



# The Pay Transparency Directive

– the new EU proposal

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This presentation

**1 - Equal Pay quiz**

**2 - The Pay Transparency proposal**

- Historical note
- What the proposal does
- What the proposal does not do

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# 1 - Equal Pay Quiz

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**1 - When was the principle of equal pay included in the Treaties ?**

**A - 1957 – EEC Treaty**

**B - 1987 – Single European Act**

**C - 2009 – Treaty of Lisbon**

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## Answer:

**A) 1957** – in the original EEC Treaty

Article 119:  
equal pay  
for men & women  
for equal work &  
work of equal value



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

**A - 14%**

**B - 29 %**

**C - 40 %**



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**Answer : All are correct**

**A) 14,1% - Gender Pay Gap**

*≠ difference of pay per hour men/women  
average in the whole European Union in 2019*

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

**C) 40% - Overall earnings gap in 2014**

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**This is « THE problem »**

**There is EU law prohibiting sex discrimination**

**BUT the difference of pay men/ women persists**

Difference is partially caused by discrimination

- also by vertical and horizontal segregation
- and by career interruptions around maternity

**Something MORE has to be done**

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## 2 – The Pay Transparency Proposal



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## Historical note

3/2014 - COM recommendation pay transparency

2017-2019 - gender pay gap action plan – WLB directive

July 2019 - President UVDL speech announcement  
“will propose binding pay transparency measures”

3/2020 - Assessment of 2017 gender pay gap action plan  
and Evaluation of provisions on equal pay of Dir. 2006/54

3/2020 – Proposal for a Pay transparency Directive

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## Objectives of the PT initiative

- Improve legal clarity of existing concepts
- Empower workers to enforce their right to equal pay by giving them the necessary information
- (to be aware of discrimination and to be able to defend the right to equal pay)
- Address the systemic undervaluation of jobs traditionally done by women - at employer level

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## Instruments

- Creating pay transparency at worker's level
- Creating pay transparency at employer's level
- Facilitating the application of the law
  - Clarification of concepts
  - and better enforcement

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## 1) Pay transparency – at worker's level

- prior to employment (Article 5)
  - Envisaged pay level (its range) – vacancy notice or prior to interview
  - Prohibition to ask candidate about previous pay
  
- of pay settings and pay progression policy
- (Article 6)

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Employers may request that the use of any information obtained remains limited to the enforcement of the right

## 1) Pay transparency – worker's level (cont.)

### **Right to pay information** (Article 7)

- average pay levels in relevant category of workers
- upon request
- safeguard against victimisation

*Workers should always be allowed to disclose their pay themselves insofar as the disclosure of pay information aims at enforcing the right of equal pay*

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## 2) Pay transparency – employer's level (250+)

- >
- > **Reporting on pay gap** female/male workers (Article 8)
  - A (*public info*): General pay gap data : poss. via administrative data, management report.
  - B (*info accessible to workers only*):  
Pay gap in categories of workers
- > Possibility to decide to gather 'A info' in organisations on the basis of administrative data

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## 2) Pay transparency – employer's level (250+) **cont.**

- > **Joint pay assessment** (Article 9)
  - Only in organisations where serious indications of pay inequalities exist
  - The remedial action to be considered - in cooperation with workers' representatives, equality bodies, and/or labour inspectorates

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### **3) More legal clarity/concepts (Articles 3-4)**

1. Clarification of existing concepts
  - 'pay' and 'work of equal value'
2. Clarification as regards the comparator
  - to establish facts about alleged discrimination
3. More clarity when the use of comparator is not limited to the same employer - 'single source'
4. Job evaluation and classification systems
  - no obligation, but should be gender-neutral

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### **4) Better enforcement**

- 1. Victims' representation (legal standing of equality bodies and representative actions)
- 2. Alleviated shift of burden of proof
- 3. Strengthened and new remedies (compensation and injunction orders)
- 4. Limitation periods - minimum 3 years
- 5. Support to carry legal costs - recover fee if wins
- 6. Sanctions - include fines

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## Social partners

- Directive is without prejudice to social partners' autonomy and their contractual freedom
- It does not impose any obligations or limit their prerogative in pay-setting process
- BUT: the principle of equal pay still applies to them too (Royal Copenhagen, Enderby, etc)

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## What the directive does NOT do

- › **Limit salary negotiations between worker and employer**
- › **Require to pay the same salary to all workers**
- › **Make it impossible to reward outstanding performance**
- › **Require to make individual salaries public**
- › **Require a costly gathering of data**

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