



WHY PAY TRANSPARENCY? D2006/54/EC

– *Article 4*

– **Prohibition of discrimination**

- For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.
- In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.

‘The principle of equal pay is not fully implemented and enforced. (...) **Lack of pay transparency is one of the key obstacles** to enforcing this right. It **stops workers from knowing how their pay, on average, compares to that of their colleagues of the other sex doing equal work or work of equal value.** This puts them in a position where they lack information on whether they are remunerated in accordance with the right to equal pay. In addition, without pay transparency, **employers do not necessarily review their payrolls**, nor check if their pay systems and job grading do not omit the valuation of relevant skills. Lack of pay transparency thus creates a grey zone **favouring the perpetuation of gender bias in the setting of salaries.**’

3

3

Why pay transparency can help reduce the EU's gender pay gap

Pay transparency can help detect and tackle **unjustified pay differences** between men and women doing the same work.

What is the EU's gender pay gap?

Directive 2023/970 - 10 May 2023

MS Implementation by 7 June 2026

MS Reporting on implementation/impact 7 June 2031

EC Report on implementation 7 June 2033

In the EU, women are on average paid **13% less** per hour than men.



4

SCOPE

- Public & private sector – some differentiation in relation to number of workers employed
- Workers with an employment contract (all types), and applicants for employment
- ‘Pay’ = basic or minimum wage or salary and any other consideration, whether in cash or in kind, which a worker receives directly or indirectly (complementary or variable components) in respect of his or her employment from his or her employer
 - E.g. regular pay, bonuses, overtime compensation, travel facilities, housing and food allowances, compensation for attending training, payments in the case of dismissal, statutory sick pay, statutory required compensation and occupational pensions.

SCOPE: EQUAL PAY COMPARISON: ART. 19

- When assessing whether female and male workers are carrying out the same work or work of equal value, the assessment of whether workers are in a comparable situation shall not be limited to situations in which female and male workers work for the same employer, but shall be **extended to a single source establishing the pay conditions**.
 - CBA job classifications, even with different employers: vertical
- The assessment of whether workers are in a comparable situation shall **not be limited to workers who are employed at the same time** as the worker concerned.
- Where no real comparator can be established, any other evidence may be used to prove alleged pay discrimination, including statistics or a comparison of **how a worker would be treated in a comparable situation**.
 - Job segregation across sectors: horizontal

STRUCTURE

- Pay structures: equal value work
- Pay transparency
- Reporting & assessment
- Remedies & enforcement
- Actors & awareness

PAY STRUCTURES



PAY & THE VALUE OF WORK: ART. 4

- MS must take measures to ensure employer pay structures ‘ensuring equal pay for equal work or work of equal value’
- ‘in consultation with equality bodies, (...) ensure that analytical **tools or methodologies** are made available and are easily accessible to support and guide the **assessment and comparison of the value of work** (and to) allow employers and/or the social partners to easily establish and use gender-neutral job evaluation and classification systems that exclude any pay discrimination on grounds of sex.’

PAY & THE VALUE OF WORK: ART. 4

- ‘**Pay structures shall be such as to enable the assessment** of whether workers are in a comparable situation in regard to the value of work **on the basis of objective, gender-neutral criteria agreed with workers’ representatives where such representatives exist.** Those criteria shall not be based directly or indirectly on workers’ sex. They shall include **skills, effort, responsibility and working conditions**, and, if appropriate, any other factors which are relevant to the specific job or position. They shall be **applied in an objective gender-neutral manner**, excluding any direct or indirect discrimination based on sex. In particular, **relevant soft skills shall not be undervalued.**’

PAY TRANSPARENCY

APPLICATION PHASE: ART. 5

- Applicants have the right to receive, from the prospective employer, information about:
 - the initial pay or its range, based on objective, gender-neutral criteria, to be attributed for the position concerned; and
 - where applicable, the relevant provisions of the collective agreement applied by the employer in relation to the position.
 - in a manner such as to ensure an informed and transparent negotiation on pay, prior to the job interview.

- An employer shall not ask applicants about their pay history.
- Employers shall ensure that job vacancy notices and job titles are gender-neutral and that recruitment processes are led in a non-discriminatory manner.

PAY SETTING & PROGRESSION: ART. 6

- Employers shall make easily accessible to their workers the criteria that are used to determine workers' **pay, pay levels and pay progression**. Those criteria shall be objective and gender neutral.
- Member States may exempt employers with fewer than 50 workers from the obligation related to **pay progression**.

RIGHT TO INFORMATION: ART. 7-8

- Workers shall have the **right to request information** on their individual pay level and the average pay levels, broken down by sex, **for categories of workers performing the same work as them or work of equal value to theirs**.
 - Either personally or through their workers' representatives or through an equality body
 - 'pay level' means gross annual pay and the corresponding gross hourly pay
 - additional and reasonable clarifications and details regarding any of the data provided and receive a substantiated reply.
- Employers shall **inform all workers, on an annual basis**, of their right to receive this information and of the steps that the worker is to undertake to exercise that right.
- Employers shall provide the information within a reasonable period of time but in any event within two months from the date on which the request is made.
- Workers shall not be prevented from disclosing their pay for the purpose of the enforcement of the principle of equal pay.

REPORTING & ASSESSMENT

GENDER PAY GAP REPORTING: ART. 9

- Employers must be made to provide information on:
 - a. the gender pay gap;
 - b. the gender pay gap in complementary or variable components;
'gender pay gap' means the difference in average pay levels between female and male workers of an employer expressed as a percentage of the average pay level of male workers
 - c. the median gender pay gap;
 - d. the median gender pay gap in complementary or variable components;
'median gender pay gap' means the difference between the median pay level of female and median pay level of male workers of an employer expressed as a percentage of the median pay level of male workers
 - e. the proportion of female and male workers receiving complementary or variable components;
 - f. the proportion of female and male workers in each quartile pay band;
'quartile pay band' means each of four equal groups of workers into which they are divided according to their pay levels, from the lowest to the highest
 - g. the gender pay gap between workers by categories of workers broken down by ordinary basic wage or salary and complementary or variable components.
- <100 (optional), <150 (2031, 3-yearly), <250 (2027, 3-yearly), >250 (2027, yearly)
- Information to be provided to a monitoring body (a-g), to workers/unions (g), and to equality bodies and labour inspectorate upon request

PAY GAP CLARIFICATION/CORRECTION: ART. 9

- Workers, workers' representatives, labour inspectorates and equality bodies shall have the **right to ask employers for additional clarifications and details regarding any of the data provided, including explanations concerning any gender pay differences.**
- Employers shall respond to such requests within a reasonable time by providing a substantiated reply.
- Where gender pay differences are not justified on the basis of objective, gender-neutral criteria, employers shall remedy the situation within a reasonable period of time in close cooperation with workers' representatives, the labour inspectorate and/or the equality body.

JOINT PAY ASSESSMENT: ART. 10-11

- Employers must be made to conduct a pay assessment in cooperation with workers' representatives where (cumulative conditions):
 - pay reporting demonstrates a difference in the average pay level between female and male workers of at least 5 % in any category of workers;
 - the employer has not justified such a difference in the average pay level on the basis of objective, gender-neutral criteria;
 - the employer has not remedied such an unjustified difference within six months of the date of the pay reporting.
- In order to **identify, remedy and prevent** differences in pay between female and male workers which are not justified on the basis of objective, gender-neutral criteria
 - A number of compulsory steps are prescribed
- And implement measures arising from pay assessment within a reasonable time:
 - gender-neutral job evaluation and classification systems
- MS shall provide assistance/training to employers/unions where <250 workers

REMEDIES & ENFORCEMENT

AN EXTENSIVE MACHINERY – PART 1

- Access to justice in defence of rights: art. 14
- Legal standing for associations, organisations, equality bodies, and unions that have a legitimate interest (including collective claims): art. 15
- Right to full compensation and reparation with no upper limit: art. 16
- Injunctive relief to end infringement: art. 17
- Burden of proof shifts to the employer who has not fulfilled ALL obligations (unless manifestly unintentional or minor): art. 18
- Employer must be obliged to disclose any relevant evidence which lies in his control (including confidential information): art.

AN EXTENSIVE MACHINERY – PART 2

- Sufficient limitation periods, no shorter than 3 years: art. 21
- Effective, proportionate and dissuasive penalties, including fines: art. 23
- Enforced in public contracts/procurement and concessions: art. 24
- Protection against victimisation: art. 25
- ☛ *All of this extended to equal pay in general (D2006/54/EC)*

ACTORS & AWARENESS



SOCIAL DIALOGUE: ART. 13

- Member States shall take adequate measures to ensure the effective involvement of the social partners, by means of discussing the rights and obligations laid down in the Directive.
- Member States shall take adequate measures to promote the role of the social partners and encourage the exercise of the right to collective bargaining on measures to tackle pay discrimination and its adverse impact on the valuation of jobs predominantly carried out by workers of one sex.

OTHER ACTORS


- Equality bodies (art. 28): competent, access to justice, resourced
- Labour inspectorate (art. 28) = equal pay inspectorate
- Body for monitoring and support of the implementation, including awareness raising and data collection (art. 29)
- Member states (art. 31): up to date annual statistics

FIRST CONCLUSIONS

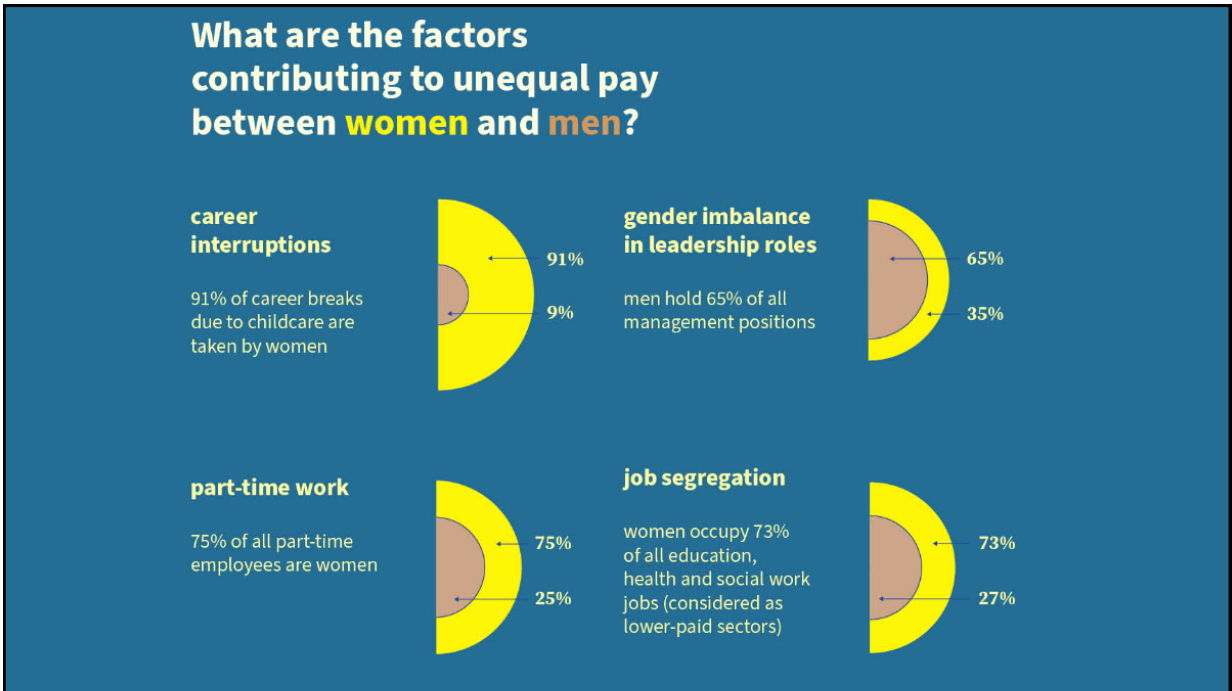
A VERY SIGNIFICANT DIRECTIVE

- Changes HR and pay practices
- Changes collective bargaining processes
- Changes the political economy of wage formation: a variety of new stakeholders
- Bolstering the role of social partners & social dialogue in wage formation (cfr. Adequate Minimum Wage Directive)
- Changes public perception and narratives
- Shifts EU-law from equal treatment/opportunity to equality: tackling horizontal 'segregation' btw sectors and vertical 'segregation' btw functions

POTENTIAL BENEFITS	POTENTIAL RISKS
Employee satisfaction, talent attraction, and productivity	Pay resentment & demotivation & turnover
Motivation, performance & employee retention	Top talent retention & talent drain & talent poaching
Rationalising recruitment	Employee morale and engagement suffer when individual performance matters less
Companies can nurture/control narrative	Misunderstanding and misinterpretation, in particular of skills in equal work measuring
Trust	Privacy concerns
...and (partially) closing the pay gap	...while lowering overall pay levels, because male or top earning pay is suppressed


27

27



28

THANK YOU!

www.marcdevos.eu

marc.devos@ugent.be

 [devosmarc](#)



29



30