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Gender pay gap

- Various reasons are structural and related to differences in employment, level of education and work experience
- Part-time work, career choices influenced by family responsibilities; more women in low-paying sectors; fewer and lower-paid female managers, stereotypes
- Pay discrimination



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The principle of equal pay between men and women for equal work or work of equal value

- The principle is enshrined in the Treaties since 1957, Art 157 TFEU (Ex 119 EC Treaty)



- Directive 2006/54/EC (ex 75/117/EEC and 97/80/EC) and 2014 Pay Transparency Recommendation
- New Directive 2023/970



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State of play

- **March 2021** – Commission's proposal (COM/2021/93 final)
- **Entry into force** – 6 June 2023
- **Transposition** - 3 years (by June 2026)



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Main obstacles in practice – to be addressed by new directive:

- **Lack of legal clarity of key concepts:** pay, work of equal value ...
- **Lack of transparency** in pay settings and on pay progression
- **Access to justice and procedural obstacles** for redress (lack of information, burden of proof, lengthy and costly procedures, short limitation periods, equality bodies' mandate ...)



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Transparency – at worker's level (1)

Transparency on pay prior to employment

Aim: to ensure an informed and transparent negotiation on pay

- **Pay information** on initial pay or its range based on objective and gender neutral criteria - in a vacancy notice or prior to job interview
- **Prohibition to ask job applicant** about current and previous salary

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Transparency – at worker’s level (2)

Transparency on pay during employment

- Applicable to all workers and employers
- Worker’s right to information on their individual pay and average pay level within the category of workers performing equal work or work of equal value
- Prohibition of pay confidentiality clauses – workers are allowed to disclose their pay (poss. restriction: for the purpose to exercise the right to equal pay)
- Accessibility of information to persons with disabilities
- Transparency on pay setting and pay progression policy – to be available to all workers (employers with less than 50 workers may be exempted)

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Transparency at employer level (1)

Pay reporting: information about the situation on pay gaps in the organisation (employers having at least 100 workers)

- Basic – overall gender pay gaps at company level, proportion of female and male workers receiving complementary or variable components (*to be sent to a monitoring body established by Member States*) –
 - Possibility to compile such information based on administrative data (by Social security, Tax or Statistic institution)
- Strengthened – gender pay gap within categories of workers doing equal work or work of equal value (*to be shared only internally, with their workers and their representatives*)

Reporting intervals:

- Employers with at least 250 workers: every year as of 2027
- Between 150 to 249 workers: every three years as of 2027
- Between 100 to 149 workers: every three years as of 2031



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Transparency at employer level (2)

- Minimum burden - information is based on data available to employer
- Regarding the categories of workers: MSs to take measure ensuring that analytical tools or methodologies are available and easily accessible – to support and guide the assessment and comparison of the value of work
- Standard criteria: skills, efforts, responsibility, working conditions – to be complemented by other criteria relevant to specific jobs.
- Criteria should not be directly/indirectly based on worker's sex

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Transparency at employer level (3)

Joint pay assessment – only when needed!

Triggered once 3 conditions are fulfilled:

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

Actions: Analysis of the reasons of pay differences; the remedial action - in cooperation with workers' representatives, equality bodies, and/or labour inspectorates; revision of existing job evaluation system or its establishment



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Better enforcement (1)

- Victims' representation (associations, organisations, equality bodies and workers' representatives may engage in any administrative procedure or court proceedings)
- They can act on behalf of, or in support of, a worker who is an alleged victim - upon their approval
- Strengthened shift of burden of proof (automatic where an employer has not implemented the pay transparency obligations) – except criminal proceedings
- Comparison with workers is not limited to those who are employed at the same time as the worker concerned
- Comparator from a single source establishing the pay conditions
- Hypothetical comparator (comparison of how a worker would be treated in a comparable situation)



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Better enforcement (2)

- Strengthened and new remedies:
 - right to claim and to obtain full compensation or reparation
 - full recovery of back pay and related bonuses or payments in kind, compensation for lost opportunities, non-material damage
 - dissuasive and proportionate and
 - no upper limit
- Penalties to include finer (to be set by Member States) – with a real deterrent effect; relevant aggravating or mitigating factors;
- specific penalties in case of repeated infringements
- Injunction orders by competent authorities or national courts - at the request of the claimant and at the expense of the respondent:
 - to stop the infringement or
 - apply measures to ensure the rights to equal pay

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Better enforcement (3)

- Competent authority or court – an access to relevant evidence which lies in the respondent's control (including safeguards related to confidential information)
- Minimum standards on limitation periods (min 3 years) – starts to run only when the claimant is aware, or can reasonably be expected to be aware of infringement of their right
- Equal pay matters in public procurements and concessions - economic operators to comply with their obligations related to equal pay

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Enforcement, monitoring, new concepts

- Equality bodies – enhanced mandate with regards to equal pay matters
- Monitoring body – coordinated monitoring of and support of the implementation of national measures; to be based on existing structure at national level
- Recognition of the role of social partners (effective involvement, entrusting to develop tools, etc)
- New concepts (intersectional discrimination, non-binary persons)

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Thank you

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