

# The History of EU Gender Equality Law and Recent Directives

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CURRENT REFLECTIONS ON EU
GENDER EQUALITY LAW - ERA - Trier - 4-12-2023

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## **Outline**

## A) The History of EU Equality Law

## **B)** Recent Directives

- 1) Work-Life Balance Directive 2019/1158
  - adopted 2019, DDL for transposition 8/2022
- 2) Dir. 2022/2381 Gender Balance on Company Boards
  - proposed in 2012, adopted in 2022
- 3) Pay Transparency Directive 2023/970
  - proposed in 2021, adopted in 2023
- 4) Proposals for Directives on Standards for Equality Bodies
  - proposed in Dec 2022, negotiation ongoing



# **A – The History of the EU Equality Law**

1) **1957** – the original EEC Treaty

#### Article 119

MS must ensure principle equal pay for men & women for equal work

by 1962



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### 2) the **1970's**

- adoption of directives on sex equality
  in salaries (75), in employment (76) and social security (79)
- 4/1976 ECJ case Defrenne II: princ. equal pay > direct effect!









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- 4/1976 - ECJ case *Defrenne II*: princ. equal pay > direct effect!









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3) The **2000's** (after Amsterdam Treaty 1999 – new art.13/19)

2000/2009 - EU Charter of Fundamental Rights

Directive 2000/43 on discrimination on racial or ethnic origin

- applies to employment, self-employment, social security, healthcare, education and access to goods and services

**Directive 2000/78** – prohibits discrimination

based on religion, age, disability and sexual orientation

- applies to employment and vocational training only

2002/2006 - Update of sex equality directive in employment 2004 - New Directive on sex equality in access to goods and services

2008 Proposal for horizontal Directive - on disc. beyond employment - on religion, age, disability and sexual orientation / ... still pending

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## General remarks on the evolution

- Development parallel to EU evolution + competences on social, human rights, migration
- Virtuous circle EU Court legislator (normally)
  - exs. indirect discrimination, rule burden of proof
- Continuous search for effectiveness

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# 1) The Work-Life Balance Directive





#### Content

Facilitates the reconciliation of work & family life for parents and carers to achieve equality of men and women at work

#### Provides for the right:

- 1) to paid paternity leave of 10 working days, for fathers,
- **2)** of each parent to <u>paid</u> **parental leave** of 2 months (with a further 2 months of leave that is not required to be paid and may be transferred to the other parent) and <u>non-transferable</u>;
- 3) to a carers' leave of five working days, per year, per worker;
- **4)** of parents & carers to request **flexible working arrangements**.
- » improvement of the previous Dir. 2010/18 on parental leave (only right of each worker to 4 months of parental leave, unpaid).

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#### State of play of Transposition

**Deadlines** - 2/8/2022 - <u>general transposition</u> deadline - 2/8/2024 - <u>additional deadline</u> - pay of last 2 weeks parental leave

Implementation meetings with COM & MSs - Dec 2019 + May 2021

#### **Non-communication infringements**

- Sept 2022 Letters of Formal Notice to 19 Member States for lack of communication of complete transposition
- April 2023 Reasoned Opinions to 11 Member States
- Nov 2023 Referral to Court of Belgium, Spain and Ireland

Non-conformity infringements (laws' content) assessment

- in preparation



# 2) Directive 2022/2381 on improving gender balance among directors of listed companies



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# **A- Companies concerned:**

- EU companies listed on EU stock exchanges Except SMEs
- Estimated 5000 companies
- Privately and publicly owned



### **B- Content of obligations**

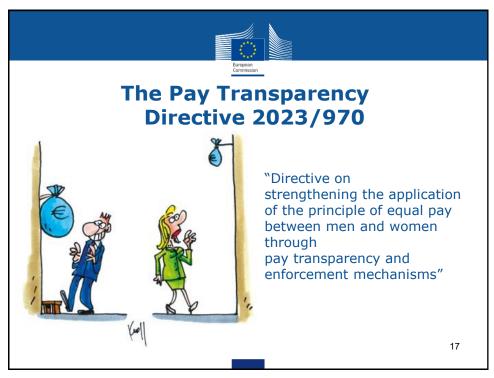
- 40% target for non-executive directors (or 33%-both types of directors) of the underrepresented sex
  - To be reached by June 2026
- Obligation to ensure transparency of selection process of board directors' - based on comparative analysis of qualifications of candidates
  - applies only if a company is below those targets
- The Directive does not impose a quota
   The selection of candidates is based on qualifications & merit
   a preference rule applies only in case of equally qualified candidates
- **Penalties** for infringement of Directive obligations' must be "effective, proportionate and dissuasive"

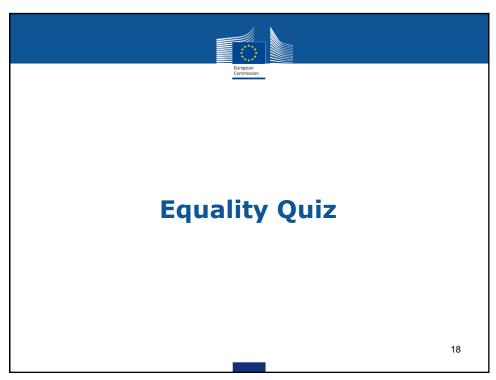
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## **C** – **Implementation** - **state** of play

- Directive was published in December 2022
- Transposition DDL end December 2024 (expires Dec 2038)
- -Same DDL applies to invoke the suspension clause
- i.e. under certain conditions, MS can suspend the application of the obligation to ensure a transparent selection procedure
- 21 November 2023 Implementation workshop w/ Member States (including EFTA and Social partners)







## 2 - What is the EU « Gender Gap » ?

A - 12,7%

B - 29 %

C - 36%



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# **Answer: All are correct**

A) 12,7% - Gender Pay Gap

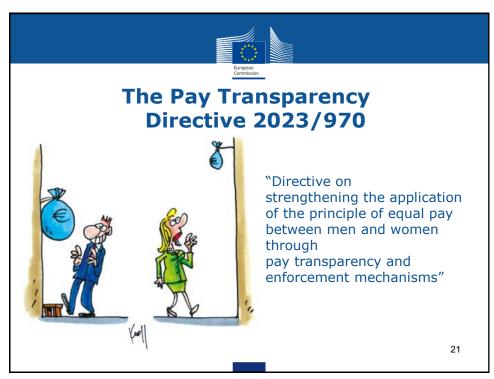
≠ pay <u>per hour</u> men/women – EU average 2021

**B) 29% - Gender Pension Gap** in 2019

C) 36,7% - Overall earnings gap

all women and men in working age - 2018

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## **Background**

**Equal Pay Principle** enshrined in the Treaties since 1957

- Art 157 TFEU (Ex 119 EC Treaty)
- & in Directive 2006/54/EC
- and by 2014 Pay Transparency Recommendation

#### Main obstacles in practice :

- Lack of pay transparency

   (if you are aware of discrimination,
   you can defend your right to equal pay)
- Legal clarity of concepts: pay, work of equal value
- Access to justice and procedural obstacles for redress (lengthy, costly, lack of information)



# **Content - 1) More Transparency**

At Worker level Prior to employment & During employment

#### At Employer level

- Pay reporting

information about pay gaps in the organisation (employers with at least 100 workers)

- Joint pay assessment

if 3 conditions are fulfilled:

- gender pay gap of at least 5% in any workers' category,
- employer cannot justify the gap by objective and gender-neutral factors,
- the employer does not address the pay gap within 6 months.

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# 2) Better enforcement

- Victims' **representation** (legal standing of equality bodies)
- Strengthened shift of burden of proof
- Strengthened and new **remedies** (compensation and injunction orders)
- Minimum standards on **limitation periods**
- Support to carry **legal costs**
- **Sanctions** to include fines (to be set by Member States)
- Involvement of **social partners**

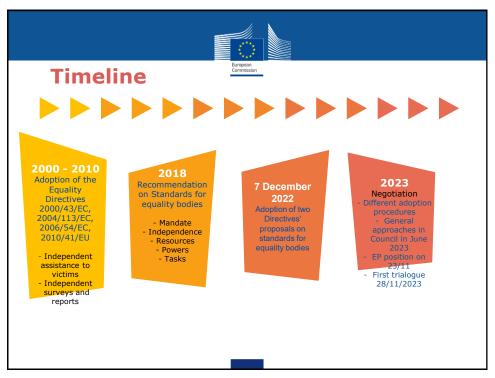


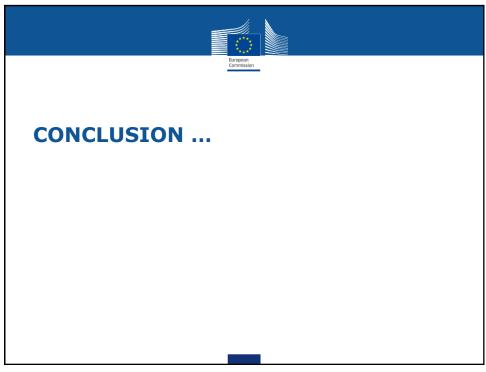
# **State of play**

- May 2023 formal adoption and publication
- Implementation **workshops** with Member States planned twice a year in 2024 and 2025.
- June 2026 DDL for transposition 3 years
- Updates of 2013 Guidelines on job evaluation and classification systems
- Call for projects under CERV-2024-GE available to support the implementation of the provisions of the Directive

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In spite of all the developments and all efforts ...

# A LOT REMAINS TO BE DONE!

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