Public Sector Equality Duty (PSED) is 'soft' or 'reflexive' legislation. It is 'proactive' legislation meant to pre-empt discrimination, avert adversarial equal pay claims and has the potential to have some collective applications. The PSED has two provisions – a general duty and specific duties. The provision for specific duties requires secondary legislation and is devolved to the Scottish Parliament and the Welsh Assembly for public authorities in those regions. The specific duties for Wales provide extensive requirements for public authorities to address pay gaps for all protected groups and specifically gender pay gaps. Regulation 7 states that "there must also be arrangements for identifying and collecting information about any difference between pay of any person (or persons) who has (or share) one or more of the protected characteristics and those who do not and the causes of such differences.". Regulation 11 requires that a public authority "must have due regard to the need, in respect of its employees, to have equality objectives that

applied to companies in case of gender-related pay discriminations (Art. 41) or, for companies with more than 100 employees, in case of omission of mandatory pay reporting (Art. 46, par. 4) (*see above*).	Experts indicate that a single and comprehensive law on public consultations could become a remedy for this crisis.	address the causes of any pay differences.... Where an authority has identified a "gender pay difference" and has not published an equality objective to address it, then the authority must publish reasons for its decisions not to publish such an objective. Regulation 12 requires an authority to publish an action plan which sets out any policy it has relating to the need to address the causes of any gender pay difference and any gender pay equality objective published by the authority. The action plan must also set out, for example, any revisions to a gender pay equality objective and information in respect of gender pay objectives that it is required to publish by virtue of regulation 3(2a) such as how long the authority expects it will take to achieve in order to fulfil a gender pay objective." In the Scottish specific duties Regulation 7 and 8 also directly concern equal pay for a range of groups. The Scottish Regulations focus largely on the publication of data and are not as proactive as the Welsh regulations. Regulation 7(1) requires public authorities with 150 or more employees to "publish information on the percentage difference among its employees between men's average hourly pay (excluding overtime) and women's average hourly pay (excluding overtime)." Regulation 8 (1) requires public authorities in Scotland to "publish a statement on their policies on equal pay among its employees every four years from 2013 when the Regulations were enacted. Section 8(2) requires the statement to specify differences "between (i) men and women; (ii) persons who are disabled and persons who are not; and (iii)

		persons who fall into a minority racial group and persons who do not" The specific duties in England do not have any direct provisions for equal pay. Prior to the EqA 2010 the **Gender Equality Duty (Equality Act 2006)** did contain a specific duty which required public authorities to have due regard to the need to eliminate discrimination that is unlawful under the Equal Pay Act. The Gender Equality Code of Practice (s3.41) states: These requirements, taken together with the specific duty to collect and make use of information on gender equality in the workforce and the duty to assess the impact of policies and practices, mean that listed public authorities have to undertake a process of determining whether their policies and practices are contributing to the causes of the gender pay gap. This should be done in consultation with employees and others, including trade unions. (EOC, 2007) This requirement was removed when the Gender Equality Duty was incorporated into s.149 of the EqA 2010. There is, as yet, no research to assess how the differences in approach between the three regions are being used by the trade unions or the impact of the differences in relation to the gender pay gap.

1.3. What is the level of consistency with the EU principles?		
Italy	**Poland**	**UK**
Directive 2006/54/EC was implemented by Delegated decree 5/2010, which amended the	The provisions on non-discrimination have been systematically introduced into the Polish legal	The majority of the equality legislation in the UK was introduced in the early 1970s in

Equal Opportunities Act (delegated decree 198/2006) (*see supra*). In 2008, on the basis of a wide concept of pay, inclusive of pension occupational schemes, the ECJ declared that by maintaining provisions under which the age at which public employees have the right to receive the old-age pension varies according to whether they are men or women, the Italian Republic failed to fulfil its obligations under Article 141 EC (Case C-46/07). As a result, the legislative pension reform of 2011 equalised old-age pension ages for men and women in the public sector from 2012 on. Differently, as regards the private sector, the reform introduced a process of progressive equalisation, which will be completed in 2018. In the case C-595/12, *Loredana Napoli vs Ministero della Giustizia*, the ECJ stated that Article 15 of Directive 2006/54/EC must be interpreted as precluding national legislation which, on grounds relating to the public interest, excludes a woman on maternity leave from a vocational training course which forms an integral part of her employment and which is compulsory in order to be able to be appointed definitively to a post as a civil servant and in order to benefit from an improvement in her employment conditions, while guaranteeing her the right to participate in the next training course organised, the date of which is nevertheless uncertain (Judgment 6 March 2014).	system since the beginning of the 1990s. General regulations intended for combating any discrimination in employment are dealt with in the Labour Code of 26 June 1974. More specific and wide-ranging changes, however, are a direct result of the obligation to transpose the EC Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). In Poland, its transposition was done by enacting the Act of 3 December 2010 on the implementation of certain provisions of the European Union on equal treatment, and entered into force on 1 January 2011. The Act specifies the areas and methods of counteracting equal treatment violations on account of gender, race, and other criteria. The performance of tasks related to implementing the principle of equal treatment was entrusted to the Government Plenipotentiary for Equal Treatment and to the Polish Human Rights Defender (Art. 18 and following). The implementation of the Recast Directive into Polish legal system resulted in the enforcement of significant mechanisms aimed at enhanced protection of equal treatment.The most important ones are as follows: • 1) Introduction of definitions of direct and indirect discrimination (Art. 3). • 2) Reversal of the burden of proof (as provided for in Art. 14 sec. 2). Accordingly, a person who accuses another person of the violation of the principle of equal treatment makes the fact of its violation probable. In case the	anticipation of the UK joining the EEC in 1973. The Equal Pay Act was enacted in 1970 but did not take effect until 1975. Membership of the EEC required that the UK should adopt what was then Article 119 of the Treaty of Rome (later Art. 141). The issue of equal pay was a recurring topic within the EEC and there was a Council of Europe ministerial resolution made on the 30th December 1961 to equalise men's and women's wages. International pressure for equal pay also came from Article 32.2 of the UN Universal Declaration of Human Rights of 10 Dec 1948 and Convention 100 recommendation 90 of the International Labour Organisation (ILO). It is interesting to note that these bodies adopted different definitions of equal pay, with the EEC at that stage taking a narrower, like work approach, with the ILO favouring a broader equal value approach. In 1975 European Council Directive75/117 (Equal Pay Directive) introduced the concept of 'work to which equal value is attributed' (Art.1). The UK remained in breach of this principle until 1983 when, following enforcement action by the EC [*Commission v United Kingdom* Case C-61/81 [1982] ECR 2601], the Equal Pay (Amendment) Regulations 1983 were enacted and amended the Equal Pay Act to allow and equal value claim. There have since been a large number of equal pay cases, often reaching the ECJ, that have tested the concept of equal value in the UK. Following Preston v Wolverhampton Healthcare NHS Trust [2001] the Equal Pay Act 1970 (Amendement)

	violation has been made probable, the person accused of the violation is obliged to prove that they have not violated the principle of equal treatment. • 3) Right to compensation in case of the violation of the principle of equal treatment (Art. 13). • 4) Providing for the legal basis for positive action measures (according to Art. 11, taking actions in order to prevent unequal treatment or align disadvantages related with unequal treatment [...] shall not constitute a breach of the principle of equal treatment). Regrettably, the Act has not provided for explicit assurance that the provisions relating to the prohibition of gender discrimination are equally applicable to discrimination arising from gender reassignment. In relation to the transposition of the relevant EU provisions referring to the self – employment sphere, it is believed that the situation is quite complicated. The Act of 2010 does not exclude this sphere, but it does not formally refer to the Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity. The legislator neglected the requirement set forth in Article 16 (1), even though at the moment of adoption of the Act, the Directive was already in force. The subsequently adopted acts referring to childbirth-related leaves and the	Regulations 2003 to change the time limits from which a claim can be made from six months to six years in England and Wales and five years in Scotland. This amendment brought the Equal Pay Act in line with Aticle 141, Other examples UK statute that is relevant to pay and has been changed to conform to EU law is in *Regina v Secretary of State for Employment ex parte Equal Opportunities Commission and Another* the extended qualifying period for unfair dismissal for part time workers in the **Employment Protection Act 1975** was successfully challenged. On 3 March 1994, the House of Lords ruled that this law amounted to indirect discrimination against women as so many more women than men work part time and was therefore incompatible with European law. The Preston case considered above highlights that similar discriminatory practices in relation to part-time women workers were evident in company pension schemes, but again only after a ruling by the ECJ. Furthermore, the discrepancy in retirement ages for men and women in relation to state pensions was only rectified in the **Pensions Act 2011.** After pressure from Europe, the government agreed in 1995 to equalise the retirement ages for men and women but this will not take full effect until 2018 when the retirement age for women will be raised to meet that of men.

	system of social security do not refer to the Directive, either. The National Action Plan for Equal Treatment for 2013-2016, a strategic document specifying the objectives and priorities of the Government's equal treatment activities, adopted in December 2013, points out that the Act of 3 December 2010 has played a pivotal role in defining the Polish model of antidiscrimination policy. It is worth noting that the reduction of gender pay gap is identified as one of its specific priorities. Regarding more particular regulations, it is important to mention the entering into force of the Act of 1 January 2013 amending the act on pension benefits from the Social Insurance Fund of 17 December 1998, which started the process of gradual increase in and equalisation of the retirement age for women and men. Reconsideration of the relationship between the EU and Polish law on equal treatment requires noting that the Charter of Fundamental Rights of the European Union binds Poland with some restrictions expressed in the British and Polish Protocol. However, in relation to social and labour rights its potential impact has been neutralised by the Polish Declaration (No. 62) on the Protocol. Summing up, the protection against gender discrimination as envisaged in EU law is provided in the Polish legal system. However, it is possible to point out certain inadequacies in the transposition of particular EU's non-discrimination laws by and large as a consequence of ambiguity and complexity of national legal provisions.	

1.4. Are there any provisions implying an indirect discrimination on grounds of gender resulting into a widening of the GPG? For example, regulations concerning pay in non-standard contracts, part-time contracts, domestic workers?		
Italy	**Poland**	**UK**
Legislation on part-time contracts (Delegated Decree 81/2015, which recently repealed Delegated Decree 61/00) prevents indirect sex discriminations by enshrining a principle of non-discrimination between part-timers and full-timers, in accordance with Directive 97/81/EC. However, while the previous law (Delegated decree 61/00) specifically clarified that part-timers are entitled to the same hourly-based pay, the same length of maternity and parental leave, the same access to training initiatives and company social services, the same criteria for the measurement of indirect and deferred compensations set by collective agreements, as full-timers, the current legislation (the above-mentioned delegated decree 81/2015) only states that part-timers cannot be treated less favourably than full time workers and are entitled to the same economic and normative rights as full timer workers on a pro rata basis. Moreover, while the previous law specifically enabled individual contracts and collective agreements to provide a more-than-proportioned measurement of performance-related pay elements for part-timers (art. 4, par. 2, delegated decree 61/00), such provision is not provided in the delegated decree 81/2015. It is quite surprising that Law 339/59, which is still the sole regulatory reference for domestic work, still presents a gender-based division and qualification of jobs (for example, «bambinaie diplomate», «dame di compagnia», «cuochi, giardinieri, balie, guardarobiere, bambinaie comuni, cameriere, domestiche tuttofare, custodi, portieri	Implementing the Directive 97/81/EC polish labour code provides that any discrimination in employment, direct or indirect, in particular in respect of sex or full or part time, are prohibited. Concluding an employment contract with an employee providing for part-time employment must not establish their work and remuneration conditions in a manner that is less favourable in relation to employees performing the same or similar work full time, though taking into account the principle of proportionality of the remuneration for work and of other work-related benefits, in relation to the length of working time of the employee. In practise, due to quite low remuneration level , Part-time work is seldom a real choice of a worker. Because of the economical reason usually both parents are full-time workers. Under the law on collective redundancies from 2003 there are no criteria given by the law while selecting employees for redundancy. The criteria should be negotiated and determined by social partners, they can not however have discriminatory character. There are no specific legal provisions relating to domestic workers (apart from partial regulation of female baby sitter, taking care of a child over	There are some areas of statute that can potentially have a bearing on the gender pay gap in the UK. The gendered nature of part-time work means that the **Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000** should be particularly important in reducing the gender pay gap. However the statistical data seem to suggest that the pay gap for part-time women workers has closed little since the introduction of the Regulations. One area of legislation outside of the EqA 2010 that does seem to have had an impact on the gender pay gap in the **National Minimum Wage Act 1998.** The Act came into law in April 1999. Although there was some concern that the minimum wage rates had been set too low to affect low paid women working in the public sector, the Low Pay Commission estimated that the introduction of the national minimum wage would increase the pay of 0.5 million men and 1.5 million women. Part-time men (26%) and women (22%) were likely to benefit more since their hourly pay rates were the lowest. There is general agreement that

privati, personale di fatica, stallieri, lavandaie»). It is worth noticing that – according to this classification – there are no female butlers but only duenna, no male baby-sitters but only stable boys, no female chefs but only waitresses. It is a legislative direct discrimination that can contribute to the perpetuation of one of the most stubborn causes of the GPG, which is the horizontal segregation of women in the labour market. Law 53/00 provides a funding system for companies that introduce flexible working time arrangements aimed at fostering work-life balance in the workplace. In order to be entitled to funding, companies need to negotiate such arrangements with the social partners. This incentive system – which makes it possible for women to reduce their time gap and thus possibly their pay gap too – is currently inactive. A similar incentive system – aimed at promoting company agreements fostering work-life balance – has been experimentally introduced by delegated decree 80/2015 (art. 25) for the period 2016-2018, with the provision of a (although quite small) funding support. Under Law 223/91, when selecting employees for redundancy, an employer is required to use three criteria: family burdens; length of service; productive/technical/organisational needs. However, the employer cannot make redundant a percentage of women higher than the percentage of women employed in the working area concerned. This provision can partially neutralise the possible gendered bias deriving from the combined effect of the gender pay gap and the fiscal provisions on family burdens deductions (*see infra*).	20 weeks old up to 3 years old (niania). There are no particular regulations aiming at fostering work-life balance in the workplace.	the national minimum wage benefits low paid, particularly part-time workers, but because the legislation affects both low paid men and women the impact on the gender pay gap is muted.

III. Wage system

3.1. What are the sources setting and regulating the wage system? Are they legal or contractual? can wage elements be unilaterally established? How is this system arranged? What are the employment/self-employed contracts involved? what is the salary structure? what are variable pay components based on?		
Italy	**Poland**	**UK**
Art. 36 Const. enshrines the principles of sufficiency and proportionality of pay with regard to dependant labour. Delegated decree 276/2003 introduced a similar provision also with regard to independent contractors (self-employed with economic dependence). As far as dependant labour is concerned, and with the exception of employees excluded from collective bargaining (*see template 2*), pays are set and the wage system is regulated by collective agreements. As confirmed by the Intersectoral Agreement of June 2011 and the Productivity Agreement of 2013, minimum wages are set by national collective agreements, while performance-related pay elements are set by decentralised agreements (company or territorial agreements) according to the rules set by national agreements. Pay is composed by: minimum wage, length of service bonus, collective interim pay guarantee, allowances depending on the type/nature of the job (shift, night-work…), compensation (pay increase) for overtime/holiday working hours, individual bonuses/performance-related pay elements awarded by the employer unilaterally or in accordance with a collective agreement, Christmas bonus. After the legislative reforms of 2012, collective bargaining has started to cover also the	The wage system should be determined either by social partners or by the employer. The Labour Code provides general rules regarding the salary and wage systems, leaving the creation of more detailed provisions to internal establishment regulations. Their main purpose is to determine the remuneration schemes, which refer to the general existing solutions for a given employer, including the principles and components of remuneration. For most employers, those settlements are made in the specific sources – by collective agreements or regulations on remuneration. It applies mostly to employers in the private sector. Wages for state employees of public sector are determined by law. This includes persons employed in state budgetary units, state budgetary enterprises, state universities, as well as professional soldiers and officers specified by the law (Act on Wages in Budgetary Sector). The remuneration of the employees covered by the multiplier is calculated in relation to the base amount, indexed annually, and the basis for determining the remuneration for the financial year for employees not covered by such a system is the salary from the previous year, indexed to average annual wage increases. Principles and elements of their remuneration are set out by the respective law and enactment legislation. Rules for the distribution of funds for	In UK law the individual contract of employment is the primary legally enforceable instrument in relation to employment terms and conditions including pay. A contract of employment must exist between an employer and an employee (as opposed to a worker) and is considered to be a 'contract of service'. Who should be considered to be an employee is subject to a series of complex legal tests established by a large body of case law and is implied i.e. not necessarily determined by either the employer or the employee. A worker who is not an employee (self-employed) may be contracted under a 'contract for services'. It is important to note that the equal pay legislation only applies to employees. Collective agreements in the UK are not, of themselves, legally binding (**Trade Union and Labour Relations (Consolidation) Act 1992 s.179**). However the terms of a collective agreement can be inserted into employment contracts to make them legally enforceable. Where this happens it will be applied to all workers in the bargaining unit covered by the collective agreement and not just trade union members. Salary structures in the UK are largely decentralised to the level of the organisation and are voluntarist, only subject to legal constraints in the statutes considered in paragraphs 1.1., 1.2 and 1.4. Where trade

regulation of working conditions and pays of independent contractors (self-employed with economic dependence) for specific jobs such as out-bound call centre jobs.	salaries granted to those units are agreed with the trade unions. Within the granted resources, it is possible to set such systems in the collective agreements. In self-government budgetary units the principles and elements of remuneration are introduced by laws and enactment legislation. The specification of those rules shall be made by collective agreements or regulations on remuneration. However, there is a preference of statutory regulations for the wages in the public sector (although allowed, negotiations are very limited). All other employers that employ at least 20 employees should mandatorily create the remuneration systems by collective agreements or remuneration regulations. Payment conditions should be set in such a way that on their basis it is possible to specify the conditions of individual contracts of employment. Where there is a trade union operating at a given work establishment, the employer shall agree the regulations concerning remuneration with the union As far as the difference between remuneration systems by collective agreements and remuneration regulations is concerned, one can highlight that collective agreements have a wider scope, they can regulate all working conditions, as working time for example. Regulations on remunerations limit to remunerations schemes. collective agreements are more important and superior. According to labour code regulations on remuneration are obligatory for an employer with at least 20	union(s) are recognised for collective bargaining, pay structures are usually collectively agreed (nationally in the public sector but usually at a company level in the few remaining private sector companies that have collective agreements (see template 2 for greater detail) (so, salary structures are unilaterally determined by employers at company level? Or can they be determined by company agreements? What is the role of trade unions, if there is any?) (could you please briefly specify such exceptions? Beside a reference to template n. 2).

	employees who are not covered by an enterprise collective labour agreement. What's more, The remuneration regulations are valid for as long as the employees are not covered by an enterprise collective labour agreement or a multi- -enterprise collective labour agreement determining the conditions of remuneration for work and of granting other work-related benefits in a scope and in a manner allowing for individual conditions of employment contracts to be specified. Collective agreements can be concluded only with trade unions. If there are no unions, no collective agreement can be concluded. The remuneration regulations are determined by the employer negotiating with trade unions, but if there is no trade unions the regulation on remuneration is set unilaterally by the employer. This regulation is obligatory for each employer with at least 20 employees. Collective agreements, as "more" are facultative. Additionally, economic entities that employ more than 50 employees are covered by the procedure for determining the annual growth rate of wages. Wage growth rates at company level are agreed on/established/fixed based on the maximum annual rate of increase of the average monthly salary approved by the Tripartite body (Commission for Social and Economic Affairs before, social dialogue council since October 2015) or introduced by the	

	Council of Ministers. The Labour Code provides employers with wide-ranging freedom concerning the formation of remuneration systems (which relates primarily to private sector employers), especially as far as components of remunerations are concerned. At the same time, the Code defines in a fairly detailed way rules for payment of wages and the right to additional remuneration components. For example, additional amounts of remuneration of a general nature include allowance for overtime work in the amount of 50% or 100% of normal salary (Article 151 1 of the Labour Code) or allowance for night work in the amount of 20% of the minimum wage (Article 151 8 of the Labour Code). It also applies to the severance pay in case of termination of employment contract for reasons not related to employees, death benefit (Article 93 of the Labour Code) and retirement severance (Article 92 1 of the Labour Code). There is a statutory regulation on the minimum wages in the Polish labour law system, governed by the Minimum Wages Act. The obligation to ensure at least the minimum wage applies to all employees, regardless of sector or industry. It does not, however, apply to persons performing work under private law contracts (people performing their duties under civil law contracts - contract of mandate – are not self-employed). The Act specifies that the salary of a full-time worker may not be lower than the minimum	

	wage given monthly (with the exception of an employee in the first year of his or her employment, whose salary may not be lower than 80% of the minimum wage). The minimum wage is updated annually, every 1st of January, or twice a year, if needed. The latter is the case when the price index (i.e. consumer goods and services in general) is 105% or higher. Then the minimum wage is adjusted twice a year, effective 1st of January and 1st of July.The minimum wage is the subject of negotiations between the social partners within the Tripartite body (Commission for Social and Economic Affairs before and Social Dialog council since October 2015). If the council does not establish the minimum wage, it is determined by the Council of Ministers. Since 1st of January 2015 the minimum salary is determined on the level of 1750 PLN (approx. 430 €). Since 1st of January 2016 it is 1850 Pln.	

3.2. What are the pay elements directly linked to gender? For example, maternity pay, parental pay etc.?		
Italy	**Poland**	**UK**
Maternity-leave pay (80% of pay, even during early motherhood + possible integration added by the employer unilaterally or in accordance with a company agreement), parental-leave pay (30% of pay + possible integration), paternity-leave pay (a. in case of death/infirmity of the mother: 80% of pay; b. as an exclusive 3-day	According to the Labour Code, there are no pay elements directly linked to gender. Article 189 1 of the Labour Code expressly provides that rights connected with taking care of a child (enumerated by the Code) shall also apply to a male employee. However, where both parents or custodians are employed, the rights stipulated	Some aspects of the EqA 2010 do cover universal minimum gender specific elements such as maternity pay and maternity leave. Sections 72 to 76 of the Act cover pregnancy and maternity equality. Section 74 covers the Maternity Equality Clause in relation to pay and s. 75 covers the Maternity Equality Rule in

leave, composed of a mandatory one-day leave within 5 days from childbirth + two discretionary one-day leaves within 5 months from childbirth: 100% of pay). In the agriculture sector, fixed-term employees are entitled to maternity/paternity pay if they worked for more than 51 days in the previous year.	in these provisions may be exercised by one of them. It applies to additional maternity leave. Also having used at least 14 weeks of the maternity leave after the birth, a female employee may give up the remaining part of the leave that is granted to the employee-father. The rules for calculating maternity allowances are the same, regardless of an employee's gender. According to article 180 of the labour code a female employee is entitled to maternity leave of 20 weeks to 37 weeks (depending on number of children given birth at one birth). A female employee, after having used at least 14 weeks of maternity leave after the birth, is entitled to waive of the remaining part of the leave; in this case, the unused part of the maternity leave is granted to a male employee raising his child, upon his written request. There is a maternity leave pay (100% of pay, financed by social security benefits) Article 182 1a provides that after the maternity leave an employee (both female or male) is entitled to parental leave up to 32-34 weeks). There is a parental leave pay (60% of pay, financed by social security benefits). If female employee decides to take the maternity leave and parental leave jointly (the decision is taken up to 21 days after birth) the pay is equal to 80%. Also article 182 3 stipulates that a male employee raising a child has the right to 2 weeks paternity leave to be taken before the child reaches the age of 24 months. (paid 100%). According to article 92 while an employee is	relation to pensions. The legislation in relation to bonuses (variable pay) paid during maternity leave is complex and depends on whether the bonus is contractual or discretionary. Pay rises during pregnancy and maternity leave are protected and membership of a pension scheme is not affected by pregnancy or maternity leave. A pregnant worker has the right to paid time off for ante-natal care (**Employment Rights Act 1996 (as amended)** ss55-56). The UK has a system of statutory maternity leave and pay (ss71-76). Pregnant employees have the right to 52 weeks maternity leave and some have the right to 39 weeks statutory maternity pay. Similar arrangements exist for adoption leave and pay (s.75A-D). The first six weeks is paid at 90% of the employee's average weekly earnings. The remaining 33 weeks is paid at a statutorily set amount (currently £139.40 per week). A woman is not obliged to take all of her Statutory Maternity or Adoption Leave (only the first two weeks is compulsory or four weeks for factory workers). Leave not taken by the mother can be taken by the father or eligible partner. The law has recently changed (1st December 2014) for babies due or born or adopted on or after 5th April 2015. There is also a system of rights to unpaid time off for employees, providing up to four weeks per year per child capped at 18 weeks to be used within the first 5 years of the child's life or up to the age of 18 for children adopted at a later age or for a disabled child. The employment contract may improve upon the statutory provisions for

	unable to work because of illness during pregnancy retains the right to 100 per cent of his remuneration (normally it 80 per cent of remuneration). A pregnant employee has also a right under article 185 to time off for examinations recommended by a doctor conducted in connection with the pregnancy, if the examinations cannot be conducted outside of working hours. The employee retains the right to remuneration for an absence from work for that reason. According to article 187 a female employee who is nursing a child has the right to two half-hour breaks from work calculated into the working time. An employee who is nursing more than one child has the right to two breaks from work, of 45 minutes each. The breaks for nursing a child may, at the employee's request, be granted at one time. An employee employed for a period shorter than 4 hours per day is not entitled to breaks for nursing. If the employee works for no more than 6 hours a day, the employee is entitled to one break for nursing.	maternity/adoption/parental pay and leave.

3.3. What are the policies about secrecy of pay?		
Italy	**Poland**	**UK**
In accordance with the Code on protection of personal data (delegated decree 196/2003), which implements directives 95/46/EC and 2002/58/EC, as well as to the decisions of the Privacy Authority concerning the processing of employees' personal data in the private sector	There is a prevalent opinion in the Polish labour law literature that the information concerning received salary, including its height, is within the sphere of private life. As a rule, each employee has the right to protect his or her salary as a personal right. What follows from the	**S.77 of the EqA 2010** prevents employers from inserting a pay secrecy clause in contracts of employment or preventing in any other way employees discussing their pay with each other. This clause also covers workers seeking to find a comparator for an equal pay claim and should,

(Res. 23 November 2006, no. 53) and in the public sector (Res. 14 June 2007), also with specific regard to pay-slips (Res. 25 June 2009, n. 325), employers are required to deliver payslips in closed envelopes or folded-and-stapled sheets in order to prevent third parties from seeing their contents. The communication of this data to third parties needs to be approved by the employee.	recognition of the right of an employee not to disclose the amount and parts of his or her salary is that the interference with the privacy of worker in this regard can be done only with the consent of the employee or under express provisions of the law (which is considered as circumstances excluding the illegality of the threat or violation of personal rights). The existence of such regulations leads to the conclusion that, in principle, the secrecy applies to remuneration paid to individuals, while the law provides exceptions to this rule, as exemplified by the art. 882 of the Code of Civil Procedure, which requires the employer to disclose to the court bailiff who seized an employee's salary as part of enforcement proceedings a periodic statement of the employee's remuneration. Also the jurisprudence indicates that the disclosure by the employer without the consent of the employee the amount of his or her earnings may constitute a violation of personal rights within the meaning of the Civil Code (resolution of the Supreme Court of 7 May 1993, I PZP 28/93). The obligation to maintain the height of wage secret is not absolute, however, as the obligation to indicate the height of wage earned at the second workplace in order to award assistance grants from the social fund does not infringe the worker's personal rights (judgment of the Supreme Court of 8 May 2002, I PKN 267/2001). According to current regulations, the benefits from the social fund shall depend on the financial situation of the employee (on social criteria). According to the Trade Unions Act of 1991 (art.	in theory, make finding an actual comparator easier.

	28), an employer is obliged to provide on-demand of the trade union the information necessary to conduct trade union activities, in particular information about working conditions and remuneration policies. It is pointed out, however, that the information provided by the employer shall not contain data concerning individual employees and should have an over-individual character, which pertains in particular to the data on the conditions of remuneration. The trade unions do not have the power to demand that the employer provide information about the employee's salary without his or her consent. On this basis, employers refuse to provide to the unions the information about the height of remuneration of individual employees. It should also be pointed out that the obligation to maintain the secrecy of wages refers to the employer. According to the jurisprudence, a disclosure by an employee to other employees information on his or her wages, even if such data are covered by the confidentiality clause, with the aim of preventing the violation of the principle of equal treatment and forms of discrimination concerning wages, may not involve negative consequences to the employee, including termination of employment, regardless of how the employee obtained access to the information. This means that employers must not abuse the confidentiality clauses or "secrecy" of payroll for any purpose other than the protection of business secrets, the disclosure of which could jeopardize the essential interests of the company, e.g. its competitiveness (judgment of	

	the Supreme Court of 26 May 2011, II PK 304/10).	

IV. Tax and social security framework

4.1. What are the relevant fiscal and social security provisions? What is the difference between wage and income (for example, this includes considerations also on the relationship between wages and possible state allowances)? Is there any gender-related relevance of fiscal/social security provisions resulting into a widening of the GPG? for examples tax deductions, tax reductions, "silent social security contributions"?		
Italy	**Poland**	**UK**
1. The regulation of family unit allowances (Assegno per il nucleo familiare) can imply possible indirect sex discrimination and a widening of the gender pay gap. While their amount is set according to the whole family unit income, employees are entitled to the whole weekly allowance only if they work more than 24 hours per week (taking into account all the employment relationships in which they are involved). If they work fewer than 24 hours per week, they are entitled to as many daily allowances as there are days effectively worked, whatever the amount of hours per day is (now art. 11, delegated decree 81/2015; the same provision was provided in the previous law, delegated decree 61/00). This results into a difference in treatment between horizontal and vertical part-timers, but also into a possible indirect gender-related difference in wages between men and women. Considered that more women than men are generally involved in part-time relationships, family unit allowances are likely to be primarily requested	Tax liability is one of the key institutions of personal income tax. It depends on both the place of residence of natural entity and the place of tax revenue source. There is clear differentiation between the unlimited tax obligation rule (i.e. the subject of which are natural entities who have the place of residence on the territory of the Republic of Poland) and the limited tax obligation rule (i.e. the one which concerns natural entities who do not have the place of residence on the territory of the Republic of Poland). Natural persons in Poland are subject to personal income tax calculated, as a rule, according to a progressive tax scale. Tax rates vary depending on the income earned, defined as the total revenue minus tax deductible costs, earned in a given taxable year. The legal basis for this obligation is settled in the Natural Persons' Income Tax Act of 1991 (NPIT Act, with further amendments). A person single-handedly raising children who	UK social policy is historically underpinned by a strong breadwinner model characterised by a conceptualisation of a family unit that was based on heterosexual marriage and in which the male head of the household worked full time and earned enough to keep a wife and family. Women were considered to not work at all or only infrequently, taking responsibility for the home and care of family members. How far this model existed outside of a white, middle-class ideal has been challenged by a number of feminist academics (e.g. Lewis, 1992; Mama, 1984). The social security and taxation systems have historically reflected the breadwinner model by defining women's access to benefits and tax allowances in relation to their husband's income. Much of the gendered structural issues identified in the economic analysis above have their roots in Beveridge's 1942 blue print for the British post-war welfare state. Although most of the most blatant aspects of sex

by men, since they are more frequently entitled to access their full weekly amount.

2. Fiscal deductions for family burdens are generally shared between the parents equally. However, the law allows the parents to concentrate all these fiscal deductions on the parent with the higher income, when the other cannot take full advantage of such fiscal benefit because of an insufficiency of income (the whole amount of fiscal deductions is higher than the gross tax applicable). The Gender Pay Gap can therefore result into a concentration of these fiscal deductions on men, with a possible negative consequence at the expense of women: the absence of family burdens deductions in the pay slip can have a pivotal importance in case of redundancy, considering that family burdens are one of the selection criteria that employers are required to apply in a collective redundancy situation. As mentioned above, the anti-discrimination provision set by Law. 223/91 can only partially prevent this result from occurring (*see supra*).

3. The possible impact of performance-related pay elements on the GPG can be widened by:

a) a reduction of tax rates applicable to performance-related pay elements (as well as to over-time and night-work compensations), which is granted on condition that such elements are regulated and set by collective agreements, in accordance with the Programmatic Guidelines on Productivity of 21 November 2012 and the Intersectoral

would like to take advantage of this preference should be unmarried, widowed, divorced, or separated. It can be also a married person in case when a spouse is deprived of parental rights or serves time in prison (art. 6 par. 4 NPIT Act). She or he should maintain at least one child who is underage (up to 18) or who received nursing allowance (benefit) or social pension or is under the age of 25 and is a student under the provisions of separate legal acts concerning the higher education system.

Under the provisions of art. 21 NPIT Act, some of the incomes are free from the tax, like family benefits and allowances, care allowances, childbirth allowances which are granted under separate regulations of law (point 8 of art. 26) as well as one-time allowance due to childbirth which is paid from the trade unions' fund (point 9). Additionally, amounts representing reimbursement by virtue of childcare are also tax-free income (point 26b).

Personal income tax payers may take advantage of a few tax credits, such as a credit for charitable donations an a child tax credit. The Natural Persons' Income Tax Act in its art. 27f states, among others, that a taxpayer has the right to deduct the amount calculated according to the provisions of the Act for every child under the age of 18 for whom he/she exercises parental authority, acts as a legal guardian if a child has the same residence or is a foster parent on the basis of the court's judgment or of the agreement with the local authorities.

discriminatory social policy were removed following the **Sex Discrimination Act 1975,** their removal has been slow, incremental and often made only after legal challenges that UK law was incompatible with European law. For example in *Regina v Secretary of State for Employment ex parte Equal Opportunities Commission and Another* the extended qualifying period for unfair dismissal for part time workers in the **Employment Protection Act 1975** was successfully challenged. On 3 March 1994, the House of Lords ruled that this law amounted to indirect discrimination against women as so many more women than men work part time and was therefore incompatible with European law. The Preston case considered above highlights that similar discriminatory practices in relation to part-time women workers were evident in company pension schemes, but again only after a ruling by the ECJ. Furthermore, the discrepancy in retirement ages for men and women in relation to state pensions was only rectified in the **Pensions Act 2011.** After pressure from Europe, the government agreed in 1995 to equalise the retirement ages for men and women but this will not take full effect until 2018 when the retirement age for women will be raised to meet that of men. The historical sex bias in social policy is still shaping women's life-long incomes. For example, even by 2006, only 13% of women qualified for the full basic state pensions compared with 92% of men (Thane, 2006).

Austerity measures taken by the government in

Agreement on Productivity of April 2013, as well as to Law 228/12. Specifically the employee is granted a 10% tax rate instead of the ordinary one. However, this fiscal provision, introduced by Law 228/12 for the 2013-2015 period, was not confirmed by the Stability Law for 2015, and therefore it is currently suspended. b) a reduction of social security contributions (a 25% reduction of those at the expense of the employer; a total 100% exemption from those at the expense of the employee) applicable to performance-related pay elements as long as they are set by collective agreements (Law. 247/07 and Law. 92/12).	All the above mentioned provisions are foreseen for both women and men and have no gender connotations. Bearing in mind the social security system in Poland it may be noted that it comprises retirement and disability insurance, accident insurance and illness insurance. Insurance covers, among others, employees, the self-employed, and contractors. These individuals are also subject to mandatory health insurance. There are no special provisions for women as such, and according to art. 1 of the Law on Social Security System social security covers: 1. pension; 2. annuities; 3. sickness insurance and in the case of maternity; 4. accident insurance. Additionally, art. 2a.1. of the above mentioned act stresses that Polish law in the matter in question promotes equal treatment of all insured persons regardless the sex, race, nationality, ethnicity, marital or family status. In the light of the problem discussed in the report such provisions seem crucial. It can also be added that in case of maternity or/and numerous families (with three and more children) the Law on Social Welfare in art. 7.8 states that the social welfare is granted, among others, to persons and families due to the need to protect	relation to the latest financial crisis have rekindled the debates about gender biased social policy. The emergency budget put into place by the coalition government in the first few months of their taking office in 2010 was challenged by the Fawcett Society, a women's organisation dating back to the suffrage movement of the 19th Century. Using the Gender Equality Duty, the Fawcett Society applied for a judicial review of the budget claiming that its measures had disproportionate effect on women, particularly poor and ethnic minority women and that the government had not completed an equality impact assessment or demonstrated 'due regard' for gender equality required by the Duty(Conley,2012). Although the judge agreed that the government was covered by the Duty and had not met its requirements, he ruled against allowing the case to go to full judicial review stating that the Fawcett Society had left the claim too late and would cause "problems of a significant order for the certainty which the public and corporate world (individual and foreign) is entitled to have in the budgetary affairs of the United Kingdom" (cited in Conley, 2012:355). The Fawcett challenge was built on data that was collected largely by the Women's Budget Group (WBG)4, a collective of feminist economists, researchers, policy experts and activists, who often work closely with the trade unions. One of the main arguments of these groups is that changes being made to the social security and taxation framework in the name of austerity are eroding the improvements made since the Sex Discrimination Act. For example, marriage has

	maternity and numerous families. The difference between men and women in the context of incomes comes from the Law on Pensions and concerns the age of retirement (see art. 24. 1a and 1b of the Law on Pensions). It depends on the date of birth and is different for men and women but according to Polish Law it is going to be equal - 67 years of age in 2040 for both groups (for men 67 years of age will be the age of retirement in 2020). For now, generally speaking, every insured person who was born before 1st January 1949 has the right to retirement at the age of 60 for women and 65 for men. But the new law on pensions was created for those who were born after 31st December 1948. Every person is entitled to pension regardless of the duration of the contributory or non-contributory period in the system of social security but the amount of benefit depends on the period of employment of the insured person. And here the problem appears that men can still work longer in comparison with women so their pension is usually higher. The situation will change only in 2040 when the retirement age will finally increase for both groups up to 67 years of age. So the position of women who become pensioners for next 25 years will be still worse than men. In conclusion, it may be stated that considering certain acts of Polish law connected with tax and social security system there are no specific gender-related provisions, also in the case of tax deduction and tax reductions, except for those	been given a higher profile in the latest changes to the taxation system with a system of transferable allowances for married couples coming into effect in 2015. The WBG (2013) have argued that this infringes a system of independent taxation that does not financially tie a wife to her husband. Perhaps the biggest impact on the GPG is in relation to the measures the government has taken in relation to freeze public sector pay increases as part of their austerity measures. In the 2010 emergency budget pay was frozen for two years. This was extended for a further year and then a 1% limit on pay increases was introduced. In addition to this automatic pay progression was removed for large groups of public sector workers. Since approximately 65% of public sector workers are women and most of the higher paid jobs for women are in the public sector, it is anticipated that these measures will have an impact on the GPG.

	connected with the retirement system. But the other conveniences are granted to every person who fulfils certain conditions. As far as social security regulations and the problem of gender bias are concerned, the new Polish government is proposing and preparing a new law on the age of retirement. According to the proposal, retirement age will again be 60 years for women and 65 for men. While no official draft of the new law has been submitted to the Polish Parliament so far, it is unlikely that retirement at this age will be mandatory.	

V. Instruments for involvement of trade unions

5.1. What are the instruments for trade unions to shape the employers' agenda as far as the GPG is concerned (other than collective bargaining)?		
Italy	**Poland**	**UK**
In accordance with Art. 42 delegated 198/2006, affirmative actions programmes do not necessarily need to be adopted with a collective agreement. However, if they are negotiated with trade unions, they are entitled to priority access to public funding. Differently, under Art. 9 Law. 53/00, work-life balance arrangements need to be collectively negotiated with trade unions in order to access public funding.	Collective bargaining and consultations are the main instruments. Moreover, a "Social Labour Inspection" (Społeczna Inspekcja Pracy), a structure established and managed by company trade union organisations, representing the interests of all of a company's employees, aims at ensuring the maintenance of safety at work by employers and the protection of the employee rights specified by labour law. Theoretically, an inspector may also monitor wages, but the Social Partners involved in the project did not confirm such practice in their companies. Tariffs and principles of remuneration are also agreed with trade unions (according to the Labour	…The only legal instrument that expressly allowed the trade unions to be consulted on the GPG was the Gender Equality Duty (see 1.2 above) which included a specific duty on equal pay and a duty to consult trade unions. However when the Gender Equality Duty was combined in the Equality Act 2010 with the other equality strands this specific duty was lost.

	Code, an employer employing at least 20 employees is obliged to implement the remuneration regulations). The regulations set out the conditions of awarding remuneration to employees, and include provisions relating to the system of remuneration, remuneration components and their respective amounts. They also specify the rules for granting premiums and prizes, as well as additions to salaries, benefits, etc. Theoretically, the trade unions could be competent to verify them with respect to the gender pay gap.	

TEMPLATE 2

The model of industrial relations

I. Collective Bargaining: the regulatory framework.

1.1. How does your legal system recognize unions? If so, is it a multi-union model? (i.e. is there a plurality of trade unions or only one trade union for each sector? Same question for employers' associations)		
Italy	**Poland**	**UK**
The legal system recognises and protects unions at Constitutional level. In particular, Art. 39, first par. Const. states that «trade union organisation is free». The principle of freedom of union organisation also applies to employers' organisations. Since the programmatic provisions set by the other paragraphs of Art. 39, concerning the registration of unions, were not followed by the legislative acts required for their implementation, the Italian union system is still currently characterised by an absence of norms dealing with union organisation. Consequently, union organisations can be freely set up as non-recognised associations under the rules of the Civil Code, and a plurality of different unions can be established and co-exist within the same sector.	The legal system recognises and protects unions at Constitutional level. Art. 12 and 59 Const. state that the Republic of Poland shall ensure freedom for the creation and functioning of trade unions and employers' organizations, which are granted the right to bargain and conclude collective agreements. This leads to a multi-union model (with exceptions in the public sector). There are both territorial and branch trade unions, so it is possible that a plurality of different trade unions represent workers of the same professional group. According to the Trade Union Act of 21 May 1991, a trade union can be founded with the founding resolution passed by at least 10 persons entitled to found a trade union. They also adopt its statute and elect a founding committee of 3 to 7 members. The trade union must be registered in the National Court Register (KRS). Similar provisions apply to employers' organisation, under the Employers Organizations Act of 21 May 1991.	There is no formal constitution in the UK and therefore no constitutional recognition of either the freedom of association or of collective bargaining. The Human Rights Act of 1998 gives effect in UK law to the rights and freedoms guaranteed under the ECHR, such as the freedom of association provided by Art. 11 (in the cases of *Demir and Baykara v. Turkey* and *Enerji Yapi-Yol Sen v. Turkey* the European Court of Human Rights declared that Article 11 ECHR includes a right to collectively bargain and precludes a blanket ban on a right to strike). In the frame of a context traditionally considered to be characterised by voluntarism and state abstenstionism, the law historically provided trade unions with a series of immunities from the principles of common law, under which trade unions activities would otherwise be unlawful. However a series of legislative interventions starting in the 1980s has limited the ability of trade unions to picket and call strikes. Further limitations on trade unions are proposed in the 2015 Trade Union Bill. The TUC is the sole trade union confederation in the UK, paralleled on the employers' side by the CBI. They both have no mandate to conclude collective agreements at any level.

		While trade unions can be freely established, they can access company collective bargaining only if recognised by the employer (*see infra*). An employer may recognise more than one trade union and my conduct multi-table i.e with more than one union present or single table collective bargaining i.e where negotiations take place with only one recognised trade union. The recognition procedure relates to the employer rather than sector. Some employers in a particular sector may recognise more than one trade union, some may recognise only one and some may not recognise any. Sectoral/national agreements are now largely (if not entirely) confined to the public sector and even then tend to be "enabling agreements" that are open to interpretation at a decentralised level. It is a multi-union model, but there is no single model: it depends very much on the sector/employer.

1.2. At what level does the legal system recognize and protect collective bargaining?		
Italy	**Poland**	**UK**
The recognition and protection of collective bargaining is implied in the principle of freedom of union organisation enshrined by art. 39 Const (*see above*).	According to Article 59.2 Const., trade unions and employers and their organizations shall have the right to bargain, particularly for the purpose of resolving collective disputes, and to conclude collective labour agreements and other arrangements.	There is no constitutional recognition of the right to collectively bargain. The Human Rights Act of 1998 gives effect in UK law to the rights and freedoms guaranteed under the ECHR, such as the freedom of association provided by Art. 11, which shall include the right to collectively bargain according to the case-law of the ECHR

		(*see above*). The Employment Relations Act 1999 (building on the 1975 Employment Protection Act) is the most significant regulatory act concerning recognition and thereby collective bargaining: it defines a statutory union legal recognition procedure, applying to employers with 21+ employees, which enables trade unions to use the law via the Central Artitation Committee (CAC) to require employers to recognise them for collective bargaining over pay, hours and holidays, if such recognition is not established voluntarily.

1.3. Are there general prohibitions on the right to collectively bargain? Are collective agreements subject to the prior approval by authorities before coming into force? Are there any sectors or workers excluded from the right to collectively bargain?		
Italy	**Poland**	**UK**
Neither are there any general prohibitions on the right to collectively bargain, nor are collective agreements conditioned to any form of authorisation in order to come into force, except for the public sector (*see infra*). There are workers whose employment relationships are not regulated by contracts and collective agreements but by public laws, like University professors and researchers, magistrates, lawyers of the state legal advisory service, prefects, diplomats, prisons' managers, fire-fighters (see delegated decree 165/2001). Furthermore, there are workers that are also excluded from the right to be unionised and from the right to strike, like in the military sector.	While a freedom to collective bargain is generally granted to trade unions, there are certain workers in public sectors excluded from this right (*see infra*). According to the Labour Code, in order to enter into force, multi-establishment and single-establishment collective agreements need to be registered. The aim of the registration is to examine their conformity with the law and to grant them the status of a legal act. Once registered, they cannot be changed without a re-registration and the rights and obligations they provide can be enforced in the same way as those enshrined by statutory laws.	For some public workers pay conditions are set by pay review bodies and not by collective agreements (*see infra*). Collective bargaining is still a voluntary process that is not legally binding. See 1.2 for discussion on recognition procedures which may lead to collective bargaining. The police and armed forces are prohibited from striking. Governments frequently raise the issue of prohibiting other workers from striking, e.g. health and public services.

1.4. Are collective agreements legally binding? Do they have *erga omnes* applicability or are they legally binding only for the members of the

signatory associations (trade union/employers associations)? Are collective agreements applied to the workers without ratification or do workers need to ratify the agreement?		
Italy	**Poland**	**UK**
Since the second part of Art. 39 Const. was not implemented by the required legislative measures, collective agreements do not have *erga omnes* legal effects. Therefore, they are still legally binding only for the members of the signatory associations. Therefore, employees are included in their scope only if their employers are members of a signatory employers' association or voluntarily apply them. However, on the grounds of established case-law, the clauses of (national) collective agreements concerning minimum wages can be judicially applied - even if the employer is not a member of the signatory association - when in the context of litigation a judge needs to determine whether a salary is consistent with the principle of sufficiency and proportionality of pay enshrined by art. 36 Const. If an employer applies a collective agreement – whether as a result of membership or voluntary adhesion – an exclusion of certain employees from the scope of such collective agreement will imply a breach of the principle of non-discrimination on grounds of union affiliation enshrined by Art. 15 Law no. 300/70 (so called Statute of Workers), in accordance with dir. 2000/78/EC. Collective agreements do not need to be ratified by employees in order to be applicable. However, cross-sectoral agreements at national level – which are still binding only for their member associations – recently required procedures of ratification when a company agreement is negotiated by a non-elective workers representative, on condition that a union or the 30% of company's employees ask for a ratification of such	As far as multi-employer collective agreements are concerned, according to the Labour Code they can be extended by the decree of the Ministry of Labour to employers who are not affiliated to the signatory parties associations following a joint request of an employer association and of a multi-employer trade union. «This legal opportunity is not used in practice as in general multi-employer collective agreements are very rare» (Eurofound 2014). With the exception of certain groups of workers, company collective agreements have generally *erga omnes* applicability: they apply to all workers employed by the employer covered by the collective agreement. This explanation is also related to the Trade Union Act that introduces so-called "negative union freedom", according to which no person shall bear negative consequences of their membership or non-membership in a trade union or performance of a function within the trade union. Additionally, according to section 7 of this Act, trade unions shall represent rights and collective interests of all employees regardless of their trade unions membership (contrary to the individual work relation, when trade unions represent rights and interests of their members or those who asked for trade unions protection; specifically, in the sphere of collective labour law trade unions represent all workers, which means that if a collective agreement is concluded it covers all workers, whether they	According to the Trade Union and Labour Relations (Consolidation) Act 1992 s. 179, collective agreements are presumed not to be legally binding (they are "binding in honour only") unless they expressively state so in writing. As there is no legal obligation to treat collective agreements as a source of norms for individual contracts, their provisions become legally binding and enforceable only if they are inserted into employment contracts. There are no legislative or voluntary mechanisms for extending the subjective scope of collective agreements. They are applied to all workers in the bargaining unit and not just to trade union members as a result of the fact that they are incorporated into individual contracts of employment.

agreement by referendum. Under Art. 8, Law Decree 138/2011, as converted in Law 148/2011 (*see infra*), decentralised collective agreements are given «erga omnes» effects on condition that specific conditions (subjects, objectives and negotiating parties) are fulfilled.	are members of trade unions that concluded the agreement or not; in the sphere of individual labour law trade unions represent their members, which means that trade unions protect against dismissal only their members.). As a consequence, Article 239 of the Labour Code provides that an agreement shall be concluded for all employees employed by the employer covered by an agreement, unless the parties hereto decide otherwise. It means that while concluding collective agreements the parties have the right to change this general rule. First of all, parties can exclude certain groups from the scope of collective agreement, provided that this exclusion has no discriminatory basis. In particular, the exclusion cannot refer to all non-union members (due to "negative union freedom"). The exclusion of workers covered by other (multi-establishment) collective agreements can serve as an example. Secondly, parties of the collective agreement can broaden the scope of the collective agreement and decide that it can also apply to non-workers (employed on the basis of civil contracts, retired pensioners, pensioners or members of worker's family). Certain statutory exclusions concern employees in the public sector (*see infra*). The collective agreements apply to workers without their ratification, due to normative character of those agreements. However, workers are protected against an unfavourable change of working conditions. In particular, the less advantageous provisions of the agreement	

	shall be introduced by a notice to terminate the existing terms of the contract of employment (or the terms of other legal instrument constituting a basis for the employment relationship). However, giving notice to terminate the existing terms of the contract of employment shall not be subject to any provisions which limit the admissibility to give notice to terminate the terms of such an agreement. That gives the employer the right to change the employment conditions of all workers, also those protected by the law due to their social functions or life situation.	

II. Collective Bargaining: Structure, bargaining parties and procedure.

2.1. What are the levels of the collective bargaining: Central/ Sector / branch of activity/ company/establishment level/ Group company/ clusters companies?		
Italy	**Poland**	**UK**
Collective bargaining can be carried out at both national and decentralised level. The former includes intersectoral and sectoral agreements, the latter includes company or – in some specific sectors, like craftsmanship and construction industry – territorial agreements. The relationship between the different levels of collective bargaining is currently regulated by the social partners at national level. Specifically, the national Intersectoral Agreement of 28 June 2011 enables decentralised agreements to derogate from national agreements on condition that the former complies with the limits and procedures set by the latter.	Collective bargaining can be conducted at all levels, although the Labour Code specifically refers only to establishment and multi-establishment level. In practice, collective bargaining takes place mostly at an establishment level, with the exception of certain professional groups. The Labour Code allows also to conclude one establishment collective agreement for several employers when they form one legal person. There was also a Tripartite Commission for Socio-Economic Affairs, composed of trade unions and employers' organisations and	Depending on the sector, collective bargaining can operate at national, industrial, regional, company and workplace levels. In the private sector, the company level is the principle level for collective bargaining and for the setting of pay and working time. Industry/sectoral wide bargaining has declined, but is still relevant in certain sectors, e.g. construction, parts of the textile and furniture industries, food and drink, where multiple unions may be key actors and multiple agreements the outcome. The peak bodies, namely TUC and CBI, do not have a mandate to conclude collective agreements.

Differently, Art. 8 of Law Decree 138/2011, as converted into Law 148/2011, enables decentralised agreements to derogate from both national collective agreements and legislative provisions as long as they deal with a specific list of subjects, are concluded to the purpose of specific objectives and are negotiated in accordance with the procedures set by the law. Notwithstanding the development of collective bargaining at group and/or clusters level, such levels are not expressively regulated by the above-mentioned Intersectoral Agreement, whose provisions are not even always suitable for their specific characteristics.	representatives of the main national administration bodies, which provides a platform for national-level social dialogue on matters concerning directions and tools for the socio-economic policies of the state (*see Template 1*). Since September 2015 the tripartite commission has been replaced by the council of social dialogue. The composition and tasks of the council are very similar.	Industry-wide agreements are more common in the public sector, with the exception of some public sector employers, such as the civil service, who bargain at the level of a single organisation. However, early results from a major official survey of employee relations carried out in 2011 to 2012 (WERS 2011) show that the proportion of public sector workplaces using multi-employer bargaining has fallen from 58% in 2004 to 44% in 2011. Finally, some workers in the public sector, such as teachers, parts of the health service and those in the prison service, are covered by pay review bodies, rather than by collective bargaining.

2.2. What is the collective bargaining coverage rate? (levels and percentage of workers covered by collective agreements)		
Italy	**Poland**	**UK**
According to Eurofound 2011, in Italy, with regard to national sectoral agreements, the collective bargaining coverage rate is (apparently) the 80% of employees, quite higher that the EU-25 average rate. As regards company agreements, the coverage is much lower, approximately 40-45% of employees in the industry sector; 35-40% of the employees in the service sector and 20-25% of companies. However, Eurofound clarifies that there is no available systematic data on collective bargaining coverage, especially in terms of company agreements, but only surveys.	The collective bargaining coverage rate is low in Poland, but there are no official data concerning this coverage. According to the European Participation Index (EPI), developed for the 2009 *Benchmarking Working Europe* report in its updated 2010 version (the EPI 2.0), the collective barganing coverage in Poland is estimated at 35% (percentage of workforce covered by collective contracts) and the trade union density at 16% (percentage of workforce that belong to the trade unions). Eurofound informs that bargaining coverage rates in Poland are available only for the various	Collective bargaining coverage has declined alongside the decline in trade unions and employers' associations. Nevertheless, it is still an important means of pay determination (see paper on UK bargaining). Today we see overall union density is 25.6 which conceals women's greater union density at 28.3, which exceeds that of men's at 22.9. According to the 2013 Trade Union Membership Statistical Bulletin, the proportion of employees who had their pay affected by a collective agreement was around 41% in larger workplaces, compared with 16% in workplaces with less than 50 employees. There are further

	bargaining levels separately, and there are no general figures taking into account the overlapping of agreements concluded at different levels. The unionisation rate for 2001 was estimated for 15%. According to Polish CBOS (Foundation for Public Opinion Research Center), the trade unions density in 2012 was 12%. Similar data concern 2014. There are no official data concerning the establishment collective agreements. According to the National Labour Inspection (report from 2013), in recent years there has been a decline in the total number of requests for registration of establishment collective agreements	distinctions between full-time and part-time employees and permanent and temporary employees. Permanent employees were more likely than those in temporary jobs to be union members in all occupations. The proportion of permanent employees who were trade union members was 26% in 2013, compared with 14% for temporary employees. Full-time employees were also more likely than those in part-time work to be union members.

2.3. How many collective agreements are there in each level of collective bargaining? in which sector are there more collective agreements? Have the EU anti-crisis measures, from the Euro Plus Pact on, affected the degree of centralisation of collective bargaining?		
Italy	**Poland**	**UK**
At national level there can be a plurality of collective agreements in each sector. Following the push towards decentralisation fostered by the EU anti-crisis measures and specifically required by the letter to Italy issued by the ECB in August 2011, the Italian Government enacted a specific law-decree in order to regulate and support the development of decentralised collective bargaining. This legislative measure was introduced notwithstanding the self-regulating system adopted by the social partners just two months earlier with the above-mentioned Intersectoral Agreement of 28 June 2011. Such legislative intervention was therefore strongly criticised and opposed by trade unions. Nevertheless, it	Since the system is multi-union, there can be more than one sectoral collective agreement for each sector. The EU anti-crisis measures did not influence the level of collective bargaining.	The largely decentralised nature of employment relations in the UK has progressively increased over the last three decades, with a shift to company-level bargaining. Therefore the decentralisation process cannot be considered to be a result of or a response to EU anti-crisis measures .

was eventually applied by some collective agreements.		

2.4. At the present time of crisis and reforms of labour law, do any new law or the social partners prefer a specific level of bargaining? If so, what are the mechanisms used by the law or by the social partners to support and/or reinforce such level (for example, clauses set by national collective agreements in order to regulate the possibility for decentralised collective agreements to derogate from the contractual provisions set at national level (so called, «exit clauses»)?		
Italy	**Poland**	**UK**
Following the policy guidelines set by the Euro Plus Pact, as reaffirmed by the ECB letter to Italy of August 2011, decentralised collective bargaining was strongly fostered and supported by Art. 8, Law Decree 138/2011, as converted in Law 148/2011. Under this provision and on condition that specific conditions (subjects, objectives and negotiating parties) are fulfilled, decentralised collective agreements can derogate from both national collective agreements and legislative regulations, and be given «erga omnes» effects. Differently, the regulatory system autonomously established by the social partners in the Intersectoral Agreement of 28 June 2011, just two months before the enactment of Art. 8 Law Decree 138/2011, allows decentralised collective agreements to derogate from national contractual provisions only on condition they comply with the limits set by the «exit clauses» of national collective agreements. In order to foster collective bargaining on performance-related pay, the legislator introduced a reduction of social-security	Amendments to the Labour Code introduced in 2002 enable the signatory social parties to suspend the application of a company collective agreement or a multi-employer collective agreement, for a period no longer than three years, if this is justified by financial difficulties of the employer. In the case no trade union is operating in the work establishment, internal regulations can be suspended by the agreement between the employer with representatives of the employees selected in accordance with the applicable procedures. Similar regulation was introduced in 2013 in the Labour Code with regard to the possibility of extending the calculation period for working time up to 12 months. While in 2009 anti-crisis measures adopted by law were previously negotiated by the government with the social partners within the Tripartite Commission on Socio-Economic Affairs, the new anti-crisis legislation introduced in 2013 was not a result of social dialogue.	The prominence of company-level collective bargaining already intensified over the last three decades so it cannot be linked to any law or social partners' preference occurred during this time of crisis. Besides, «the UK is notable for the disorganised nature of its levels of collective bargaining and the lack of legal backing and promotion that collective bargaining are subject to» (Eurofound 2014). The UK government is less concerned with the level of bargaining. It is more concerned with how the outcome of the bargaining is arrived at and keen to restrict the right to strike through the 2015 Trade Union Bill, which will effectively weaken the bargaining process.

contributions for collectively negotiated performance-related pay elements (*see Template 1*). Such incentive was firstly introduced on an experimental basis in 2008, and was then made permanent in 2012 (Law 92/12). As for 2015, the Stability Law for 2015 has strongly reduced the amount of funding aimed at covering this measure. Another legislative measure aimed at supporting collective bargaining on performance-related pay is the reduction of tax-rates applicable to these pay elements, when negotiated by collective agreements. Whereas a reduction of tax-rates for over-time and performance-related pay was already introduced in 2008 on an experimental basis, but without requiring the intervention of collective bargaining, such intervention was added as a prerequisite by the legislator in 2011. At national level the social partners introduced self-regulatory guidelines on the topic in 2012. However, such inter-sectoral agreement was reached without the CGIL, which is the most representative trade union. Therefore, it was de facto repealed by the following National Inter-sectoral Agreement of 24 April 2013, signed by all the trade unions, which enabled the legislative measure to become effective for collective agreements aimed at improving company and work productivity through working time arrangements (*see Template 1*).		

2.5. Are the bargaining parties totally or partially defined by law? If not, who are the negotiating parties of a collective agreement? who are legitimated to negotiate in each level?

Italy	Poland	UK
In the private sector, bargaining parties are defined by the law only if legislative regulations need to be complemented in detail by contractual provisions, and the collective agreements that are given such competence need to be selected. Bargaining parties are also defined by Art. 8 Decree Law 138/2011 for the purpose of selecting which collective agreements are given erga omnes effects as well as the power to derogate from legislative provisions. At national level, intersectoral unions negotiate intersectoral collective agreements, while sectoral unions negotiate sectoral collective agreements. At decentralised level, company agreements are negotiate by the employer and company worker representatives, while territorial agreements are negotiated by territorial trade unions and territorial employers' associations (as regards the latter, see for example the territorial protocol for territorial development signed by Confindustria of Bergamo, on one side, CGIL, CISL and UIL of Bergamo, on the other, 10 March 2014) The regulatory system autonomously established by the social partners in the Representation Act of 2014 requires the social partners willing to enter negotiations at national level to meet a representativeness threshold of 5%. This is an average value obtained combining the percentage of certified union memberships and the percentage of votes received by the union in the elections of unitary representative bodies at	The bargaining parties are defined by law. According to Article 241 of the Labour Code a multi-establishment collective agreement is concluded by the appropriate statutory body of a multi- establishment trade union acting for the employees and the appropriate statutory body of an employers' association, acting for the employers – on behalf of the employers united in the association. A single establishment agreement due to Article 241 of the Labour Code is concluded by the employer and the establishment trade unions. To conclude collective agreements, parties must meet the representativeness criteria set by the Code. Such a regulation is a consequence of the definition of an employer adopted in the Polish legal system (management concept of employer). According to Article 3 of the Labour Code an employer is an organisational unit, even if it has no legal personality, or an individual, provided it employs employees. Therefore, in the public sector it is the unit that is regarded as the employer, e.g. the office, court, school, and not the State, the Treasury, or the municipality. To conclude a collective agreements, trade unions must meet the representativeness criteria set by the Code. Moreover, the Act on Tripartite Commission for Social and Economic Affairs and regional social dialogue commissions provided that employees and employers of the Commission could conclude multi-establishment collective agreements covering all employers associated in employers' organizations or a group of those	In order to engage in a process of collective bargaining at company or sectoral level, a trade union needs to be recognised by the employer. The primary basis for union recognition has traditionally been voluntary agreement. In 1975 the Employment Protection Act introduced a statutory union legal recognition procedure which was subsequently updated in various Employment Relations Acts (1999, 2004), which applies to employers with more than 21 employees.

company level.	employers and workers employed by those employers. The same possibility concerns parties of new council of social dialogue. However, there are no collective agreements under these provisions concluded so far.	

2.6. Does the law set out any procedure for negotiation? Is the procedure freely chosen by the bargaining parties?		
Italy	**Poland**	**UK**
In the private sector, procedures for negotiation are set only by the social partners in national collective agreements for the purpose of regulating re-negotiation of contractual provisions (such as provisions regulating the presentation of negotiation proposals and no-strike clauses). The Intersectoral Agreement of 28 June 2011 set a procedure for ensuring that national and company collective agreements are effective and are applied by all the signature parties. To this purpose, the procedure requires collective agreements to meet specific prerequisites with regard to: i) certification of trade unions' representativeness; ii) presentation of negotiation proposals; iii) conclusion of the agreement.	The Labour Code does not provide any particular procedure for negotiations, leaving the freedom to determine it to the negotiating parties. However, it indicates three general rules applying to negotiations. First of all, there is an obligation to enter into negotiations, which does not imply an obligation to conclude a collective agreement. Secondly, there is an obligation to conduct negotiations in good faith and with respect for the legitimate interests of the other party. Thirdly, employers are obliged to provide the representatives of trade unions with information on their economic situation, necessary to conduct responsible negotiations with respect to the matters covered by such negotiations.	The statutory recognition process allows a union or group of unions to refer their claim for recognition to the Central Arbitration Committee (CAC) for determination when the issue cannot be resolved voluntarily. Following the union mandatory recognition procedure, union recognition can be ordered only in relation to pay, hours and holidays. In relation to these matters, the CAC may specify a «method» of collective bargaining enforceable by specific performance in the courts.

III. Collective bargaining: contents.

3.1. Are there limits on the possible content (subjects/issues) of collective agreements? (International Law? ILO? EU law? Domestic Law?) What is the relationship between the law and the collective agreement? Is it possible for collective agreements to repeal/abolish/derogate from the law?		
Italy	**Poland**	**UK**
As a general rule collective agreements cannot derogate *in peius* from protective statutory law. However, collective agreements concluded in accordance with art. 8 Law Decree 138/11 can derogate from the law, as long as they respect the principles and protective standards set by the Italian Constitutional, the EU law and International Labour Law Conventions. While as a general rule collective agreements cannot derogate *in peius* from the law, the law can either provide substitute provisions in case a collective agreements is not reached (for example, selection criteria for redundancy, see Template 1) or delegate to collective agreements the regulation of specific complementary aspects (for example regulation of overtime, identification of the essential services to be provided during strike, regulation of part-time flexibility clauses). In this latter case, an alternative regulation set by an administrative authority or by the individual contract may apply if there is no applicable	According to Art. 9 of the Labour Code, generally collective agreements cannot derogate from the law, unless the law introduces that possibility (so-called derogating clauses). However, the scope of issues that can be modified to the detriment of employees is very limited. The possible modifications concern the augmentation of the maximum limit of overtime (Art. 151 of the Labour Code), payment of wages partly in non-monetary form and in a different way than tendering payment to an employee (Art. 86 of the Labour Code) and the prolonged reference periods for working time up to 12 months (Art. 129 of the Labour Code). These derogations are also possible in a different way than by means of the collective agreement, e.g. some of them by way of arrangement with other workers representatives, some in internal regulations and some by an employment agreement.	While collective agreements themselves are not legally binding although may be incorporated into an individual contract of employment, they should not in any way seek to undermine the law of the land whether knowingly or not. It is this principle that led to the decision on *Allen & Ors v GMB* (*see Template I*)

collective agreement.		

3.2. What are the ordinary subjects/matters covered by collective agreements? In a context of economic crisis and rising unemployment, do you appreciate changes in the issues negotiated? What type of changes: quality/ quantity/? Are there any new business management issues?		
Italy	**Poland**	**UK**
Ordinary subjects covered by collective agreements are: minimum wages, which are set at national level; job classification; use of atypical contracts (such as part-time, fixed-term contracts, tele-working); productivity-based bonuses, which are generally set at decentralised level; relationship between the signatory parties. Further subjects can be: company welfare benefits (such as: company nursery schools; complementary pensions schemes; company health insurances; «shopping cart» vouchers etc.); working time; training; work-life balance arrangements; smart-working; health and safety at work; out-sourcing; disciplinary sanctions. In the context of economic crisis one can observe a quantitative increase of collective agreements aimed at managing company financial difficulties and/or restructuring processes, in order to access to the Wage Guarantee Fund, manage redundancy or transfer of parts of the undertaking.	Collective agreements usually concentrate on the remuneration, mostly on additional (non-obligatory) elements of the wage system such as premiums and additional allowances (connected, for example, with leaves, seniority or social activity of the employer). However, in lack of collective agreements the same issues can be determined in an internal regulation on remuneration or regulation on social fund. Collective agreements can also contain provisions concerning the right to re-employment, policies of promotion, working time, leaves (additional ones, educational, circumstantial), health an safety at work, health's protection. The economic crisis has mostly influenced pay-related workers' rights. Conducted agreements or arrangements usually suspend the application of additional payment benefits such as annual or month bonuses (premiums) or allowances on the basis indicated in par. 2.4.Collective agreements that allow, in principle, only to include additional obligations (according to Article 9 of the Labour Code, described in point b) are not attractive to the employers in an economically difficult situation. Overcoming the economic crisis also forces changes in the organization of working time.	Comprehensive collective agreements tend to cover issues such as pay, hours of work, holidays, sickness leave, maternity and paternity pay, special provisions relating to particular occupational groups and organisation and various procedural agreements. It is noteworthy that in the public sector pay can also be determined by pay review bodies in conjunction with social partners (*see infra*). Some commentators exclude pay review bodies from the calculation of CB coverage. However, given the important role of social partners in pay review bodies, such exclusion would give an inaccurate picture of the influence of unions in the pay and conditions bargaining process.

3.3. Flexibility and Collective bargaining: **- What are the main signs of flexibility in working patterns** **- Flexibility and job classification system: main expressions of this approach** **- Flexibility and working time: main expressions of this approach** **- Flexibility and salaries: main expressions of flexibility** **- Flexibility and others issues: which ones?**		
Italy	**Poland**	**UK**
Collective agreements introduce and regulate flexibility in work organisation mainly by focussing on the following aspects: - Job classification: adoption of a dynamic notion of professional equivalence, involving a possibly multi-tasking expertise, which can be used in different work areas, and valorisation of multi-tasking within the same level or across different levels, by providing mechanisms of exchange and rotation of workers across different job positions. This is the so-called «functional flexibility», that is the possibility for companies to adapt to changing organisational needs by moving employees to different tasks, duties and responsibilities. While it aims at enhancing workers' professional versatility and skills, it can be complemented by training activities and result into performance-related pay elements or career progression (see Company Agreement Ferrero 2014). - Flexible working time: contractual working time can be variably allocated in multi-week cycles over the course of the year. Flexibility can be defined as either positive or negative depending on whether it determines an excess or reduction of working hours, compared with	The flexibility signs in collective bargaining are those specifically regulated by the law, that is the above-mentioned increase of the maximum limit of overtime, payment of wages partly in non-monetary form and in a different way than tendering payment to an employee and the prolonged reference periods for working time up to 12 months. collective agreements cannot derogate from the law in matters not expressly provided by the law. There are no particular productivity measures other that mentioned above provided expressly by the law that can be introduced to collective agreements (the pay structure is not defined by the law). However, agreements can introduce an effective wage system that would effect workers' productivity.	Flexibility is a wide-ranging topic that is janus faced with both positive and negative aspects of flexibility. We recognise that flexibility at work is experienced both positively and negatively by workers. Temporal flexibility is the focus here and relates to the flexible dimension as being the employees'/workers' time. It is the case that flexibility of work may have many advantages and enable people to manage their home/work commitments. This is particularly important for women who still bear the double burden of paid work and unpaid domestic work. However this does not mean temporal flexibility should be accepted at any cost. Instead, decent work means a 'two-way flexibility', which benefits the employer and the employee and involves a number of important features, in particular, the following four-fold factors: • Predictability • Agreed hours • Pro rata payments • A reality of the right to request time off

the contractual working time. - Productivity: company agreements set the indicators for measuring productivity and the actions aimed at improving and raising the productivity of work organisation. In this regard, and for the purpose of setting the eligibility criteria for a reduction of tax-rates on performance-related bonuses, while both the Agreement of 2012 (without CGIL) and the ministerial regulations (DPCM 22.1.13) included flexible working time, new technologies, and flexibility of job positions as areas of possible intervention by company agreements, the Agreement on Productivity of 2013 focussed only on the first one, that is flexibility of working time.		for family activities (TUC 2014a). We would also add that at a minimum the Living Wage should be paid. The shame is that the effect of deviation from good employment practices tends to disproportionately fall on those workers on casual contracts, with a one-sided flexibility that is all in the employers' interests and takes no account of the needs of the employee (see point b) above). In other words, flexibility is often to the employers' benefit and at a price for the worker. This has the consequence of the man or woman being required to always be the flexible side of the employer/employee equation rather than enjoying the reciprocity resulting from the above four-fold factors of flexibility. It is in this negative context of flexibility, that flexibility becomes casualised. Functional flexibility is often used as a means to increase productivity. For some years, partnership agreements were popular which in effect traded functional and temporal flexibility for greater union involvement in company partnerships. It turned out as many warned that these agreements tended to increase the power balance of the employer vis a vis the unions.

3.4. Is there any distribution of the subjects/matters among the different levels of bargaining (for instance: only central collective agreements can bargain the minimum wages or, on the contrary, only collective agreements at company level can do it), meaning: are there any preferences or reservations for certain matters to be dealt with at certain levels of negotiation?		
Italy	**Poland**	**UK**
Minimum wages can be bargained only by	There is no difference in contents between	The content of collective agreements at

national collective agreements. Criteria for awarding performance-related pay elements are mainly negotiated at company level. The Intersectoral Agreement of 28 June 2011 calls for a coordinated decentralisation between the national and the decentralised level on topics like work performance, working time, work organisation. The Agreement on productivity of 2012 prompted and strengthened a broader decentralisation of collective bargaining by supporting company agreements aimed at increasing productivity with a flexible management of job positions, working time, and new technologies. The Agreement of 2013 limited such intervention to working time (*see above*).	establishment and multi-establishment agreements.	different bargaining levels is not regulated or organised. Besides, collective bargaining may be written, unwritten, formal or informal. Therefore, national bargaining may have been supplemented by local bargaining, which may or may not be written down. The determination of unwritten local rules is often described as custom and practice.

3.5. How does collective bargaining approach or regulate gender-related issues? Do collective agreements usually include provisions concerning the gender pay gap or, more generally, the promotion of gender equality? If so, at what level of collective bargaining are such clauses usually provided? Please, point out some examples.		
Italy	**Poland**	**UK**
In general, collective agreements expressively promote gender equality and deal with gender-related issues by regulating the following aspects: - <u>at national level</u>: protection of maternity with an increase of maternity pay and/or specific training programmes aimed at facilitating their return to work; parental leaves (even if national agreements mainly refer to the relevant legislative provisions, with no significant additions); paternity leaves on the occasion of	There are no legal provisions relating to gender-related issues that should be taken into consideration while conducting collective bargaining. Also, in practice, those issues are not taken into consideration, nor do they constitute a subject of negotiations between trade unions and employers.	Most unions have taken action to ensure that awareness of equality issues are raised and the TUC have monitored this over time. Monitoring includes the annual equality audits of TUC members since 2003. These audits demonstrate clear progress towards greater equality but still there is far to go. Unions have worked at national level to encourage negotiators to include equality issues as part of the bargaining agenda. The 2014 Equality Audit shows that 76 per cent of unions have adopted the TUC

childbirth; care-giving leaves; work-life balance provisions, such as a right to transform full-time to part-time; teleworking; smart-working (for example Agreement General Motors Powertrain Europe, 2015); flexible working time arrangements (mainly at company level, see infra); codes of conduct and/or committees on harassment and violence at work. At decentralised level: I) work-life balance provisions, relating to part-time (28%); time savings account (26%); flexible working time arrangements (18%); teleworking; training. II) company welfare benefits (company nursery schools or company health insurances, see supra) However, contractual provisions, at both national and decentralised level, can also have an indirect gender-related impact. In particular, as far as the GPG is concerned, they can have a pivotal indirect impact on wage differentials between men and women when dealing with: i) compensations for typically male-dominated job positions: travel allowances, allowances for uncomfortable shifts, allowances for arduous works. ii) criteria for measuring productivity and awarding performance-related pay elements based on work attendance. The impact of such criteria on the GPG can be partially corrected or neutralised by including maternity, parental and/or other care leaves in the calculation of attendance as well as by granting part-timers a more-than-proportionate rate of adjustment. However, this indirect impact on the GPG can be avoided more effectively if contractual		equality clause (TUC 2014b). This clause states that 'The objects of the union shall include:a. The promotion of equality for all including through: i. CB, publicity material and campaigning, representation, union organisation and structures, education and training, organising and recruitment, the provision of all other services and benefits and all other activities;ii. the union's own employment practices. b. To oppose actively all forms of harassment, prejudice and unfair discrimination whether on the grounds of sex, race, ethnic or national origin, religion, colour, class, caring responsibilities, marital status, sexuality, disability, age, or other status or personal characteristic.' (TUC 2014b) Unions are also seeking to build an equality aware environment in the workplaces where they represent members through the appointment of equality representatives. Half of unions in the UK have provision in their rulebook or a practice of appointing or electing equality reps at branch or workplace level. This includes many of the larger unions, so 87 per cent of union members are now in a union that has equality reps. However, the 2014 Equality Audit makes clear that this does not mean all these members have access to an equality rep in their branch or workplace as it is still a relatively new development and not all positions are filled. Moreover, some unions reported that they were struggling to meet their ambitions to increase the number of equality reps because lack of statutory rights, cuts to facilities time and increasing workload pressures were discouraging members from volunteering for the

provisions measure productivity on the basis of a multiple range of criteria, among which attendance is involved only to a small extent. This option requires a case-by-case assessment, since its feasibility might depend on the organisational lay-out of the company involved. Besides, the social partners highlight that such option is often opposed by the employees themselves.		role. It is less clear how unions' initiatives have transferred into the bargaining environment. In 2009, the TUC Equality Audit (2009) demonstrated that negotiating success had been achieved with respect to working parents and carers (51 per cent), age (37 per cent), BME workers and disability (each 35 per cent), harassment and bullying and LGBT workers (each 33 per cent) flexible working and women's pay and employment (each 30 per cent). WERS 2011 provides further insight into the processes and practices of equality in UK workplaces: 76% of workplaces were covered by a formal policy on equal opportunities, up from 67% in 2004, and such policies have become 'almost universal' in large companies (van Wanrooy et al, 2013: 34). 87% of these policies deal explicitly with gender equality. However, only a small minority of workplaces reported taking action to combat gender discrimination through recruitment or promotion policies and monitoring (14%), or through pay reviews (3%), and the proportion had barely changed since 2004. Nevertheless, it is noteworthy that equality concerns are multiple and do not solely focus on gender. Widely cited examples of national level bargaining that use 'non-discriminatory techniques' to classify jobs are as follows: Agreements have been negotiated between unions and employers in Local Government (National 'Single Status' Agreement) and the

		National Health Service ('Agenda for Change'). Both agreements have brought all employees into a common grading and pay structure, which followed an extensive job evaluation exercise. Low paid women workers particularly benefited from pay increases on the basis of the revaluing of their work. The NIPSA public service union in Northern Ireland negotiated an equal pay agreement in 2010, which will benefit around 13,000 low paid civil servants. Workers in three main grades will move on to new pay structures with the changes adding around £25 million to the civil service pay bill. Administrative workers in the AA grade, for example, will move from a pay structure with a range of £13,130-£14,420 a year to one where the salaries start at £13,280 and rise to £17,108 (Pillinger 2014). However, the interpretation of these examples is not straightforward as annex 1 (above) makes clear. The 2012 equality audit (TUC 2012) emphasized the negative impact of the economic environment, with two in five unions reporting existing equality policies being diluted as a result. Over half of unions said that it had become more difficult to bargain on equality; according to the Communications Workers' Union, 'In the face of austerity, companies see equality as an easy target' (TUC, 2012: 7). Unions also expressed fears about the impact of recent policy developments (cuts in public funding which adversely affect women, proposed changes to the 2010 equality act which may erode maternity rights, the extension of qualifying periods for workplace rights, and

		proposals to make it easier to fire workers and harder to access industrial tribunals), although the TUC welcomed the proposed extension of the right to request flexible working (in Milner and Gregory 2014). Milner and Gregory (2014) concludes that bargaining equity was strengthened by continued feminization of union membership, and specific initiatives (some resulting union investment in initiatives such as the TUC's organizing academy, others facilitated by New Labour's financial support through the Union Modernization Fund) aimed training women officers, raising awareness, and developing a more professional approach to equality bargaining. In addition, New Labour's programme of equality measures and support for working parents encouraged companies to adopt equality policies through a combination of enforceable rights and 'best practice' benchmarking. However, the number of collective agreements reached is limited to a small number of very large companies, and there is evidence of equality issues being 'crowded out' by the post-2008 recession. Outcomes depend on the bargaining parties' relative power resources, which in the British context are heavily localized but mediated in the public sector by governments. In conclusion, CB provides an important wage premium to women and where CB is replaced by individual bargaining, the pay gap between men and women is likely to increase (Healy, Nollenberger and Sevilla 2014). The law

		remains a powerful force but one that has become increasingly complex and harder to access because of the introduction of fees for applicant to employment tribunals. These fees are prohibitive to all but the very well paid.

IV. Collective bargaining: the Public Administration.

4.1. How is the right to collectively bargain recognized and regulated in the public sector?		
Italy	**Poland**	**UK**
In the public sector, the right to collectively bargain enshrined by Art. 39 Const. needs to be intertwined and counter-balanced with the principles of economy, impartiality and good performance of public administrations established by Art. 97 Const. This implies the need for collective bargaining to respect specific financial limits, requirements and procedures set by the law.	In general, employees in the public sector have the right to collectively bargain, however there are certain limitations to this right. First of all, according to Article 239 of the Labour Code, an agreement shall not be concluded for members of the civil service corps, employees of the State offices (employed by nomination or appointment), self-government employees in the marshal's offices, poviat starosties or gmina offices (employed by election or appointment, which refers to the highest posts) and judges and public prosecutors. Secondly, according to Article 240 of the Labour Code, a collective agreement for employees employed in budgetary units, budgetary enterprises and support agencies of budgetary units may be made only to the extent	Collective bargaining in the public sector is characterised as follows: i) There is a larger frequency of sectoral-level collective agreements. ii) Some workers in the public sector, such as teachers, parts of the health service and those in the prison service, who are covered by pay review bodies, rather than collective bargaining. There are two main ways in which pay is negotiated in the public sector: collective bargaining and pay review bodies. Collective bargaining is supported by the Whitley Council, a National Joint Industrial Council, divided into a system of committees to represent different occupational groups with both staff side

	that the funds at their disposal so allow, including those for remuneration determined under separate provisions. Therefore, an application for registration of a collective agreement made for employees employed in those units shall include a representation of the agency which created the unit concerned or which has taken over the responsibilities of such an agency, stating that the aforementioned requirements have been met. The limitation of collective bargaining is also introduced by Article 77 of the Labour Code which provides that rules for remunerating for work and allocating other work-related benefits to employees employed in state budget organisations, unless they are covered by a multi-establishment collective agreement, shall be determined in a regulation, to the extent that it is not reserved under special provisions for the competence of other agencies, by the Minister for Labour and Social Policy, acting upon request of relevant minister.	representatives (trade unions) and employers' side representatives. However, since the 1970s, an increasing number of public sector employees have had their pay established via pay review bodies. Pay review bodies are made up of independent experts who take evidence from the government, employers' organisations and trade unions and then make recommendations on pay increases and terms and conditions. There are 6 main pay review bodies: Armed Forces, Doctors and Dentists, Nursing and Other Health Professions, Prison Service, School Teachers, Senior Salaries (holders of public office) covering approximately 26% of public sector employees. Neither the government nor the trade unions are bound by the recommendations. It is rare for the government to reject the recommendations, although in 2014 it rejected the NHS pay review bodies' recommendations of a 1% rise, resulting in widespread industrial action by public sector trade unions.

4.2. Who are the bargaining parties?		
Italy	**Poland**	**UK**
In the public sector, the bargaining parties are defined and regulated by the law. On the side of employees, unions need to meet specific legal representativeness requirements. On the side of employers, all public administrations are legally	The bargaining parties in the public sector are defined in the same way as in the private sector – it is always an employer who is conducting the negotiation and is a party to a collective agreement (the organisational public unit	

represented by a National Agency (the so called ARAN).	wherein public workers are employed) or employers' organisation. According to Article 241 of the Labour Code a multi-establishment collective agreement is concluded by the appropriate statutory body of a multi-establishment trade union acting for the employees and the appropriate statutory body of an employers' association, acting for the employers – on behalf of the employers united in the association. A single establishment agreement due to Article 241 of the Labour Code is concluded by the employer and the establishment trade unions. That is a consequence of the management concept of the employer. To conclude collective agreements, parties must meet the representativeness criteria set by the Code. There is also the exception concerning a multi- establishment agreement pointed in the section II.5. The doubts concern the conclusion of multi-establishment collective agreements, because the state and local government budgetary units have not been associated in employers 'organizations. That is why in 2000 a temporary solution was introduced, according to which until the association of those units in employers' organisations, multi-establishment collective agreements shall be concluded on behalf of employers of employees working in state units budgetary sphere by the relevant minister or a central government authority. On behalf of the employers of government workers of budgetary sphere entities collective agreements are concluded respectively by the mayor, regional governor or marshall. Because state and local	

	government agencies have not been associated in employers' organizations, since 2008 this solution remains in force indefinitely, which means until the association of public sector units in employers' organizations. That leads to the conclusion that in the public sector a multi-establishment agreement can be concluded by other stakeholder than an employers' organization. It is supposed that this situation continues, as the state and local government budgetary units are currently not obliged to associate in employers' organisations. That is a consequence of the management concept of the employer that leads to the falsification of labour relations in the public sphere, because the actual employer is hidden in the form of state and local government organizational units that do not have the authority to make final decisions about pay and working conditions.	

4.3. Are there any peculiarities as far as the negotiation of flexibility, productivity and gender-related issues is concerned?		
Italy	**Poland**	**UK**
- After the legislative reform of 2009 (Delegated Decree no. 150/09), the evaluation and compensation of collective and individual performances in public administrations are regulated by the law. However, the blocking of	There are no peculiarities concerning public administration with relation to flexibility, productivity and gender-related issues.	Because public sector employers employ both men and women in largely gender segregated roles with pay setting that is fragmented across these groups and where the outcomes are visible and trade unionism remains relatively

collective bargaining has strongly affected the implementation of such reform and the development of these aspects since 2010. - When dealing with the management of human resources in public administrations, Art. 7 of delegated decree 165/01 focuses on the need for training programmes to be designed in order to support the development of a gender-related culture in public administrations. - Art. 57 of delegated decree 165/01 requires public administrations to establish committees aimed at guaranteeing the respect of equal opportunities, well-being in work organisation, fight against discriminations, harassment and violence at work. - Art. 48 of delegated decree 198/06 requires public administrations to adopt affirmative actions programmes aimed at ensuring an effective implementation of the principle of equality between men and women at work. However, since 2006 there is no sanction in case this requirement is not fulfilled. The legislative intervention of 2006 also deleted the three-year term previously imposed.		strong, the potential for equal pay claims is high. After a few such high profile successful cases were taken by women working in the public sector and supported by their trade unions in the 1980s and 90s, the public sector employers who were most at risk were keen to negotiate pay structures that would provide them with a legal defence. This led to a number of complex and controversial collective agreements, most notably 'Agenda for Change' in the NHS (2004) and the 'Single Status Agreement' in local government (1997). In each case part of the collective agreement was to conduct job evaluation across occupational groups as a basis of new single pay spine structures that would provide a legal defence in the event of an equal pay case. The job evaluations revealed extensive gendered pay inequality, and whilst rectifying this was largely funded by the government in relation to the NHS, in local government settlements had to be reached on the basis of 'no cost'.

4.4. What was the impact of austerity measures? (for example, pay freezes etc.)		
Italy	**Poland**	**UK**
The main impact of austerity measures was the blocking of collective bargaining on pay elements from 2010 on, with a consequent 5-year pay freeze.	Austerity measures undertaken recently provide the pay freezes in the budget sector also for 2015. It was not, however, negotiated, but introduced by budget-related law. There was also no collective bargaining connected to other austerity measures. As indicated in section II.4., in November 2013, new anti-crisis legislation	Pay review bodies make recommendations on pay to the government, which are then normally approved. However, beginning in 2010 as agreements ran out, a two-year pay freeze followed by a 1% cap on pay increases has been imposed by the government on many

	came into force, but the new legislation was not a result of social dialogue.	public sector workers.