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The Gender Pay Gap, EU Pay Transparency Directive and its Implications

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Introduction

In recent years, the European Union (EU) has prioritized gender equality, implementing various measures to tackle inequality. European Commission President Ursula von der Leyen has highlighted that 'equality for all and equality in all its senses' is a central focus of her leadership.[1] The European Pillar of Social Rights (EPSR) adopted in 2017, which aims to improve social rights for EU citizens, has also laid groundwork for EU commitments towards gender equality. In particular, the EPSR has been instrumental in the adoption of directives specifically designed to tackle gender inequality and close gender gaps in the labour market. One such initiative is the Work-Life Balance Directive, adopted in 2019. This Directive seeks to alter gendered arrangements in work and care by introducing parental leave policies that encourage fathers to take a more active role in childcare, among others (Zumbyte and Szelewa 2024). Additionally, in May 2023, the EU Parliament and Council adopted the Directive (EU) 2023/970 on pay transparency. This Directive aims to strengthen the principle of equal pay for equal work and combat pay discrimination, ultimately contributing to closing the gender pay gap in the EU. Member States have until June 7, 2026, to transpose this Directive into national law. Reducing the gender pay gap is a critical objective for both the EU and its Member States. The EU's Gender Equality Strategy 2020-2025 explicitly prioritizes 'reducing the gender pay, earnings and pension gaps and thus fighting poverty among women'.[2]

The first part of this report examines key data on the gender pay gap in the EU, while the second part provides context for the implementation of the Directive, exploring its content, measures, and implications.

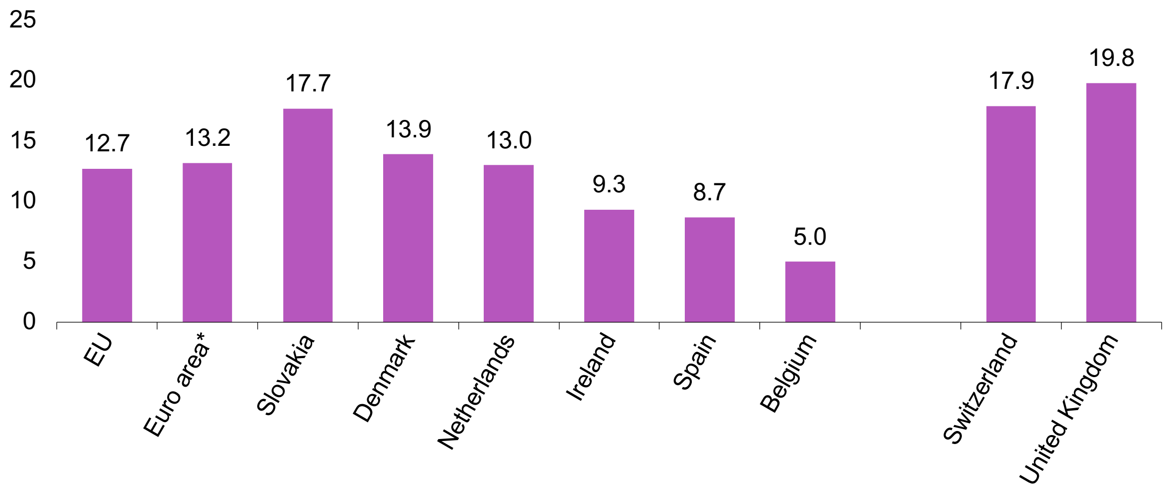
[1] https://charter-equality.eu/the-charter/the-eu-and-gender-equality.html

[2] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'A Union of Equality: Gender Equality Strategy 20202025' COM/2020/152 final.

Measuring gender pay gap and its sources

Understanding the extent of the gender pay gap and its underlying factors typically relies on statistical analysis. The European Union and national agencies utilize the unadjusted gender pay gap, calculated as the relative difference between the average earnings of women and men, as a metric to monitor progress in narrowing gender pay disparities.[3] The unadjusted GPG provides a comprehensive overview of pay disparities between women and men, encompassing various inequalities prevalent in the labour market, including sectoral segregation, unequal distribution of paid and unpaid work, and instances of pay discrimination, among others.

Figure 1. The unadjusted gender pay gap, 2022



Note: gender pay gap measured as difference between average gross hourly earnings of male and female employees as % of male gross earnings.
Source: Eurostat 2022 (online data code: sdg_05_20).

As of 2022, the unadjusted gender pay gap in the EU stood at 12.7% (Figure 1), indicating that women earned an average of 13.0% less per hour than men. Among the countries examined, the UK, Switzerland, and Slovakia reported the highest unadjusted

[3] https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Gender_pay_gap_statistics

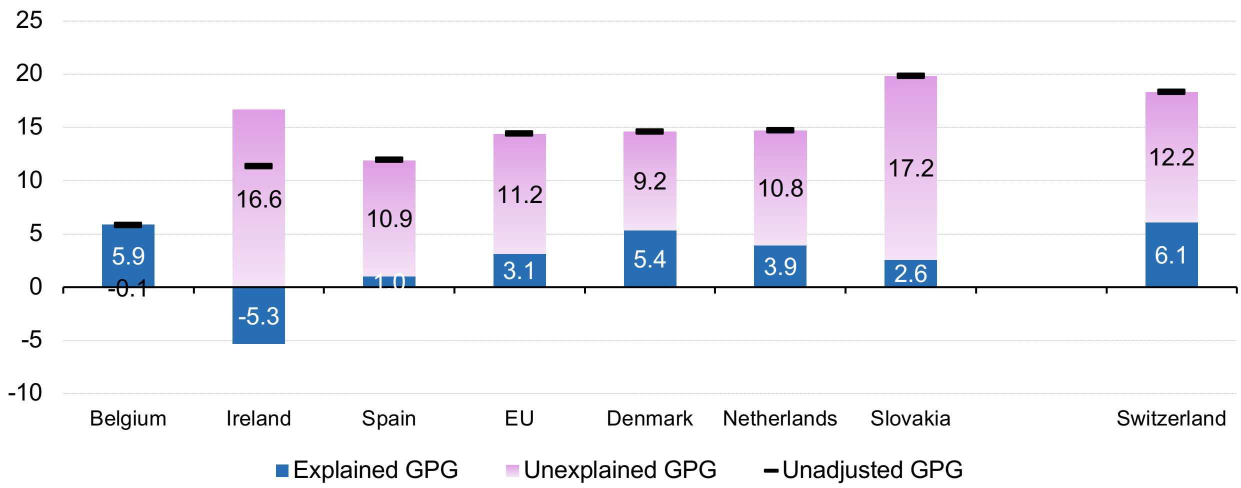
gender pay gaps, at 19.8%, 17.9%, and 17.7%, respectively. Conversely, Belgium and Spain showcased the lowest GPGs, with rates of 5% and 8.7%, respectively.

Explained vs Unexplained gender pay gap

While the adjusted GPG is useful as an overall indicator of progress in pay inequality, to better understand its sources it can be decomposed into explained and unexplained parts. The ***explained*** part is attributable to differences in (observable) characteristics between women and men, resulting from multiple factors, such as concentration of women and men in specific sectors and occupations, gender stereotypes, and others. This component may also include some discrimination elements if there are barriers to education or economic activities, jobs or occupations (Leythienne and Pérez-Julián 2022).

The portion of the gender pay gap that remains **unexplained**, also known as the *adjusted* GPG, compares individuals with similar characteristics such as education and experience. This adjusted measure allows for a comparison of workers in similar roles, tenure, and educational backgrounds, providing insights into the contribution of various factors to observed pay disparities. However, data used for calculating GPG statistics often lack certain crucial individual attributes, such as unmeasured productivity or negotiation skills, which may impact the unexplained gap. Consequently, the adjusted GPG does not directly measure discrimination related to 'unequal pay for equal work.' Therefore, it is essential to analyse both the explained and unexplained components of the gap and their respective origins with caution (Boll and Lagemann 2018). Nonetheless, the unexplained residual offers an initial approximation of the underlying factors contributing to the gap.

Figure 2. Explained and unexplained parts of the unadjusted gender pay gap, 2018 (%)



Note: No data for the UK included.
Source: Eurostat - Structure of earnings survey 2018.

At the EU level, the explained portion of the GPG accounts for 3.1% (Figure 2). This indicates that, based on their average attributes in the labour market, women are anticipated to earn 3.1% less than men (whose characteristics typically command higher remuneration) (Leythienne and Pérez-Julián 2022). However, there are noteworthy disparities in the explained GPG among countries. The positive explained portion was highest in Switzerland, at 6.1%, and Belgium, at 5.9%, while in Ireland, it was a negative 5.3%. The positive gap is largely influenced by economic factors, with women being more inclined to work part-time and in lower-paying economic sectors and occupations than men (ibid). The negative gap in Ireland stems from women's self-selection in the labour market, with those participating tending to possess higher education levels and pursue better-paid occupations compared to men, resulting in greater returns to their attributes compared to men (Leythienne and Pérez-Julián 2022). Regarding education, in most EU countries, female employees have, on average, higher qualifications than males, although the opposite is observed in Belgium and Switzerland (for an examination of how other characteristics contribute to the GPG, refer to Leythienne and Pérez-Julián (2022).

In terms of the adjusted (or unexplained) GPG, it stood at 11.2% at the EU level, indicating that women earned 11.2% less than men on average, even after accounting for differences in average characteristics. Among the seven countries examined, Slovakia and Ireland reported the highest unexplained gender pay gaps, at 17.7% and 16.6%, respectively.

Belgium had the lowest gap at negative 0.1%, while Denmark had a positive gap of 9.2%. As mentioned earlier, this measure can capture discrimination against women (unequal pay for equal work) as well as other factors not directly related to discrimination, due to various data limitations and social processes that statistics may overlook. For instance, as actual work experience is often challenging to quantify directly, gender discrepancies in work interruptions and their financial repercussions contribute to the unexplained gap. A substantial body of research highlights significant earnings losses for women due to family-related breaks, particularly from a life course perspective (Boll and Lagemann 2018). Moreover, there may be significant wage differentials favouring men over women even within the same sector, indicating sorting into hierarchical positions. Additionally, sectoral variations may contribute to wage-related disadvantages for individuals, particularly women, who may opt for more flexible and part-time roles (ibid). To address the unexplained portion of the gender pay gap, including the undervaluation of women's work and biased assumptions that lead to lower pay for jobs typically held by women, the Directive's requirement for gender-neutral job evaluations can be a valuable tool (Pillinger 2023).

When examining GPG it is also important to consider the trade-offs between measures of GPG and women's employment. Studies indicate that countries with higher female employment rates, like those in Northern and Western Europe, often exhibit higher gender pay gaps (Boll and Lagemann 2018; Ciminelli, Schwellnus, and Stadler 2021). In countries where supportive work-family policies, such as flexible work arrangements, public childcare and part-time jobs, are prevalent, women are more likely to participate in the labour force. However, due to the prevalence of part-time employment, they tend to experience lower wages. In contrast, in countries with limited work-family reconciliation policies, such as those in Southern Europe, only women with high earnings potential typically enter the job market. Once they overcome the barriers to enter the labour force, women often gain access to attractive job opportunities and face fewer wage penalties compared to contexts with more extensive support systems (Boll and Lagemann 2019).

Finally, to understand how pay transparency laws may address GPG, it is important to examine the broad drivers of GPG. The Ciminelli, Schwellnus, and Stadler (2021) who conducted analyses for the OECD, suggest that factors related to the 'child penalty,' such as career interruptions for childcare, contribute to about 60% of the gap, with 'sticky floors' related to social norms, gender stereotypes, and discrimination making up the remaining 40%. However, the extent to which these factors drive GPG varies across Europe. Specifically, in Northern and Western countries, child penalty-related explanations account for 75% of the gender wage gap, but only around 40% in Central and Eastern European countries, while Southern European countries fall in between these cases. This indicates the need for contextualized policy measures to address the gender wage gap. For instance, in countries where gender discrimination plays a larger role, such as in most Central and Eastern European as well as some Southern European countries, prioritizing equal pay laws, pay transparency measures, and initiatives to tackle gender stereotypes may be crucial (Ciminelli, Schwellnus, and Stadler 2021). In contrast, most Northern and Western European countries may benefit more from prioritizing policies that address the motherhood penalty, such as further promoting flexitime and telework among all workers, and supporting gender neutral parental leave and early childcare provision. Countries like Belgium, Denmark, and Iceland have received recognition for their early adoption of pay transparency measures or innovative policy approaches, which have helped reduce the gender wage gap effectively. Therefore, while the Directive may still offer benefits in countries with robust transparency measures, its impact may be more significant in Eastern or Southern European countries with fewer advancements in pay transparency laws.

The Context of Pay Transparency Directive

Despite long-standing legislation promoting equal pay, achieving pay equity for women in the European Union remains a challenge. The right to equal pay between women and men for equal work as well as for work of equal value has been a founding principle of the European Union since the 1957 Treaty of Rome (Carlson 2022). This principle was reaffirmed in Article 157 of the Treaty on the Functioning of the European Union and in Article 4 of the 2006 Recast Directive. The European Commission further emphasized pay transparency in 2014 with its Recommendation on strengthening equal pay. Progress, however, has been slow (Benedí Lahuerta 2022). Pay equity is measured by the gender pay gap (GPG), which represents the difference between the average gross hourly earnings of female and male employees in a given organization, sector or country.[4] While the gap narrowed significantly after World War

[4] https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Gender_pay_gap_statistics

II until 1980s, it has stagnated in recent decades (Weichselbaumer and Winter-Ebmer 2005, in Bennedsen et al. 2023). In the EU-27, in 2022 women on average earned 13% less than men per hour (gender pay gap of 12.7%), and this disparity reduced only marginally from the previous decades (Leythienne and Pérez-Julián 2022). The gender pay gap has significant negative consequences for women. It contributes to poverty, widens the pension gap and limits economic and social opportunities. For example, the gender pension gap stood at 30% in 2022, which was more than double the gender pay gap.[5] There is also a widespread understanding of the unacceptability of the gender pay gap, with nine out of ten Europeans believing it is unacceptable for women to be paid less than men for the same work or work of equal value (European Commission 2017). Moreover, almost two-thirds of Europeans support pay transparency, which involves publishing average wages in their organization by gender and job type (European Commission 2017).

The gender pay gap stems from several interconnected issues. One significant factor is the historical division of labour between women and men, and undervaluing of work traditionally done by women. These occupations, often in care and service sectors, are seen as less demanding and therefore receive lower recognition and pay, despite the crucial skills they require (Müller 2019; Arabadjieva 2021). Gender pay gap is also linked to biases and stereotypes that shape choices and behaviour of individuals and institutions (OECD 2023; Ciminelli, Schwellnus, and Stadler 2021). Moreover, in recent years, information asymmetry and a lack of pay transparency have emerged as significant barriers to closing the gender pay gap. The absence of transparent wage data makes it challenging to discern instances of discrimination or undervaluation of women's work (Arabadjieva 2021). While it may be feasible for a worker to recognize unjust pay relative to colleagues in the same position (i.e., equal pay for equal work), identifying disparities in pay relative to workers in different roles, with whom they likely have little interaction (i.e., equal pay for work of equal value), becomes considerably more difficult (Ceballos, Masselot, and Watt 2022). Historically, companies have exploited this information asymmetry to impede employees from identifying and addressing instances of pay discrimination, contributing to the slow progress in closing the gender pay gap. While pay equity legislation is in place in certain countries, its enforcement has often been lacking (Ceballos et al. 2022). Hence, it is imperative for workers to have access to

[5] https://www.consilium.europa.eu/en/policies/pay-transparency/

transparent information regarding the pay of comparable roles within their company to ascertain whether equal pay for work of equal value is being upheld. The public dissemination of pay data has the potential to enhance awareness of the issue, a development proponents believe would spur organizations to intensify their efforts in narrowing the pay gap (OECD 2023).

Prior to the Pay Transparency Directive, one of the most significant measures to improve pay transparency and address gender pay gap was the 2014 European Commission's *Recommendation on strengthening the principle of equal pay between men and women through transparency* (2014/124/EU). This recommendation sought to encourage Member States to enact one or more of four transparency measures in their national law: (1) recognise a right of individual workers to obtain information on pay levels, (2) introduce employer reporting on the average pay levels by gender for employers with at least 50 workers, (3) require pay audits for employers with at least 250 workers, where the wage structure and gender pay differentials are systematically assessed, and (4) include equal pay and pay audits in collective bargaining discussions and negotiations (Benedí Lahuerta 2021). The Recommendation has had a positive but limited impact at national level as there were still 15 Member States without pay transparency measures (ibid). Another issue that gave the impetus for the Directive were difficulties in effectively applying Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (ibid). There were challenges in understanding the principles of equal pay for equal work and work of equal value, as well as impediments to accessing justice, such as inaccessibility of pay information of potential comparators and others (Arabadjieva 2021). Besides that, many trade unions across Europe have long campaigned for greater pay transparency to address the underlying structural causes of the gender pay gap (Pillinger 2023).

While pay transparency alone will not eliminate the GPG, one of the primary advantages of the Directive lies in its enhancement of pay transparency through the provision of access to pay information via individual and collective measures, along with support for the enforcement of these rights (Benedí Lahuerta 2022). The Commission also perceives transparency as a means to illuminate 'gender bias in pay systems and job-grading that do not value the work of women and men equally and in a gender-neutral way,' thereby raising awareness and initiating efforts to address unconscious bias (Carlson 2022). By reducing information asymmetries, the Directive will diminish employers' ability to unilaterally set wages and facilitate workers' identification and remediation of pay discrimination (Benedí Lahuerta 2022).

At the individual level, workers and jobseekers will gain a clearer understanding of their position within the broader pay structure of a company or industry, empowering them to assert stronger claims for equal pay. Currently, it is challenging for individual workers to discern whether they are being underpaid and to whom their salary should be compared (OECD 2023). A common hurdle for equal pay claimants is finding a suitable male comparator performing similar work or work of equal value within the same employer and receiving higher pay (Benedí Lahuerta 2022), especially prevalent in sectors or occupations where work is predominantly feminized and undervalued. Importantly, the Directive offers the option to establish a hypothetical comparator in situations where actual comparators are unavailable, addressing a significant obstacle in determining equal pay in Europe, notably the lack of comparators for workers in female-dominated jobs and sectors (Pillinger 2023).

At the collective level, employers will be mandated to disclose aggregated pay data by gender, both internally and publicly. These provisions would provide significant value across most, if not all, Member States, given that even those with existing pay transparency measures have not adopted the comprehensive approach outlined in the Directive (Benedí Lahuerta 2022). Prior to the Directive, many EU countries had implemented various transparency reforms, albeit with varying levels of ambition and legal requirements for firms and individual rights (ibid). While most countries provided rights for individuals to access pay information or mandated employers to disclose such information, fewer had provisions for pay audits when gender-based pay disparities were identified or obligations for social partners to negotiate pay equality (Bennedsen et al. 2023). Benedí Lahuerta observes, for instance, that France, Denmark, and Belgium have implemented pay transparency measures at the collective level, but lack individual rights to access pay information during recruitment procedures in those jurisdictions.

How can pay transparency reforms contribute to reducing the gender pay gap? In the EU, it is estimated that 'a comprehensive approach to pay transparency and integrating equal pay in collective bargaining could reduce the gender pay gap by between 1.65 percent and

4.33 percent' (ILO 2022: 6 in Pillinger 2023). As most pay transparency policies are relatively new, there has been limited research evaluating their effects on wage and employment outcomes. However, evidence from national pay transparency reforms in the EU and OECD countries, where such reforms have been implemented, suggests that in most cases, policy reforms are indeed effective in reducing the gender pay gap (documented for Canada, Denmark, Switzerland, and the UK) (Bennedsen et al. 2023). Studies examining how the gender pay gap was reduced found that it occurs by stalling the growth rate of male wages, rather than accelerating the growth rate of females' wages (ibid). However, in cases where enforcement mechanisms or wage gap visibility are weaker, these measures seem to have had fewer or no positive effects (Böheim and Gust, 2021; Gulyas, Seitz, and Sinha 2020 in OECD 2023). Nevertheless, where positive effects on the gender pay gap are observed, scholars suggest that transparency laws can incentivize firms to decrease the gender pay gap to maintain public relations, particularly in unionized workplaces, thereby making managers more accountable and potentially more inclined towards equitable wage allocation (Baker et al. 2022; Castilla 2015; Obloj and Zenger 2022 in Bennedsen et al. 2023).

There are also some discussions about how this Directive will impact the costs for employers, with some arguing that transparency reforms will increase administrative costs, especially for small-medium-sized businesses. Generally, EU pay transparency policies primarily incur direct costs, including but not limited to: 1) additional salary expenses for administrative staff tasked with collecting and organizing salary data, 2) compliance costs, such as implementing equality plans, maintaining salary records, and conducting pay audits, 3) expenses associated with hiring external experts to analyse data and produce reports, 4) costs related to the development and enhancement of software for evaluating the gender pay gap, and 5) training expenses, among others (Bennedsen et al. 2023). However, evidence suggests that implementation costs are relatively minor and should not be the sole determinant for policy decisions (Bennedsen, Larsen, and Wei 2023; OECD 2023). The following section provides a detailed analysis of the novel elements within the Pay Transparency Directive's core provisions.

Finally, for the Directive to be effective, Member States must commit to providing instrumental resources, such as uniform information dissemination and accessible administrative procedures (De La Porte et al. 2023). These resources are crucial for facilitating employer reporting, complaint submissions, and other procedural issues. The role of instrumental resources is to transform de jure rights into tangible de facto rights or obligations accessible to citizens and organizations. For example, inconsistent commitment to implementing the Work-Life Balance Directive across Member States was found to potentially hinder the Directive's goals and create disparities in social rights among EU citizens (De La Porte et al. 2023).

Directive's measures

We turn to Benedí Lahuerta (2022) as our guide to explore the primary characteristics of the Directive's measures. Building upon her analysis, we categorize these measures aimed at addressing the GPG based on their applicability at either the individual or collective level (see Table 1). The individual measures serve as 'tools,' granting rights to individuals to assert equal pay. The collective measures aim to diminish the information asymmetries prevalent in workplace pay matters by imposing proactive obligations on employers. The final part of this section also discusses the key aspects of enforcement mechanisms.

Table 1. Directive's measures

	For job applicants	*For workers*
Individual-level measures	1. Employers are not allowed to inquire candidates about their salary history. 2. Job applicants have a right to be informed about pay from the employer.	1. Individual workers' have a right to request and receive pay information. 2. Workers can not be prevented from disclosing their pay for the purpose of the enforcement of the principle of equal pay.

Collective-level measures	*Employers:* 1. Employers need to ensure that job vacancy notices and job titles are gender-neutral and that recruitment processes are non-discriminatory. 2. Employers need to perform gender neutral job evaluations *(equal work and work of equal value).* 3. Employers need to make easily accessible to their workers the criteria they use to determine workers' pay, pay levels and pay progression. 4. Employers need to report on pay gap between female and male workers publicly and internally. 5. Employers are required to conduct joint pay assessment with workers' representatives to identify, remedy and prevent discriminatory pay differences when their pay reporting reveals a gender pay gap above 5% that cannot be justified by objective, gender-neutral criteria and was not tackled within 6 months. *Member States*: 1. Ensure the availability of analytical tools or methodologies to assess and compare the value of different jobs at the employer's level. 2. Provide technical assistance and training to help employers with fewer than 250 staff comply with the requirements of the directive. 3. Take measures to ensure social partners are actively involved, without prejudice to the autonomy of the social partners and in accordance with national law and practice.

Source: Adapted from Benedí Lahuerta (2022) and Directive.[6]

Individual measures

As highlighted by Benedí Lahuerta (2022), there are two individual measures that are introduced prior to employment commencement, which have not been previously addressed at the EU level: the prohibition of inquiries into salary history and the provision of pay level details to job applicants. After employment starts, two more measures come into play: employees should have the right to request and obtain pay information, and they must not face obstacles in disclosing their pay for the purpose of enforcing the principle of equal pay.

End to salary history inquiries

The Directive mandates that employers refrain from inquiring about applicants' 'previous' salary levels, a pivotal measure in advancing gender pay equity. Such queries are deemed

[6] https://eur-lex.europa.eu/EN/legal-content/summary/equal-pay-for-equal-work-or-work-of-equal-value-between-men-and-women-rules-on-pay-transparency.html

irrelevant, as the salary for a particular role should be determined based on gender-neutral criteria pertinent to the job, such as training requirements, effort, responsibility or working conditions, rather than prior salary benchmarks (Benedí Lahuerta 2022). The practice of soliciting salary history can perpetuate unequal pay for similar work.

Right to Pay Information for Job Applicants

The Directive introduces a crucial right for job applicants: knowing the "initial pay level or its range" upfront. This might seem simple, but many candidates enter interviews blind to the expected salary (Benedí Lahuerta 2022). This puts the burden on them to research or ask during the interview, potentially putting them at a disadvantage. The Directive changes this by mandating employers to clearly disclose the initial pay level or range in the job posting or directly to the applicant before the interview, without them having to ask. This transparency benefits both women and men by putting them on a more equal footing during salary negotiations (ibid). Benedí Lahuerta notes, that the requirement to provide pay information and the ban on salary history inquiries work together to combat pay inequity.

Right to pay information for Workers

The Pay Transparency Directive empowers employees beyond the application stage. Workers will now have a *right to pay information*, particularly valuable if they suspect pay inequity (Benedí Lahuerta 2022). All employees, regardless of company size, will be able to request information on their individual pay and the average pay (broken down by gender) for similar positions or work of equal value. Employers cannot refuse this request, even with justifications. Another notable aspect of this entitlement is that it not only grants the right to request pay information but also ensures the right to receive it. Consequently, employers would be prohibited from denying access to pay information, even if they have valid reasons. Employers will be required to furnish this information within two months of the request.

This right has the potential to diminish pay secrecy, enhance transparency, and contribute to reducing the gender pay gap (Benedí Lahuerta 2022). To address the issue of workers potentially being unaware of this right, Directive (Article 7(3)) stipulates that 'Employers shall inform all workers, on an annual basis, of their right to receive [pay] information.' The individual right to request pay information can prove invaluable for workers who suspect they are being remunerated less than others performing similar or equivalent work (ibid).

Collective measures

The Pay Transparency Directive tackles the gender pay gap not only through individual rights, but also through a set of collective measures aimed at addressing its root causes within workplaces. Three of the key tools are: 1) gender-neutral job evaluations, 2) reporting pay information and 3) analysing data and taking action (Benedí Lahuerta 2022). Additionally, the Directive mandates that employers ensure gender-neutral job vacancy notices and titles, as well as non-discriminatory recruitment processes. Employers are also required to make the criteria used to determine pay, pay levels, and pay progression easily accessible to their employees. Together, these measures compel employers to actively assess the gender neutrality of their pay structures, thereby shifting the responsibility for addressing pay inequity from workers to employers (Benedí Lahuerta 2021). Furthermore, the compilation and dissemination of pay data and analyses can enhance public awareness of pay inequity issues and contribute to improved perceptions of fairness and job satisfaction (ibid).

Gender neutral job evaluations

One of the key challenges addressed by the Pay Transparency Directive is ensuring work is valued based on unbiased, gender-neutral criteria (Benedí Lahuerta 2022). This is difficult because unconscious biases can creep into seemingly neutral evaluation methods. For example, criteria that emphasize traditionally 'masculine' skills might undervalue skills commonly associated with 'female-dominated' jobs.

To address this, Article 4(1) of the Directive requires Member States to implement measures that guarantee employers have pay structures that ensure equal pay for men and women doing the same work or work of equal value. Job Evaluation Systems (JES) or Job Classification Systems (JCs) traditionally seek to ensure equal pay by assessing job worthiness based on either job descriptions (JCs) or gender-neutral factors like training, skills, responsibility, and working conditions (JES). While imperfect, if designed with gender-neutral criteria, these tools serve as an initial step to identify gender inequities in pay structures (ibid). Article 4(2) of the Directive does not prescribe specific tools but requires accessible methodologies to facilitate job value assessment. This progressive approach allows Member States to adopt job valuation instruments tailored to their national contexts, whereas currently EU law only requires that 'where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women (Benedí Lahuerta 2022). However, the vagueness of job assessment factors listed in the Directive ('skills, effort, responsibility and working conditions, and if appropriate any other relevant factors'), may potentially lead to pay inequities (ibid).

This measure could also aid in making claims for fairness and better pay in low-paid, female-dominated occupations where comparators are scarce (Pillinger 2023). By applying these job assessment factors, workers could demonstrate unequal treatment compared to counterparts performing similar work or work of equal value. Article 19(3) allows for hypothetical comparisons in cases without real comparators, empowering workers to establish unequal pay based on how they 'would' have been treated in a comparable situation (ibid). This provision could thus remove a significant obstacle to achieving equal pay for work of equal value, particularly in undervalued, low-paid, female-dominated jobs where comparators are lacking.

Reporting on gender pay gap in the workplace

Another collective measure outlined in the Directive mandates employers to report pay information by gender, both publicly and internally. For companies with over 250 employees, this reporting obligation begins annually starting in 2027, while those with 150-249 employees can report every three years. Employers with 100-149 employees must comply by 2031 and report every three years thereafter. There is no mandated reporting requirement for companies with fewer than 100 employees, though Member States retain the option to enforce such reporting.

The reported metrics encompass both public and internal reporting. Public metrics are relatively basic, comprising mean and median calculations for ordinary salary and variable components (e.g., bonuses), as well as proportions of gender distribution in each quartile pay band. While these metrics offer general insights into organizational gender pay gaps, they do not delve into specific causes such as those related to working patterns (Lahuerta 2022). However, uniform reporting standards allow for comparison between different employers, enhancing accountability and empowering stakeholders like employees, consumers, and investors to make informed decisions, potentially encouraging reputation-conscious companies to address their GPGs (ibid). There is growing evidence that increased access to pay information alone can contribute to reducing the GPG, even without legal requirements for action to address identified gaps (ibid). Internal metrics are slightly more detailed, requiring data disaggregation for each job category. Organizations must report GPGs by gender and worker categories for both ordinary salary and variable components. Disseminating this information internally to workers, their representatives, labour inspectorates, and equality bodies serves as a valuable starting point for individual workers who suspect unequal pay within their job category (Benedí Lahuerta 2022). Lahuerta points out that this measure may face practical limitations, as small companies (<100 employees) are exempt from reporting requirements, despite the fact that the majority of companies in the EU are small and medium-sized enterprises, collectively employing 67% of EU workers (83.9 million).[7]

Joint pay assessments

Regarding internal reporting, the Directive also mandates employers (of specified size, see above) to conduct joint pay assessments 'in cooperation with their workers' representatives' under the following conditions:

1. When pay reporting indicates a discrepancy of at least 5% in the average pay level between female and male workers within any worker category.
2. If the employer fails to justify this difference based on objective, gender-neutral criteria.
3. If the employer does not rectify this unjustified discrepancy within six months of submitting the pay report.

When implementing measures resulting from the joint pay assessment, the employer must address unjustified pay differences within a reasonable timeframe, in close collaboration and accordance with national law and/or practice, with the workers' representatives. This requirement to take corrective action is crucial, as research suggests that employers are less

[7] Eurostat, 'Small and Medium-sized enterprises: An overview' (14/05/2020), <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/ddn-20200514-1> accessed 7 October 2022

inclined to address internal gender pay gaps without prescribed action (Benedí Lahuerta 2022).

However, in the absence of workers' representatives, the Explanatory Memorandum accompanying the Directive proposes that 'the employer should designate one or more workers for this purpose.' In such instances, however, the designated workers would be chosen by the employer, rather than elected by fellow workers. Consequently, it is uncertain whether they could legitimately be considered 'workers' representatives,' as they would not democratically represent the interests of their colleagues (Benedí Lahuerta 2022).

Enforcement mechanisms

The Pay Transparency Directive introduces robust enforcement mechanisms to ensure employers comply with its provisions. Research indicates that pay transparency reforms are most effective in reducing the gender pay gap when accompanied by robust enforcement mechanisms, as optional and voluntary measures tend to be largely ineffective (Ceballos, Masselot, and Watt 2022). Therefore, the Directive aims to deter non-compliance and empower employees to pursue compensation for pay discrimination through key provisions such as (Carlson 2022):

- *Shifting the Burden of Proof:* In cases of alleged pay discrimination, the Directive places the burden of proof on the employer, a significant change from current practices. This means employers must demonstrate the absence of discrimination if they haven't met pay transparency obligations. Previously, the initial burden fell on the employee to prove discrimination.
- *Comprehensive Compensation:* Employees who experience pay discrimination can seek full compensation for losses and damages. This includes recovery of unpaid wages, bonuses, and lost opportunities. It also encompasses compensation for intangible harm and interest on overdue payments. Notably, there's no upper limit on these claims, allowing for significant compensation in severe cases.
- *Penalties for Repeat Offenders:* Member states are required to establish effective penalties for violations of the Directive's transparency requirements. These penalties should be proportionate and dissuasive, potentially based on the employer's financial

standing. This approach emphasizes the EU's commitment to eradicating pay inequality by holding employers accountable for repeated offenses.

Conclusion

The Pay Transparency Directive creates a robust system for combating workplace discrimination. The Directive introduces measures that empower employees and strengthen legal protections against pay discrimination based on gender (Carlson 2022). The Directive increases transparency by granting employees greater access to information about pay structures and company policies. This empowers them to understand their rights and hold employers accountable for fair pay practices. Another key feature is the shifted burden of proof from employees to employers. Now employers will have to demonstrate that they are paying men and women equally for similar work. The Directive also strengthens access to justice mechanisms for employees who will have access to legal tools like injunctive relief and reallocation of legal costs (ibid). By combining pay transparency with measures that address the root causes of the GPG and strengthen legal protections, the Directive builds a comprehensive framework for promoting workplace equality.

While the Directive is a significant step towards achieving gender pay equity, it is important to acknowledge that pay transparency alone is not a cure-all. The persistent gender pay gap stems from entrenched societal issues. Unequal distribution of unpaid care work, gender segregation in the workforce, and limited work-life balance options disproportionately affect women's career trajectories and contribute to the gap.[8] To truly address these issues, a multi-pronged approach is necessary. As mentioned earlier, strengthening work-life balance policies, such as offering flexible work arrangements, and encouraging men's participation in caregiving and care occupations can benefit all workers and help close the gap. Additionally, regulations like minimum wages and strong collective bargaining systems can ensure fairer compensation across various sectors (Benedí Lahuerta 2021; Ciminelli, Schwellnus, and Stadler 2021).

[8] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'A Union of Equality: Gender Equality Strategy 20202025' COM/2020/152 final.

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