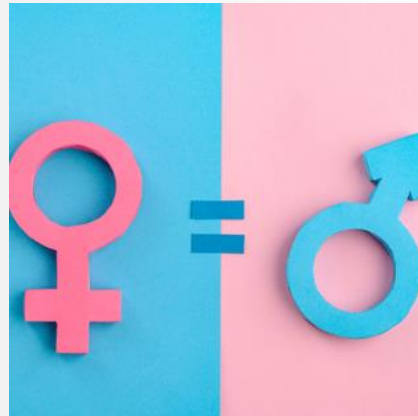


EU Gender Equality Law - Seminar for Legal Practitioners

ERA

16 April 2024

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Equal pay between men and women

At EU level

- › Article 157 TFEU: right to equal pay
- › Article 4 Gender Equality Directive
- › Shift in burden of proof: ECJ 17 October 1989, *Danfoss*
- › 2014 Commission Recommendation: need for transparency

At Belgian level

- › Pay Gap Act of 22 April 2012
- › Interprofessional + industry level
- › Company level:
 - › Biennial analysis report of remuneration structure (company + 50 employees)
 - › Consulting with Works Council/action plan
 - › Breakdown of data in the social balance sheet

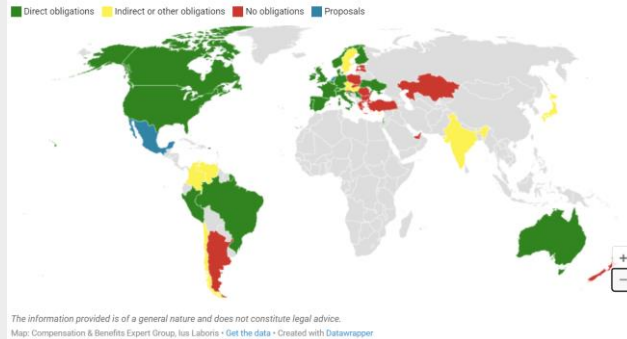


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Other EU countries

13 EU member states with reporting obligations

Gender pay reporting requirements



<https://iuslaboris.com/insights/gender-pay-gap-map/>

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Gender Pay Gap EU

Facts & Figures (2022)

- › 12,7 % (Eurostat)
- › Decreased only minimally over last 10 years
- › Large differences
 - Belgium 5 % (but 8,1 % in private sector)
 - Denmark 13,9 %
 - Germany 17,7 %
 - Estonia 21,3 %

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Gender Pay Gap EU

Reasons?

- › Gender stereotypes
- › Glass ceiling & sticky floors
- › Overrepresentation of women in low-paid service jobs
- › Unequal sharing of care responsibilities

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Pay Transparency Directive

- › EU Directive 2023/970 of 10 May 2023
- › Entry into force: 7 June 2023 - Transposition: 7 June 2026
- › Objective:
 - Combating pay discrimination and close the gender pay gap
 - By:
 - Defining key concepts
 - Introducing binding pay transparency measures
 - Strengthening remedies and enforcement mechanisms
- › Minimum requirements (!)

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For who?

- Public and private sector
- All workers with employment contract (ECJ concept)
 - Including temporary agency workers, domestic workers, on-demand workers, platform workers, ...
- Job applicants
- Pay gap reporting obligations: only for +100 workers (introduced gradually)



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Key concepts

| | |
|----------------------------|---|
| Pay | Ordinary basic pay + 'complementary or variable components' = basic pay + all other benefits (cash + in kind) a worker receives directly or indirectly in respect of his/her employment |
| Pay level | Gross annual pay and the corresponding gross hourly pay |
| Category of workers | Workers performing the same work or work of equal value |
| Work of equal value | Work that is determined to be of equal value based on non-discriminatory and objective gender-neutral criteria agreed with workers' representatives (if applicable). They shall include: <ul style="list-style-type: none"> ➤ Skills ➤ Efforts ➤ Responsibilities ➤ Working conditions |

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Pay transparency: right to information

During recruitment (job applicants)

- › Information regarding initial pay or its range and applicable CBA (position) prior to job interview
- › Ban on asking about pay history
- › Non-discriminatory recruitment processes
- › Gender-neutral vacancies and job titles

During employment (workers)

- › Easy access to criteria to determine pay, pay levels and pay progression which must be objective and gender-neutral
- › Right to request and receive information in writing (within 2 months) on individual pay level and average pay levels of comparable workers, broken down by sex + annual information obligation for the employer on this right
- › Ban on pay disclosure restrictions

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Pay transparency: reporting obligation

What?

(1) Reporting on:

- › To national monitoring body (which will publish it):
 - › Gender pay gap
 - › Gender pay gap in complementary or variable components
 - › Median gender pay gap
 - › Median gender pay gap in complementary or variable components
 - › Proportion of female and male workers receiving complementary or variable components
 - › Proportion of female and male workers in each quartile pay band
- › To workers and workers' representatives :
 - › Gender pay gap between workers by categories of workers broken down by ordinary basic wage or salary and complementary or variable components

Right for workers, workers' representatives, labour inspectorates and equality bodies to ask clarifications + obligation to respond within reasonable time + to remedy situation if gender pay differences **are not justified by objective and gender-neutral criteria**

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Pay transparency: reporting obligation

What?

(2) Joint pay assessment with workers' representatives if:

- 5% gender pay gap (average pay) in a category of workers
- Employer has not justified difference based on objective and gender-neutral criteria
- Employer has not remedied difference within 6 months

Must be available to workers and workers' representatives + communicated to monitoring body + to labour inspectorate and equality body upon request

Who?

- + 250 workers: annual reporting from 7 June 2027 onwards (2026)
- + 150 - 249 workers: triannual reporting from 7 June 2027 onwards (2026)
- + 100 - 149 workers: triannual reporting from 7 June 2031 (2030) onwards
- 100 workers: based on local law or on a voluntary basis

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Strengthening remedies and enforcement

- Litigation power to national equality bodies to act on behalf of, or in support of, an alleged victim
- Right to obtain full compensation in case of equal pay breach including recovery of back pay, bonus, payments in kind and non-material damages and taking into account intersection with other protected grounds
 - Member states can not fix an upper limit
- Shift of burden of proof
- Mandatory training for HR staff
- Effective, proportionate and dissuasive penalties
- Protection against less favourable treatment and rehabilitation
- Limitation period does not begin when infringement is ongoing

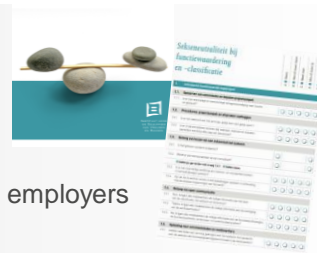
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▶ Start preparing now for 2026 !

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Start preparing for 2026 now !

Checklist
Subsidiëerbaar bij facturerings- en -certificaten



- ▶ 'Get it on the business agenda'
- ▶ Determine obligations (headcount)
- ▶ Anticipate new obligations that will apply to all employers
 - Consider not asking applicants about pay history
 - Consider adding initial pay or salary ranges before job interview and how
 - Ensure vacancy notices and job titles are gender-neutral
 - Screen employment contracts, work rules and policies for pay confidentiality clauses
 - Review HR processes: recruitment, job classes (Belgium: Checklist Institute for Gender Equality [39 - Checklist_NL.pdf \(belgium.be\)](#)), performance management, criteria used to assess performance and skills

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Start preparing for 2026 now !

- ▶ Anticipate new obligations that will apply to all employers
 - Consider criteria and methodology to group categories of workers performing the same work or work of equal value
 - Review criteria used to determine pay, pay levels and pay progression
 - Review criteria to grant complementary or variable components (bonusses)
 - Prepare a pay policy with these criteria and the obligations concerning the right to information
 - Prepare training of managers and HR staff
- ▶ Address the new reporting obligations (+ 100 workers)
 - Calculate existing pay gaps at company level and per category of workers
 - Map possible justifications for identified pay gaps
 - Prepare a pay gap action plan to remedy unjustified pay gaps
- ▶ Consider adopting a Diversity and Inclusion Policy

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