The EU Pay Transparency Directive (2023/970) – Ensuring Equal Pay for Equal Work or for Work of Equal Value

Introduction

From fundamental principle …

Under article 157 of the Treaty on the Functioning of the European Union (TFEU[1]) each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. In conjunction with the case-law of the Court of Justice of the European Union (ECJ), the Gender Equality Recast Directive 2006/54/EC[2] on equal opportunities and equal treatment of men and women in matters of employment and occupation further consolidated various directives in the field of gender equality with a view to ensuring the proper implementation of this principle.

In 2013, the gender pay gap, i.e. the difference between the average gross hourly wage of women and the average gross hourly wage of men[3] in the European union was still at an average of 16.3 %[4], a mere 0.14% lower than the 17.7 % that was recorded in 2006. After assessing the impact of its Recast Directive[5], the Commission drafted a Report providing practical guidance on gender-neutral job classification systems that would help bridge the gender pay gap. Pay transparency was presented by the Commission in its Recommendation of 7 March 2014 as another useful instrument to strengthen the principle of equal pay[6].

These initiatives would ultimately culminate in a new Directive 2023/970[7] of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms (the PTD).

… to effective practice …

The PTD sought to combat the three obstacles to pay equity as defined in the Commission's 2020 evaluation of the Recast Directive of 2006, i.e. a lack of transparency in pay systems, a lack of legal certainty on the concept of work of equal value, and procedural obstacles faced by victims of discrimination. The Directive thus proposed three main instruments as means to strengthen the fundamental principle of equal pay, ie. (i) more transparency about pay levels, (ii) setting up of and reporting on gender-bias-free pay structures and (iii) ensuring easier access to justice for victims of pay discrimination.

The Directive was adopted on 10 May 2023 and entered into force on the 7th of June 2023. At the time of its adoption, the Directive did not seem to cause much of a stir. However, as the deadline

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[1] With the Treaty on the European Union (TEU), the TFEU is considered as a « Constitutional » Treaty on the EU, enshrining the basic rules of the Union.

[2] Directive - 2006/54 - EN - EUR-Lex

[3] This is measured as a percentage of men's earnings across the EU Union.

[4] Questions and Answers on the gender pay gap – publication of EU Commission of 30 October 2015.

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[6] EUR-Lex - 32014H0124 - EN - EUR-Lex

[7] Directive - 2023/970 - EN - EUR-Lex

of its transposition into the national law of each of the Member States draws closer (7th June 2026), stronger concerns are being voiced, especially on the employers' part, as regards the increased administrative burden imposed on their organizations, often deemed disproportional in comparison to the relatively small pay gaps in their country. Indeed, while the average unadjusted gender pay gap in the EU was 11.1 % in 2024, these levels vary significantly across the EU with Estonia at the highest (18.8 %) and Luxembourg at the lowest (-0.8 %). This means that, without correcting for differences in individual and job characteristics of employed men and women, Luxembourg is the only EU country where, on average, men earned less than women, in 2024[8].

To date, not one Member State has fully transposed the Directive[9], with local politicians advocating for a "no gold-plating" approach[10] and some Member States seeking a postponement of the transposition date[11]. In reply to a parliamentary question (E-0004018/2025), the competent Commissioner for Equality, Ms. Lahbib, reiterated that the Commission expects all Member States to implement the directive within the legal deadline, and that failure to do so could lead to the Commission launching infringement proceedings. Ms. Lahbib also highlighted that the European Institute for Gender Equality is preparing a step-by-step toolkit on gender-neutral job evaluation and classification for use by employers and social partners and that this toolkit is intended to contain various methodologies specifically tailored to the size of employers. Furthermore, dedicated funding was said to be made available to Member States and social partners to support the implementation of the directive, training and capacity building[12].

I. Overview of main provisions

I. *Persons in scope*

The PTD applies to « *employers in both public and private sectors* »[13] and to « *all workers who have an employment contract or employment relationship as defined by law, collective agreements and/or practice in force in each Member State with consideration to the case-law of the Court of Justice*[14].

This case-law is quite extensive and tends to take a broad interpretation of the concept of workers. Specific problems may rise where, in certain member states, triangular work relationships have been set up : an Employer of Record (EoR), a local European company formally employs workers on behalf of a foreign business and assumes responsibility for all legal obligations, such as payroll administration, compliance with labor regulations,

[8] Gender pay gap statistics - Statistics Explained - Eurostat

[9] There are partial implementations, such as e.g. for Belgium on the regional level, with the Fédération Wallonie-Bruxelles having transposed it for its public sector workers. Malta and Poland have also published partially finalized drafts.

[10] The Directive lays down minimum rules but individual member states may decide to go « above and beyond » these rules, i.e. gold-plating them by offering a more enhanced protection of workers' rights .

[11] E.g. on 17 September 2025, the Dutch government announced that it would delay until January 2027 but this has met with opposition from the European Commission.

[12] Parliamentary question | Answer for question E-004018/25 | E-004018/2025(ASW) | European Parliament.

[13] Art. 2.1 PTD.

[14] Art. 2.2 PTD.

insurance etc … whereas the foreign company will exercise the employer's authority over the employee (supervising the work, granting authorizations for holidays, etc …).

It will be for each member state, in its implementation process, to carefully assess its local existing legal frameworks and to define which entity will be responsible for the implementation of certain legal obligations.

II. ***Definitions***

Under article 3, the Directive provides for a series of definitions of various concepts, such as the notion of pay, work of equal value, category of workers, direct and indirect discrimination etc., some of which are a reiteration of concepts already well-established in the EU.

From a practical point of view, it is important to note that the concept of pay is defined very broadly and covers, not only basic pay or minimum wage or salary, but also « any other consideration, 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" (art 3.1. (a).

On the concept of "work of equal value", the Directive does not define this concept as such but sets out *how* work is to be determined to be of equal value in accordance with the non-discriminatory and objective gender-neutral criteria referred to in Article 4(4). These criteria are skills, effort, responsibility and working conditions, and, if appropriate, "any other factors which are relevant to the specific job or position". While the first four criteria are considered as essential and sufficient, the PTD allows for other elements to be taken into account "where appropriate". The Directive also highlights that these criteria must be applied in an objective gender-neutral manner, excluding any direct or indirect discrimination based on sex. Relevant soft skills should not be undervalued[15].

The Directive also refers to "Union-wide guidelines related to gender-neutral job evaluation and classification systems" which the Commission may, where appropriate, update, in consultation with the European Institute for Gender Equality (EIGE). This provision is an almost literal copy of what is mentioned under consideration (26) of the PTD. These EIGE guidelines are currently being updated. In essence, companies will be required to set up pay structures that determine which roles are of equal value and then group employees accordingly. They will have to identify the different factors and sub-factors that are used to define these categories, how much each of these factors "weigh" and throughout the whole process, ensure that the methodology they use, in addition to quite obviously being gender-neutral, is, objective, repeatable and defensible.

III. ***Pay transparency***

A. Access to information

Employers will henceforth be required to receive information at various stages of the working relationship:

[15] Article 4.4 PTD.

Prior to employment:

- applicants have a right to information[16] on the initial pay or the pay range for the position they seek, and, where applicable, the relevant provisions of the collective bargaining agreements in relation to the position. This information must be provided in order to ensure "an informed and transparent negotiation on pay".

- To exclude the "sticky floor phenomenon", employers are now prohibited from asking applicants about their pay history during their current or previous employment relationships[17].

- Job vacancy notices and job titles as well as the recruitment processes must be gender neutral[18].

During the employment

- Employers must make the criteria that are used to determine workers' pay, pay levels and pay progression easily accessible[19].

- Workers have the right to request and receive in writing, 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[20].

- Employers must inform workers annually of their right to receive that information and of the steps they must undertake to exercise that right. This obligation seeks to ensure that workers are and remain fully aware of their right to verify if they do receive "equal pay for equal work or for work of equal value" and to seek full compensation should that not be the case.

- The Directive sets out a two-month term for the employer to provide that information within as of the employee's request.

- Workers shall not be prevented from disclosing their pay for the purpose of the enforcement of the principle of equal pay. Any contractual clause restricting workers from disclosing information on their pay must be prohibited under national law.

- Employers may require workers to only use information (other than that related to their own pay or pay level) for purposes related to their right to equal pay.

B. *Reporting on the pay gap*

The PTD imposes an obligation on Member States to ensure employers report on the existence of a gender pay gap, under the terms as specified in the PTD. While certain countries already have some form of reporting obligation, the PTD is quite specific as to the nature of the nature of the information that is henceforth to be

[16] Art. 5.1 PTD
[17] Art 5.2 PTD
[18] Art. 5.3 PTD
[19] Art. 6.1 PTD.
[20] Art. 7.1 PTD

provided[21]: the biggest employers (+150 employers) will be the first to have to report (7 June 2027) and those with over 250 workers will have to report every year, whereas employers with 100-149 workers will only have to report by June 2031 and every three years thereafter[22].

While the threshold for the reporting duty is thus set at 100 employees, the Directive allows for gold-plating: Member States may require employers with fewer than 100 workers to also report[23]. Information on the gender pay gap between workers by categories of workers broken down by ordinary basic wage or salary and complementary or variable components is to be provided by the employers “to all their workers and to the workers’ representatives of their workers”, and, upon request, to the labour inspectorate and the equality body.

If a pay gap is found, i.e. if (a) the pay reporting demonstrates a difference in the average pay level between female and male workers of at least 5 % in any category of workers, and (b) this difference cannot be justified by the employer on the basis of objective, gender-neutral criteria and (c) the employer has not remedied such an unjustified difference within 6 months of the date of submission of the pay reporting, a “joint pay assessment” is to take place, in cooperation with the workers’ representatives: this consists of taking a “deep dive” into the causes/reasons for the difference and a proposal of measures to address these.

As is clear from consideration (45) and articles 13 and 28 of the Directive, its intention was to give an important role to social dialogue and to workers’ representatives in matters of equal pay and the development of gender-neutral job evaluation and classification systems. Each Member State is expected to encourage the social partners to play an active role in these matters, in accordance with its own national legislation and tradition.

Furthermore, labor inspectorates and/or national equality bodies[24] are also to be given greater prominence in these matters: they may be asked to participate in this process and Member States are required to take active measures to ensure close cooperation and coordination among these three players. The equality bodies must be provided with adequate resources required for effectively carrying out their functions on the right to equal pay[25].

IV. *Remedies and enforcement*

[21] Art 9. 1.(a) to (g) PTD
[22] Art 9.2-5 PTD
[23] Art. 9.5 PTD
[24] Government funded institutions that are set up to ensure the protection of fundamental rights.
[25] Art. 28.4

With its chapter III on remedies and enforcement, the Directive clearly sought to put some very sharp teeth on the principle of equal pay: in articles 14 to 26 it lays down a series of obligations and measures that greatly lower the threshold for workers to instigate legal proceedings on matters of equal pay.

1. Facilitating access to legal recourse

Access to the Courts, after possible recourse to reconciliation, should always be easily available to all workers[26], who may be assisted/represented by associations, organizations, equality bodies, or any entity that in accordance with national law has an interest in ensuring equality between men and women and may engage in legal proceedings[27].

The Directive requires for limitation periods not to run "*before the claimant is aware or can reasonably be expected to be aware of an infringement*"[28] and the duration should be no shorter than three yours. The practical impact of this provision cannot be underestimated: the vagueness and subjectiveness of the starting date of the limitation period, in conjunction with its duration[29], could *de facto* lead to claims becoming imprescriptible. In addition, the Directive also requires Member States to ensure that a limitation period is suspended/interrupted "*as soon as a claimant undertakes action by bringing a complaint to the attention of the employer*"[30]. This would allow for claimants to make diverse claims (even without proper cause or thorough examination), just to avoid their potential limitation.

When exercising their rights to equal pay, workers and their representatives should not be treated less favorably: Member States should therefore introduce in their national legal systems such measures as are necessary to protect them against dismissal or other adverse treatment by an employer as a reaction to a complaint or to any administrative procedure or court proceedings for the enforcement of the principle of equal pay[31].

The fear of incurring legal costs for having filed a claim that was ultimately unsuccessful is also alleviated under the Directive: Member States shall ensure that national courts can assess, in accordance with national law, whether the unsuccessful claimant "had reasonable grounds for bringing the claim and, if so, whether it is appropriate not to require that claimant to pay the costs of the proceedings"[32].

All these measures are aimed at lowering the threshold for plaintiffs to effectively enforce their rights before the competent courts and tribunals.

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[26] Art 14 PTD

[27] Art 15 PTD.

[28] Art. 21.1 PTD

[29] In most countries, specific statutes of limitations will limit claims on the basis of an employment contract (e.g. In Belgium: one year after the contract was terminated).

[30] In addition to the actual institution of a claim before a court, the labor inspectorate or the equality body.

[31] Art 25 PTD

[32] Art. 22 PTD

2. Right to compensation

Any worker who has sustained damage as a result of an infringement of any right or obligation relating to the principle of equal pay has the right to claim and to obtain full, real and effective compensation or reparation for the damage sustained: this requires for the person to be put in the situation were he or she had not been discriminated against based on sex or if there had been no infringement of any of the rights or obligations relating to the principle of equal pay.

Compensation should include full recovery of backpay, related bonuses or payments in kind, lost opportunities, non-material damage, any damage caused by other relevant factors which may include intersectional discrimination, and interest on arrears. The Directive also explicitly excludes the possibility for the compensation or reparation to be restricted by the fixing of a prior upper limit[33].

This provision is a reiteration of the general principle of compensation "in full" for all damages incurred because of the unlawful act that was committed. Quite obviously, the financial impact of a successful individual (or potentially collective) claim on a business is self-evident.

3. Alleviating the burden of proof

Whereas, in general, the onus of proving one was wronged (in this matter, on the principle of equal pay) would lie with the claimant, the Directive contains several provisions that seek to alleviate this burden of proof or even to shift it entirely to the employer:

- The claimant is only required to bring facts from which it may be presumed that there has been direct or indirect discrimination, whereafter it will be for the employer to prove that there has been no direct or indirect discrimination in relation to pay[34].

- If the employer has not implemented the pay transparency obligations as set out above[35], the burden of proof shifts entirely to the employer[36].

When assessing whether workers are in a comparable situation, the comparison is not limited to workers who work for the same employer, but it shall be extended to "establishing the pay conditions". This "single source" shall be deemed to exist "*where it stipulates the elements of pay relevant for the comparisons of workers* [37]. This should lead multinational companies to reflect on the advisability of the "one-size-fits-all" approach as it would allow workers from various entities to compare themselves to workers from other Member States. Rather than creating such a large category of comparators, which has the potential of generating more equal pay claims, the focus should lie on ensuring local pay structures are compliant with the local transposition of the Directive in each Member State.

[33] Art. 16.4 PTD

[34] Art. 18.1 PTD. This method is similar to the rules that apply with regards to all other discrimination claims.

[35] Those of articles 5, 6, 7, 9 and 10

[36] Except where the employer can prove that the infringement of those provisions was manifestly unintentional and of a minor character – art 18. 2 final paragraph.

[37] Art. 19.1 PTD

The Directive allows for comparisons to be made between workers who are not employed at the same time and even, where no real comparator can be established, for “any other evidence” to be used, including statistics or a comparison of how a worker would be treated in a comparable situation[38].

Although it remains to be seen how these provisions will be transposed into national law, it is clear from the quite specific wording of the Directive that it seeks to remove as many obstacles as possible to potential equal pay claims.

4. Penalties and public contracts and concessions

The Directive imposes an obligation on Member States to provide for effective, proportionate and dissuasive penalties for infringements of the principle of equal pay. These should have a real deterrent effect, and include fines to be set by national law, taking into account aggravating or mitigating factors, including intersectional discrimination and specific penalties in case of repeated infringements[39].

Failure to comply with pay transparency obligations or a pay gap of more than 5 % could also lead to economic operators being excluded from participating in a public procurement procedure[40].

Conclusion

This Directive was instigated by the previous EU Commission[41] as part of its six policy priorities, among which the goal to create “an economy that works for people”. As the deadline for its transposition into national Member States’ legal systems draws closer, more opposition is now being voiced, especially from the employers’ side who, among other objections, fear the additional administrative burdens the Directive imposes on them, and which may well put European enterprises at a further disadvantage in the current global world economy, marked by uncertainty, political instability and various economic (energy/supply chain) challenges .

Nonetheless, the principle of equal pay for equal work or work for equal pay as such is indisputable, and unless a new legal initiative is undertaken to postpone the deadline[42]for transposition, the Directive that seeks to strengthen its application is effectively a part of the European legal order, while it is for Member States to implement it in their national systems by the deadline set by the Directive.

[38] Art. 19.3 PTD

[39] Art 23 PTD

[40] Art. 24 PTD

[41] Under U. von der Leyen’s first mandate as president of the Commission (2019-2024) focused on the European Grean Deal, A Europe fit for the Digigtal Age, An economy marked by a pus.

[42] At the time of writing this contribution, this seems unlikely.

Although certain provisions leave very little leeway to individual Member States as to their actual transposition[43], approaches may vary from one Member State to another on other matters[44] and legal advice should be sought in each Member State to ensure compliance.

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[43] E.g. specific obligations on informing applicants of their rights.

[44] E ;g. the exact role of the workers' representative organizations, social dialogue, penalties, judicial issues, ..