DIRECTIVES

DIRECTIVE (EU) 2023/970 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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 157(3) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Acting in accordance with the ordinary legislative procedure ([2]),

Whereas:

(1) Article 11 of the United Nations Convention of 18 December 1979 on the Elimination of All Forms of Discrimination against Women, which all Member States have ratified, provides that States Parties are to take all appropriate measures to ensure, *inter alia*, the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.

(2) Article 2 and Article 3(3) of the Treaty on European Union enshrine the right to equality between women and men as one of the essential values of the Union.

(3) Articles 8 and 10 of the Treaty on the Functioning of the European Union (TFEU) require the Union to aim to eliminate inequalities, to promote equality between men and women and to combat discrimination based on sex in all its policies and activities.

(4) Article 157(1) TFEU obliges each Member State to ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. Article 157(3) TFEU provides for the adoption by the Union of measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value (the 'principle of equal pay').

(5) The Court of Justice of the European Union (the 'Court of Justice') has held that the scope of the principle of equal treatment of men and women cannot be confined to discrimination based on the fact that a person is of one or other sex ([3]). In view of its purpose and the nature of the rights which it seeks to safeguard, that principle also applies to discrimination arising from gender reassignment.

([1]) OJ C 341, 24.8.2021, p. 84.

([2]) Position of the European Parliament of 30 March 2023 (not yet published in the Official Journal) and decision of the Council of 24 April 2023.

([3]) Judgment of the Court of Justice of 30 April 1996, P v S, C-13/94, ECLI:EU:C:1996:170; Judgment of the Court of Justice of 7 January 2004, K.B., C-117/01, ECLI:EU:C:2004:7; Judgment of the Court of Justice of 27 April 2006, Richards, C-423/04, ECLI:EU:C:2006:256; Judgment of the Court of Justice of 26 June 2018, M.B., C-451/16, ECLI:EU:C:2018:492.

(6) In some Member States, it is currently possible for persons to legally register as having a third, often a neutral, gender. This Directive does not affect relevant national rules giving effect to such recognition as regards matters of employment and pay.

(7) Article 21 of the Charter of Fundamental Rights of the European Union (the 'Charter') prohibits any discrimination, *inter alia*, on the grounds of sex. Article 23 of the Charter provides that equality between women and men must be ensured in all areas, including employment, work and pay.

(8) Article 23 of the Universal Declaration of Human Rights states, *inter alia*, that everyone, without any discrimination, has the right to equal pay for equal work, to free choice of employment, to just and favourable conditions of work and to just remuneration ensuring an existence worthy of human dignity.

(9) The European Pillar of Social Rights, jointly proclaimed by the European Parliament, the Council, and the Commission, incorporates among its principles equality of treatment and opportunities between women and men, and the right to equal pay for work of equal value.

(10) Directive 2006/54/EC of the European Parliament and of the Council ([4]) provides that 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 is to be eliminated. In particular, where a job classification system is used for determining pay, it is to be based on the same gender-neutral criteria and should be drawn up so as to exclude any discrimination on grounds of sex.

(11) The 2020 evaluation of the relevant provisions of Directive 2006/54/EC found that the application of the principle of equal pay is hindered by a lack of transparency in pay systems, a lack of legal certainty on the concept of work of equal value, and by procedural obstacles faced by victims of discrimination. Workers lack the necessary information to make a successful equal pay claim and, in particular, information about the pay levels for categories of workers who perform the same work or work of equal value. The report found that increased transparency would allow revealing gender bias and discrimination in the pay structures of an undertaking or organisation. It would also enable workers, employers and the social partners to take appropriate action to ensure the application of the right to equal pay for equal work and work of equal value (the 'right to equal pay').

(12) Following a thorough evaluation of the existing framework on equal pay for equal work or work of equal value and a wide-ranging and inclusive consultation process, the Communication of the Commission of 5 March 2020 on 'A Union of Equality: Gender Equality Strategy 2020-2025' announced that the Commission would propose binding measures on pay transparency.

(13) The economic and social consequences of the COVID-19 pandemic have had a disproportionately negative impact on women and gender equality, and job losses have often been concentrated in low-paid, female-dominated sectors. The COVID-19 pandemic has highlighted the continued, structural undervaluation of work predominantly carried out by women and has demonstrated the high socio-economic value of women's work in front-line services, such as health care, cleaning, childcare, social care and residential care for older people and other adult dependents, which stands in strong contrast to its low visibility and recognition.

([4]) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23).

(14) The effects of the COVID-19 pandemic will therefore further widen gender inequalities and the gender pay gap unless the recovery response is gender sensitive. Those consequences have made it even more pressing to tackle the issue of equal pay for equal work or work of equal value. Strengthening the implementation of the principle of equal pay through further measures is particularly important to ensure that the progress which has been made in addressing disparities in pay is not compromised.

(15) The Union gender pay gap persists: it stood at 13 % in 2020, with significant variations across Member States, and has decreased only minimally over the last ten years. The gender pay gap is caused by various factors, such as gender stereotypes, the perpetuation of the 'glass ceiling' and the 'sticky floor', horizontal segregation, including the overrepresentation of women in low-paid service jobs, and unequal sharing of care responsibilities. In addition, the gender pay gap is partly caused by direct and indirect gender-based pay discrimination. All those elements constitute structural obstacles that form complex challenges to achieving good quality jobs and equal pay for equal work or work of equal value and have long-term consequences such as a pension gap and the feminisation of poverty.

(16) A general lack of transparency about pay levels within organisations maintains a situation where gender-based pay discrimination and bias can go undetected or, where suspected, are difficult to prove. Binding measures are therefore needed to improve pay transparency, encourage organisations to review their pay structures to ensure equal pay for women and men performing the same work or work of equal value, and to enable victims of discrimination to exercise their right to equal pay. Such binding measures need to be complemented by provisions clarifying existing legal concepts, such as the concepts of pay and work of equal value, and measures improving enforcement mechanisms and access to justice.

(17) The application of the principle of equal pay should be enhanced by eliminating direct and indirect pay discrimination. This does not preclude employers from paying workers performing the same work or work of equal value differently on the basis of objective, gender-neutral and bias-free criteria, such as performance and competence.

(18) This Directive should apply to all workers, including part-time workers, workers on a fixed-term contract and persons with a contract of employment or employment relationship with a temporary agency, as well as workers in management positions, who have an employment contract or employment relationship as defined by law, collective agreements and/or practice in force in each Member State, taking into account the case-law of the Court of Justice ([5]). Provided that they fulfil relevant criteria, domestic workers, on-demand workers, intermittent workers, voucher based-workers, platform workers, workers in sheltered employment, trainees and apprentices fall within the scope of this Directive. The determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of the work and not by the parties' description of the relationship.

(19) An important element of eliminating pay discrimination is pay transparency prior to employment. This Directive should therefore also apply to applicants for employment.

(20) In order to remove obstacles for victims of gender-based pay discrimination to exercise their right to equal pay, and to guide employers in ensuring respect of that right, the core concepts related to equal pay for equal work or work of equal value, such as pay and work of equal value, should be clarified in accordance with the case-law of the Court of Justice. This should facilitate the application of those concepts, especially for micro, small and medium-sized enterprises.

([5]) Judgment of the Court of Justice of 3 July 1986, Lawrie-Blum, 66/85, ECLI:EU:C:1986:284; judgment of the Court of Justice of 14 October 2010, Union Syndicale Solidaires Isère, C-428/09, ECLI:EU:C:2010:612; judgment of the Court of Justice of 4 December 2014, FNV Kunsten Informatie en Media, C-413/13, ECLI:EU:C:2014:2411; judgment of the Court of Justice of 9 July 2015, Balkaya, C-229/14, ECLI:EU:C:2015:455; judgment of the Court of Justice of 17 November 2016, Betriebsrat der Ruhrlandklinik, C-216/15, ECLI:EU:C:2016:883; judgment of the Court of Justice of 16 July 2020, Governo della Repubblica italiana (Status of Italian magistrates), C-658/18, ECLI:EU:C:2020:572.

(21) The principle of equal pay should be observed with regard to wages, salaries or any other consideration, whether in cash or in kind, which workers receive directly or indirectly, in respect of their employment from their employer. In accordance with the case-law of the Court of Justice ([6]), the concept of pay should comprise not only salary, but also complementary or variable components of the pay. Under complementary or variable components, any benefits in addition to the ordinary basic or minimum wage or salary, which the worker receives directly or indirectly, whether in cash or in kind, should be taken into account. Such complementary or variable components may include, but are not limited to, 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. The concept of pay should include all elements of remuneration due under law, collective agreements and/or practice in each Member State.

(22) In order to ensure a uniform presentation of the information required by this Directive, pay levels should be expressed as gross annual pay and the corresponding gross hourly pay. It should be possible to base the calculation of pay levels on the actual pay specified in regard to the worker, regardless of whether it is set annually, monthly, hourly or otherwise.

(23) Member States should not be obliged to set up new bodies for the purpose of this Directive. It should be possible for them to confer tasks deriving from it upon established bodies, including the social partners, in accordance with national law and/or practice, provided that the Member States comply with the obligations set out in this Directive.

(24) In order to protect workers and to address their fear of victimisation in the application of the principle of equal pay, they should be able to be represented by a representative. This could be trade unions or other workers' representatives. If there are no workers' representatives, workers should be able to be represented by a representative of their choice. Member States should have a possibility to take into account their national circumstances and different roles concerning workers' representation.

(25) Article 10 TFEU provides that, in defining and implementing its policies and activities, the Union is to aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Article 4 of Directive 2006/54/EC provides that there is to be no direct or indirect discrimination on grounds of sex in relation to pay. Gender-based pay discrimination where a victim's sex plays a crucial role can take many different forms in practice. It may involve an intersection of various axes of discrimination or inequality where the worker is a member of one or several groups protected against discrimination on the basis of sex, on the one hand, and racial or ethnic origin, religion or belief, disability, age or sexual orientation, as protected under Council Directive 2000/43/EC ([7]) or 2000/78/EC ([8]), on the other. Women with disabilities, women of diverse racial and ethnic origin including Roma women, and young or elderly women are among groups which may face intersectional discrimination. This Directive should therefore clarify that, in the context of gender-based pay discrimination, it should be possible to take such a combination into account, thus removing any doubt that may exist in this regard under the existing legal framework and enabling national courts, equality bodies and other competent authorities to take due account of any situation of disadvantage arising from intersectional discrimination, in particular for substantive and procedural purposes, including to recognise the existence of discrimination, to decide on the appropriate comparator, to assess the proportionality, and to determine, where relevant, the level of compensation awarded or penalties imposed.

([6]) For example, judgment of the Court of Justice of 9 February 1982, Garland, C-12/81, ECLI:EU:C:1982:44; judgment of the Court of Justice of 9 June 1982, Commission of the European Communities v Grand Duchy of Luxembourg, C-58/81, ECLI:EU:C:1982:215; judgment of the Court of Justice of 13 July 1989, Rinner-Kulhn, C-171/88, ECLI:EU:C:1989:328; judgment of the Court of Justice of 27 June 1990, Kowalska, C-33/89, ECLI: EU:C:1990:265; judgment of the Court of Justice of 4 June 1992, Bötel, C-360/90, ECLI:EU:C:1992:246; judgment of the Court of Justice of 13 February 1996, Gillespie and Others, C-342/93, ECLI:EU:C:1996:46; judgment of the Court of Justice of 7 March 1996, Freers and Speckmann, C-278/93, ECLI:EU:C:1996:83; judgment of the Court of Justice of 30 March 2004, Alabaster, C-147/02, ECLI:EU:C:2004:192.

([7]) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22).

([8]) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16).

An intersectional approach is important for understanding and addressing the gender pay gap. This clarification should not change the scope of employers' obligations in regard to the pay transparency measures under this Directive. In particular, employers should not be required to gather data related to protected grounds other than sex.

(26) In order to respect the right to equal pay, employers must have pay structures in place ensuring that there are no gender-based pay differences between workers performing the same work or work of equal value that are not justified on the basis of objective, gender-neutral criteria. Such pay structures should allow for the comparison of the value of different jobs within the same organisational structure. It should be possible to base such pay structures on existing Union guidelines related to gender-neutral job evaluation and classification systems, or on indicators or gender-neutral models. In accordance with the case law of the Court of Justice, the value of work should be assessed and compared on the basis of objective criteria, including educational, professional and training requirements, skills, effort, responsibility and working conditions, irrespective of differences in working patterns. To facilitate the application of the concept of work of equal value, especially for micro, small and medium-sized enterprises, the objective criteria to be used should include four factors: skills, effort, responsibility and working conditions. Those factors have been identified by the existing Union guidelines as being essential and sufficient for evaluating the tasks performed in an organisation regardless of to which economic sector the organisation belongs.

As not all factors are equally relevant for a specific position, each of the four factors should be weighed by the employer depending on the relevance of those criteria for the specific job or position concerned. Additional criteria may also be taken into account, where they are relevant and justified. Where appropriate, the Commission should be able to update existing Union guidelines, in consultation with the European Institute for Gender Equality (EIGE).

(27) National systems for wage-setting vary and can be based on collective agreements and/or elements decided by the employer. This Directive does not affect the various national systems for wage setting.

(28) The identification of a valid comparator is an important parameter in determining whether work may be considered of equal value. It enables workers to show that they were treated less favourably than a comparator of a different sex performing equal work or work of equal value. Building on the developments brought by the definition of direct and indirect discrimination in Directive 2006/54/EC, in situations where no real-life comparator exists, the use of a hypothetical comparator should be allowed, to enable workers to show that they have not been treated in the same way as a hypothetical comparator of another sex would have been treated. This would lift an important obstacle for potential victims of gender-based pay discrimination, especially in highly gender-segregated employment markets where a requirement of finding a comparator of the opposite sex makes it almost impossible to bring an equal pay claim.

In addition, workers should not be prevented from using other facts from which an alleged discrimination can be presumed, such as statistics or other available information. This would allow gender-based pay inequalities to be more effectively addressed in gender-segregated sectors and professions, especially in female-dominated ones such as the care sector.

(29) The Court of Justice has clarified that in order to assess whether workers are in a comparable situation, the comparison is not necessarily limited to situations in which men and women work for the same employer ([9]). Workers may be in a comparable situation even when they do not work for the same employer whenever the pay conditions can be attributed to a single source establishing those conditions and where those conditions are equal and comparable. This may be the case when the relevant pay conditions are regulated by statutory provisions or agreements relating to pay applicable to several employers, or when such conditions are laid down centrally for more than one organisation or business within a holding company or conglomerate. Furthermore, the Court of Justice has clarified that the comparison is not limited to workers employed at the same time as the claimant ([10]). Additionally, when performing the actual assessment, it should be recognised that a difference in pay may be explained by factors unrelated to sex.

([9]) Judgment of the Court of Justice of 17 September 2002, Lawrence and others, C-320/00, ECLI:EU:C:2002:498.
([10]) Judgment of the Court of Justice of 27 March 1980, Macarthys Ltd, C-129/79, ECLI:EU:C:1980:103.

(30) Member States should ensure that training and specific tools and methodologies are made available to support and guide employers in the assessment of what constitutes work of equal value. This should facilitate the application of that concept, especially for micro, small and medium-sized enterprises. Taking into account national law, collective agreements and/or practice, Member States should be able to entrust the development of specific tools and methodologies to the social partners or develop them in cooperation with, or after consulting, the social partners.

(31) Job classification and evaluation systems can, if not used in a gender-neutral manner, in particular when they assume traditional gender stereotypes, result in gender-based pay discrimination. In such cases, they contribute to and perpetuate the pay gap by evaluating male and female dominated jobs differently in situations where the work performed is of equal value. Where gender-neutral job evaluation and classification systems are used, however, they are effective in establishing a transparent pay system and are instrumental in ensuring that direct or indirect discrimination on grounds of sex is excluded. They detect indirect pay discrimination related to the undervaluation of jobs typically done by women. They do so by measuring and comparing jobs the content of which is different but of equal value and so support the principle of equal pay.

(32) The lack of information on the envisaged pay range of a position creates an information asymmetry which limits the bargaining power of applicants for employment. Ensuring transparency should enable prospective workers to make an informed decision about the expected salary without limiting in any way the employer's or worker's bargaining power to negotiate a salary even outside the indicated range. Transparency would also ensure an explicit, non-gender-biased basis for pay setting and would disrupt the undervaluation of pay compared to skills and experience. Transparency would also address intersectional discrimination where non-transparent pay settings allow for discriminatory practices on several discrimination grounds. Applicants for employment should receive information about the initial pay or its range in a manner such as to ensure an informed and transparent negotiation on pay, such as in a published job vacancy notice, prior to the job interview, or otherwise prior to the conclusion of any employment contract. The information should be provided by the employer or in a different manner, for instance by the social partners.

(33) In order to disrupt the perpetuation of the gender pay gap affecting individual workers over time, employers should ensure that job vacancy notices and job titles are gender neutral and that recruitment processes are led in a non-discriminatory manner, so as not to undermine the right to equal pay. Employers should not be allowed to enquire or proactively try to obtain information about the current pay or prior pay history of an applicant for employment.

(34) Pay transparency measures should protect workers' right to equal pay while limiting, to the extent possible, costs and administrative burden for employers, paying specific attention to micro, small and medium-sized enterprises. Where appropriate, measures should be tailored to the size of employers, taking into account employers' headcount. The number of workers employed by employers to be applied as a criterion whether an employer is subject to pay reporting as referred to in this Directive is set taking into account Commission Recommendation 2003/361/EC on micro, small and medium-sized enterprises ([11]).

(35) Employers should make accessible to workers the criteria that are used to determine pay levels and pay progression. Pay progression refers to the process of how a worker moves to a higher pay level. Criteria related to pay progression can include, *inter alia*, individual performance, skills development and seniority. When implementing this obligation, Member States should pay particular attention to avoiding excessive administrative burden for micro and small enterprises. Member States should also be able to provide, as a mitigating measure, ready-made templates to support micro and small enterprises in complying with the obligation. Member States should be able to exempt employers which are micro or small enterprises from the obligation related to pay progression, for instance by allowing them to make the pay progression criteria available upon request by workers.

(36) All workers should have the right to obtain information, upon their request, on their individual pay level and on the average pay levels, broken down by sex, for the category of workers performing the same work as them or work of equal value to theirs. They should also have the possibility to receive the information through workers' representatives or through an equality body. Employers should inform workers of that right on an annual basis, as well as of the steps to be undertaken in order to exercise the right. Employers may also, on their own initiative, opt to provide such information without workers needing to request it.

([11]) Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

(37) This Directive should ensure that persons with disabilities have adequate access to the information provided pursuant to it to applicants for employment and workers. Such information should be provided to those persons taking into account their particular disabilities, in a format and appropriate form of assistance and support to ensure their access to and comprehension of the information. This could include the provision of information in an understandable way which they can perceive, in fonts of adequate size, using sufficient contrast or other format appropriate to the type of their disability. Where relevant, Directive (EU) 2016/2102 of the European Parliament and of the Council ([12]) applies.

(38) Employers with at least 100 workers should regularly report on pay, as provided for by this Directive. That information should be published by the Member States' monitoring bodies in a suitable and transparent manner. Employers may publish those reports on their website or make them publicly available in another manner, for instance by including the information in their management report, where applicable in the management report drawn up under Directive 2013/34/EU of the European Parliament and of the Council ([13]). Employers that are subject to the requirements of that Directive may choose to report on pay alongside other worker-related matters in their management report. To maximise the coverage of pay transparency of workers, Member States may increase the frequency of reporting or make regular reporting on pay mandatory for employers with fewer than 100 workers.

(39) Pay reporting should allow employers to evaluate and monitor their pay structures and policies, allowing them to proactively comply with the principle of equal pay. Reporting and joint pay assessments contribute to an increased awareness of gender bias in pay structures and of pay discrimination and contribute to addressing such bias and discrimination in an effective and systemic way, thereby benefitting all workers employed by the same employer. At the same time, the sex-disaggregated data should assist competent public authorities, workers' representatives and other stakeholders in monitoring the gender pay gap across sectors (horizontal segregation) and functions (vertical segregation). Employers may wish to accompany the published data by an explanation of any gender pay differences or gaps. Where differences in average pay for the same work or work of equal value between female and male workers are not justified on the basis of objective, gender-neutral criteria, the employer should take measures to remove the inequalities.

(40) To reduce the burden on employers, Member States could gather and interlink the necessary data through their national administrations allowing for a computation of the pay gap between female and male workers per employer. Such data gathering may require interlinking data from several public administrations, such as tax inspectorates and social security offices, and would be possible if administrative data matching employers' data, at company or organisational level, to workers' data, at individual level, including benefits in cash and in kind, are available. Member States could gather that information not only for employers that are covered by the pay reporting obligation under this Directive, but also for employers that are not covered by the obligation and that report voluntarily. The publication of the required information by Member States should replace the obligation of pay reporting on those employers covered by the administrative data provided that the result intended by the reporting obligation is achieved.

(41) In order to make the information on the gender pay gap at organisational level widely available, Member States should entrust the monitoring body designated pursuant to this Directive to compile the data on the pay gap received from employers without putting an additional burden on the latter. The monitoring body should make those data public, including by publishing them on an easily accessible website, allowing comparison of the data of individual employers, sectors and regions of the Member State concerned.

(42) Member States may acknowledge employers that are not subject to the reporting obligations set out in this Directive, which voluntarily report on their pay, for instance by means of a pay transparency label, with a view to promoting good practices in relation to the rights and obligations laid down in this Directive.

([12]) Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies (OJ L 327, 2.12.2016, p. 1).

([13]) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

(43) Joint pay assessments should trigger the review and revision of pay structures in organisations with at least 100 workers that show pay inequalities. The joint pay assessment should be carried out if employers and the workers' representatives concerned do not agree that the difference in average pay level between female and male workers of at least 5 % in a given category of workers can be justified on the basis of objective, gender-neutral criteria, if such a justification is not provided by the employer, or if the employer has not remedied such a difference in pay level within six months of the date of submission of the pay reporting. The joint pay assessment should be carried out by employers in cooperation with workers' representatives. If there are no workers' representatives, they should be designated by workers for the purpose of the joint pay assessment. Joint pay assessments should lead, within a reasonable period of time, to the elimination of gender-based pay discrimination through the adoption of remedial measures.

(44) Any processing or publication of information under this Directive should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council ([14]). Specific safeguards should be added to prevent the direct or indirect disclosure of information of an identifiable worker. Workers should not be prevented from voluntarily disclosing their pay for the purpose of the enforcement of the principle of equal pay.

(45) It is important that the social partners discuss and pay particular attention to matters of equal pay in collective bargaining. The various features of national social dialogue and collective bargaining systems across the Union and the autonomy and contractual freedom of the social partners, as well as their capacity as representatives of workers and employers should be respected. Therefore, Member States, in accordance with their national system and practices, should take appropriate measures to encourage the social partners to pay due attention to equal pay matters, which may include discussions at the appropriate level of collective bargaining, measures to stimulate and remove undue restrictions on the exercise of the right to collective bargaining related to the matters concerned and the development of gender-neutral job evaluation and classification systems.

(46) All workers should have the necessary procedures at their disposal to facilitate the exercise of their right of access to justice. National legislation providing for the use of conciliation, or making the intervention of an equality body compulsory or subject to incentives or penalties should not prevent parties from exercising their right of access to the courts.

(47) Involving equality bodies, in addition to other stakeholders, is instrumental in effectively applying the principle of equal pay. The powers and mandates of the national equality bodies should therefore be adequate to fully cover gender-based pay discrimination, including any pay transparency or any other rights and obligations laid down in this Directive. In order to overcome the procedural and cost-related obstacles faced by workers who seek to exercise their right to equal pay, equality bodies, as well as associations, organisations and workers' representatives or other legal entities with an interest in ensuring equality between men and women should be able to represent individuals. They should be able to assist workers by acting on their behalf or in support of them, which would allow workers who have suffered discrimination to effectively institute a claim regarding the alleged infringement of their rights and the principle of equal pay.

(48) Bringing claims on behalf or in support of several workers is a way to facilitate proceedings that would not otherwise have been brought because of procedural and financial barriers or a fear of victimisation. It is also facilitative when workers are facing discrimination on multiple grounds which can be difficult to disentangle. Collective claims have the potential to uncover systemic discrimination and create visibility of the right to equal pay and of gender equality in society as a whole. The possibility of collective redress could motivate pro-active compliance with pay transparency measures, creating peer pressure, increasing employers' awareness and willingness to act preventively, and addressing the systemic nature of pay discrimination. Member States may decide to set qualification criteria for representatives of workers in court proceedings relating to equal pay claims, in order to ensure that such representatives are adequately qualified.

([14]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

(49) Member States should ensure the allocation of sufficient resources to equality bodies for the effective and adequate performance of their tasks related to pay discrimination based on sex. Where the tasks are allocated to more than one body, Member States should ensure that they are adequately coordinated. This includes, for instance, allocating amounts recovered as fines to the equality bodies for the purpose of effectively carrying out their functions in regard to the enforcement of the right to equal pay, including bringing pay discrimination claims or assisting and supporting victims in bringing such claims.

(50) Compensation should cover in full the loss and damage sustained as a result of gender-based pay discrimination in accordance with the case-law of the Court of Justice ([15]). It should include full recovery of back pay and related bonuses or payments in kind, as well as compensation for lost opportunities, such as access to certain benefits depending on pay level, and for non-material damage, such as distress because of the undervaluation of work performed. Where appropriate, the compensation can take into account damage caused by pay discrimination based on sex that intersects with other protected grounds of discrimination. Member States should not fix a prior upper limit for such compensation.

(51) In addition to compensation, other remedies should be provided for. Competent authorities or national courts should, for instance, be able to require an employer to take structural or organisational measures to comply with its obligations regarding equal pay. Such measures may include, for instance, an obligation to review the pay setting mechanism based on a gender-neutral evaluation and classification; to set up an action plan to eliminate the discrepancies discovered and to reduce any unjustified gaps in pay; to provide information and raise workers' awareness of their right to equal pay; and to establish a mandatory training for human resources staff on equal pay and gender-neutral job evaluation and classification.

(52) In accordance with the case- law of the Court of Justice ([16]), Directive 2006/54/EC establishes provisions to ensure that the burden of proof shifts to the respondent when there is a *prima facie* case of discrimination. Nevertheless, it is not always easy for victims and courts to know how to establish even that presumption. In case C-109/88, the Court of Justice held that when a system of pay is totally lacking in transparency, the burden of proof should be shifted to the respondent, irrespective of the worker showing a *prima facie* case of pay discrimination. Accordingly, the burden of proof should be shifted to the respondent where an employer does not comply with the pay transparency obligations set out in this Directive, for instance by refusing to provide information requested by the workers or not reporting on the gender pay gap, where relevant, save where the employer proves that such an infringement was manifestly unintentional and of a minor character.

(53) In accordance with the case-law of the Court of Justice, national rules on limitation periods relating to the bringing of claims regarding alleged infringements of the rights provided for in this Directive should be such that they do not render virtually impossible or excessively difficult the exercise of those rights. Limitation periods create specific obstacles for victims of gender-based pay discrimination. For that purpose, common minimum standards should be established. Those standards should determine when the limitation period begins to run, the duration thereof and the circumstances under which it is suspended or interrupted, and should provide that the limitation period for bringing claims is at least three years. Limitation periods should not begin to run before the claimant is aware, or can reasonably be expected to be aware, of the infringement. Member States should be able to decide that the limitation period does not begin to run while the infringement is ongoing or before the end of the employment contract or employment relationship.

(54) Litigation costs create a serious disincentive for victims of gender-based pay discrimination to bring claims regarding alleged infringements of their right to equal pay, leading to the insufficient protection of workers and the insufficient enforcement of the right to equal pay. In order to remove that significant procedural obstacle to justice, Member States should ensure that national courts can assess whether an unsuccessful claimant had reasonable grounds for bringing the claim and, if so, whether that claimant should not be required to pay the costs of the proceedings. This should in particular apply where a successful respondent has not complied with the pay transparency obligations set out in this Directive.

([15]) Judgment of the Court of Justice of 17 December 2015, Arjona Camacho, C-407/14, ECLI:EU:C:2015:831, para. 45.
([16]) Judgment of the Court of Justice of 17 October 1989, Danfoss, C-109/88, ECLI:EU:C:1989:383.

(55) Member States should provide for effective, proportionate and dissuasive penalties in the event of infringements of national provisions adopted pursuant to this Directive or national provisions that are already in force on the date of entry into force of this Directive and that relate to the right to equal pay. Such penalties should include fines which could be based on the employer's gross annual turnover or on the employer's total payroll. Any other aggravating or mitigating factors that may apply in the circumstances of the case, for instance, where pay discrimination based on sex is combined with other protected grounds of discrimination should be taken into account. It is for the Member States to determine the infringements of the rights and obligations relating to equal pay for equal work or work of equal value for which fines are the most appropriate penalty.

(56) Member States should establish specific penalties for repeated infringements of any right or obligation relating to equal pay between men and women for the same work or work of equal value, to reflect the severity of the infringement and to further deter such infringements. Such penalties could include different types of financial disincentives such as the revocation of public benefits or the exclusion, for a certain period of time, from any further award of financial inducements or from any public tender procedure.

(57) Obligations on employers stemming from this Directive are part of the applicable obligations in the fields of environmental, social and labour law compliance with which Member States have to ensure under Directives 2014/23/EU ([17]), 2014/24/EU ([18]) and 2014/25/EU ([19]) of the European Parliament and of the Council in regard to participation in public procurement procedures. In order to comply with those obligations on employers as far as the right to equal pay is concerned, Member States should in particular ensure that economic operators, in the performance of a public contract or concession, have pay setting mechanisms that do not lead to a gender pay gap between workers in any category of workers performing equal work or work of equal value that cannot be justified on the basis of gender-neutral criteria. In addition, Member States should consider requiring contracting authorities to introduce, as appropriate, penalties and termination conditions ensuring compliance with the principle of equal pay in the performance of public contracts and concessions. Contracting authorities should also be able to take into account non-compliance with the principle of equal pay by the bidder or one of the bidder's subcontractors when considering the application of exclusion grounds or when taking a decision not to award a contract to the tenderer submitting the most economically advantageous tender.

(58) The effective implementation of the right to equal pay requires adequate administrative and court protection against any adverse treatment as a reaction to an attempt by workers to exercise that right, to any complaint to the employer or to any administrative procedure or court proceedings aiming to enforce compliance with that right. According to the case-law of the Court of Justice ([20]) the category of employees who are entitled to the protection should be interpreted broadly and include all employees who may be subject to retaliatory measures taken by an employer in response to a complaint of discrimination on grounds of sex. The protection is not limited solely to employees who have lodged complaints or their representatives, or to those who comply with certain formal requirements governing the recognition of a certain status, such as that of a witness.

(59) In order to improve the enforcement of the principle of equal pay, this Directive should strengthen the existing enforcement tools and procedures in regard to the rights and obligations laid down in this Directive and the equal pay provisions set out in Directive 2006/54/EC.

(60) This Directive lays down minimum requirements, thus respecting the Member States' prerogative to introduce and maintain provisions that are more favourable to workers. Rights acquired under the existing legal framework should continue to apply, unless provisions that are more favourable to workers are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights set out in existing Union or national law in this field, nor can it constitute valid grounds for reducing the rights of workers in regard to the principle of equal pay.

([17]) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

([18]) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

([19]) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

([20]) Judgment of the Court of Justice of 20 June 2019, Hakelbracht and others, C-404/18, ECLI:EU:2019:523.

(61) In order to ensure proper monitoring of the implementation of the right to equal pay, Member States should set up or designate a dedicated monitoring body. That body, which should be able to be part of an existing body pursuing similar objectives, should have specific tasks in relation to the implementation of the pay transparency measures provided for in this Directive and gather certain data to monitor pay inequalities and the impact of the pay transparency measures. Member States should be able to designate more than one body, provided that the monitoring and analysis functions set out in this Directive are ensured by a central body.

(62) Compiling wage statistics broken down by sex and providing the Commission (Eurostat) with accurate and complete statistics is essential for analysing and monitoring changes in the gender pay gap at Union level. Council Regulation (EC) No 530/1999 ([21]) requires Member States to compile four-yearly structural earnings statistics at micro level, which provide harmonised data for the calculation of the gender pay gap. Annual high-quality statistics could increase transparency and enhance monitoring and awareness of gender pay inequality. The availability and comparability of such data is instrumental for assessing developments both at national level and throughout the Union. Relevant statistics transmitted to the Commission (Eurostat) should be collected for statistical purposes within the meaning of Regulation (EC) No 223/2009 of the European Parliament and of the Council ([22]).

(63) Since the objectives of this Directive, namely a better and more effective application of the principle of equal pay through the establishment of common minimum requirements which should apply to all undertakings and organisations across the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive, which limits itself to setting minimum standards, does not go beyond what is necessary in order to achieve those objectives.

(64) The role of the social partners is of key importance in designing the way pay transparency measures are implemented in Member States, especially in those with high collective bargaining coverage. Member States should therefore have the possibility to entrust the social partners with the implementation of all or part of this Directive, provided that Member States take all the necessary steps to ensure that the results sought by this Directive are guaranteed at all times.

(65) In implementing this Directive, Member States should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of micro, small or medium-sized enterprises. Member States should therefore assess the impact of their transposition measures on micro, small and medium-sized enterprises in order to ensure that those enterprises are not disproportionately affected, giving specific attention to microenterprises, to alleviate the administrative burden, and to publish the results of such assessments.

(66) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 of the European Parliament and of the Council ([23]) and delivered an opinion on 27 April 2021,

([21]) Council Regulation (EC) No 530/1999 of 9 March 1999 concerning structural statistics on earnings and on labour costs (OJ L 63, 12.3.1999, p. 6).

([22]) Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).

([23]) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Directive lays down minimum requirements to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women (the 'principle of equal pay') enshrined in Article 157 TFEU and the prohibition of discrimination laid down in Article 4 of Directive 2006/54/EC, in particular through pay transparency and reinforced enforcement mechanisms.

Article 2

Scope

1. This Directive applies to employers in public and private sectors.

2. This Directive applies 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.

3. For the purposes of Article 5, this Directive applies to applicants for employment.

Article 3

Definitions

1. For the purposes of this Directive, the following definitions apply:

(a) 'pay' means the ordinary 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;

(b) 'pay level' means gross annual pay and the corresponding gross hourly pay;

(c) '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;

(d) 'median pay level' means the pay level at which half of the workers of an employer earn more and half of them earn less;

(e) '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;

(f) '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) 'work of equal value' means work that is determined to be of equal value in accordance with the non-discriminatory and objective gender-neutral criteria referred to in Article 4(4);

(h) 'category of workers' means workers performing the same work or work of equal value grouped in a non-arbitrary manner based on the non-discriminatory and objective gender-neutral criteria referred to in Article 4(4), by the workers' employer and, where applicable, in cooperation with the workers' representatives in accordance with national law and/or practice.

(i) 'direct discrimination' means the situation in which one person is treated less favourably on grounds of sex than another person is, has been or would be treated in a comparable situation;

(j) 'indirect discrimination' means the situation in which an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified on the basis of a legitimate aim, and the means of achieving that aim are appropriate and necessary;

(k) 'labour inspectorate' means the body or bodies responsible, in accordance with national law and/or practice, for control and inspection functions in the labour market, save that, where provided for in national law, the social partners may carry out those functions;

(l) 'equality body' means the body or bodies designated pursuant to Article 20 of Directive 2006/54/EC;

(m) 'workers' representatives' means the workers' representatives in accordance with national law and/or practice.

2. For the purposes of this Directive, discrimination includes:

(a) harassment and sexual harassment, within the meaning of Article 2(2), point (a), of Directive 2006/54/EC, as well as any less favourable treatment based on a person's rejection of, or submission to, such conduct, when such harassment or treatment relates to or results from the exercise of the rights provided for in this Directive;

(b) any instruction to discriminate against persons on grounds of sex;

(c) any less favourable treatment related to pregnancy or maternity leave within the meaning of Council Directive 92/85/EEC ([24]);

(d) any less favourable treatment, within the meaning of Directive (EU) 2019/1158 of the European Parliament and of the Council ([25]), based on sex, including with regard to paternity leave, parental leave or carers' leave;

(e) intersectional discrimination, which is discrimination based on a combination of sex and any other ground or grounds of discrimination protected under Directive 2000/43/EC or 2000/78/EC.

3. Paragraph 2, point (e), shall not entail additional obligations on employers to gather data as referred to in this Directive with regard to protected grounds of discrimination other than sex.

Article 4

Equal work and work of equal value

1. Member States shall take the necessary measures to ensure that employers have pay structures ensuring equal pay for equal work or work of equal value.

2. Member States shall, in consultation with equality bodies, take the necessary measures to 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 in accordance with the criteria set out in this Article. Those tools or methodologies shall 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.

([24]) Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ L 348, 28.11.1992, p. 1).

([25]) Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 188, 12.7.2019, p. 79).

3. Where appropriate, the Commission may update Union-wide guidelines related to gender-neutral job evaluation and classification systems, in consultation with the European Institute for Gender Equality (EIGE).

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.

CHAPTER II

PAY TRANSPARENCY

Article 5

Pay transparency prior to employment

1. Applicants for employment shall have the right to receive, from the prospective employer, information about:

(a) the initial pay or its range, based on objective, gender-neutral criteria, to be attributed for the position concerned; and

(b) where applicable, the relevant provisions of the collective agreement applied by the employer in relation to the position.

Such information shall be provided in a manner such as to ensure an informed and transparent negotiation on pay, such as in a published job vacancy notice, prior to the job interview or otherwise.

2. An employer shall not ask applicants about their pay history during their current or previous employment relationships.

3. Employers shall ensure that job vacancy notices and job titles are gender-neutral and that recruitment processes are led in a non-discriminatory manner, in order not to undermine the right to equal pay for equal work or work of equal value (the 'right to equal pay').

Article 6

Transparency of pay setting and pay progression policy

1. 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.

2. Member States may exempt employers with fewer than 50 workers from the obligation related to the pay progression set out in paragraph 1.

Article 7

Right to information

1. Workers shall have the right to request and receive in writing, in accordance with paragraphs 2 and 4, 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.

2. Workers shall have the possibility to request and receive the information referred to in paragraph 1 through their workers' representatives, in accordance with national law and/or practice. They shall also have the possibility to request and receive the information through an equality body.

If the information received is inaccurate or incomplete, workers shall have the right to request, personally or through their workers' representatives, additional and reasonable clarifications and details regarding any of the data provided and receive a substantiated reply.

3. Employers shall inform all workers, on an annual basis, of their right to receive the information referred to in paragraph 1 and of the steps that the worker is to undertake to exercise that right.

4. Employers shall provide the information referred to in paragraph 1 within a reasonable period of time but in any event within two months from the date on which the request is made.

5. Workers shall not be prevented from disclosing their pay for the purpose of the enforcement of the principle of equal pay. In particular, Member States shall put in place measures to prohibit contractual terms that restrict workers from disclosing information about their pay.

6. Employers may require workers who have obtained information pursuant to this Article, other than information concerning their own pay or pay level, not to use that information for any purpose other than to exercise their right to equal pay.

Article 8

Accessibility of information

Employers shall provide any information shared with workers or applicants for employment pursuant to Articles 5, 6 and 7 in a format which is accessible to persons with disabilities and which takes into account their particular needs.

Article 9

Reporting on pay gap between female and male workers

1. Member States shall ensure that employers provide the following information concerning their organisation, in accordance with this Article:

(a) the gender pay gap;

(b) the gender pay gap in complementary or variable components;

(c) the median gender pay gap;

(d) the median gender pay gap in complementary or variable components;

(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;

(g) the gender pay gap between workers by categories of workers broken down by ordinary basic wage or salary and complementary or variable components.

2. Employers with 250 workers or more shall, by 7 June 2027 and every year thereafter, provide the information set out in paragraph 1 relating to the previous calendar year.

3. Employers with 150 to 249 workers shall, by 7 June 2027 and every three years thereafter, provide the information set out in paragraph 1 relating to the previous calendar year.

4. Employers with 100 to 149 workers shall, by 7 June 2031 and every three years thereafter, provide the information set out in paragraph 1 relating to the previous calendar year.

5. Member States shall not prevent employers with fewer than 100 workers from providing the information set out in paragraph 1 on a voluntary basis. Member States may, as a matter of national law, require employers with fewer than 100 workers to provide information on pay.

6. The accuracy of the information shall be confirmed by the employer's management, after consulting workers' representatives. Workers' representatives shall have access to the methodologies applied by the employer.

7. The information referred to in paragraph 1, points (a) to (g), of this Article shall be communicated to the authority in charge of compiling and publishing such data pursuant to Article 29(3), point (c). The employer may publish the information referred to in paragraph 1, points (a) to (f), of this Article on its website or make it publicly available in another manner.

8. Member States may compile the information set out in paragraph 1, points (a) to (f), of this Article themselves, on the basis of administrative data such as data provided by employers to the tax or social security authorities. The information shall be made public pursuant to Article 29(3), point (c).

9. Employers shall provide the information referred to in paragraph 1, point (g), to all their workers and to the workers' representatives of their workers. Employers shall provide the information to the labour inspectorate and the equality body upon request. The information from the previous four years, if available, shall also be provided upon request.

10. 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.

Article 10

Joint pay assessment

1. Member States shall take appropriate measures to ensure that employers who are subject to pay reporting pursuant to Article 9 conduct, in cooperation with their workers' representatives, a joint pay assessment where all the following conditions are met:

(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;

(b) the employer has not justified such a difference in the average pay level on the basis of objective, gender-neutral criteria;

(c) the employer has not remedied such an unjustified difference in the average pay level within six months of the date of submission of the pay reporting.

2. The joint pay assessment shall be carried out 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, and shall include the following:

(a) an analysis of the proportion of female and male workers in each category of workers;

(b) information on average female and male workers' pay levels and complementary or variable components for each category of workers;

(c) any differences in average pay levels between female and male workers in each category of workers;

(d) the reasons for such differences in average pay levels, on the basis of objective, gender-neutral criteria, if any, as established jointly by the workers' representatives and the employer;

(e) the proportion of female and male workers who benefited from any improvement in pay following their return from maternity or paternity leave, parental leave or carers' leave, if such improvement occurred in the relevant category of workers during the period in which the leave was taken;

(f) measures to address differences in pay if they are not justified on the basis of objective, gender-neutral criteria;

(g) an evaluation of the effectiveness of measures from previous joint pay assessments.

3. Employers shall make the joint pay assessment available to workers and workers' representatives and shall communicate it to the monitoring body pursuant to Article 29(3), point (d). They shall make it available to the labour inspectorate and the equality body upon request.

4. When implementing the measures arising from the joint pay assessment, the employer shall remedy the unjustified differences in pay within a reasonable period of time, in close cooperation, in accordance with national law and/or practice, with the workers' representatives. The labour inspectorate and/or the equality body may be asked to participate in the process. The implementation of the measures shall include an analysis of the existing gender-neutral job evaluation and classification systems or the establishment of such systems, to ensure that any direct or indirect pay discrimination on the grounds of sex is excluded.

Article 11

Support for employers with fewer than 250 workers

Member States shall provide support, in the form of technical assistance and training, to employers with fewer than 250 workers and to the workers' representatives concerned, to facilitate their compliance with the obligations laid down in this Directive.

Article 12

Data protection

1. To the extent that any information provided pursuant to measures taken under Articles 7, 9, and 10 involves the processing of personal data, it shall be provided in accordance with Regulation (EU) 2016/679.

2. Any personal data processed pursuant to Articles 7, 9 or 10 of this Directive shall not be used for any purpose other than for the application of the principle of equal pay.

3. Member States may decide that, where the disclosure of information pursuant to Articles 7, 9 and 10 would lead to the disclosure, either directly or indirectly, of the pay of an identifiable worker, only the workers' representatives, the labour inspectorate or the equality body shall have access to that information. The workers' representatives or the equality body shall advise workers regarding a possible claim under this Directive without disclosing actual pay levels of individual workers performing the same work or work of equal value. For the purposes of monitoring pursuant to Article 29, the information shall be made available without restriction.

Article 13

Social dialogue

Without prejudice to the autonomy of the social partners and in accordance with national law and practice, 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 this Directive, where applicable upon their request.

Member States shall, without prejudice to the autonomy of the social partners and taking into account the diversity of national practices, 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.

CHAPTER III

REMEDIES AND ENFORCEMENT

Article 14

Defence of rights

Member States shall ensure that, after possible recourse to conciliation, court proceedings for the enforcement of rights and obligations relating to the principle of equal pay are available to all workers who consider themselves wronged by a failure to apply the principle of equal pay. Such proceedings shall be easily accessible to workers and to persons who act on their behalf, even after the end of the employment relationship in which the discrimination is alleged to have occurred.

Article 15

Procedures on behalf or in support of workers

Member States shall ensure that associations, organisations, equality bodies and workers' representatives or other legal entities which have, in accordance with criteria laid down in national law, a legitimate interest in ensuring equality between men and women, may engage in any administrative procedure or court proceedings regarding an alleged infringement of the rights or obligations relating to the principle of equal pay. They may act on behalf of, or in support of, a worker who is an alleged victim of an infringement of any right or obligation relating to the principle of equal pay, with that person's approval.

Article 16

Right to compensation

1. Member States shall ensure that 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 compensation or reparation, as determined by the Member State, for that damage.

2. The compensation or reparation referred to in paragraph 1 shall constitute real and effective compensation or reparation, as determined by the Member State, for the loss and damage sustained, in a dissuasive and proportionate manner.

3. The compensation or reparation shall place the worker who has sustained damage in the position in which that person would have been if 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. Member States shall ensure that the compensation or reparation includes full recovery of back pay and related bonuses or payments in kind, compensation for lost opportunities, non-material damage, any damage caused by other relevant factors which may include intersectional discrimination, as well as interest on arrears.

4. The compensation or reparation shall not be restricted by the fixing of a prior upper limit.

Article 17

Other remedies

1. Member States shall ensure that, in the case of an infringement of rights or obligations related to the principle of equal pay, competent authorities or national courts may, in accordance with national law, at the request of the claimant and at the expense of the respondent, issue:

(a) an order to stop the infringement;

(b) an order to take measures to ensure that the rights or obligations related to the principle of equal pay are applied.

2. Where a respondent does not comply with any order issued pursuant to paragraph 1, Member States shall ensure that their competent authorities or national courts are able, where appropriate, to issue a recurring penalty payment order, with a view to ensuring compliance.

Article 18

Shift of burden of proof

1. Member States shall take the appropriate measures, in accordance with their national judicial systems, to ensure that, when workers who consider themselves wronged because the principle of equal pay has not been applied to them establish before a competent authority or national court facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no direct or indirect discrimination in relation to pay.

2. Member States shall ensure that, in administrative procedures or court proceedings regarding alleged direct or indirect discrimination in relation to pay, where an employer has not implemented the pay transparency obligations set out in Articles 5, 6, 7, 9 and 10, it is for the employer to prove that there has been no such discrimination.

The first subparagraph of this paragraph shall not apply where the employer proves that the infringement of the obligations set out in Articles 5, 6, 7, 9 and 10 was manifestly unintentional and of a minor character.

3. This Directive shall not prevent Member States from introducing evidential rules which are more favourable to a worker who institutes an administrative procedure or court proceedings regarding an alleged infringement of any of the rights or obligations relating to the principle of equal pay.

4. Member States need not apply paragraph 1 to procedures and proceedings in which it is for the competent authority or the national court to investigate the facts of the case.

5. This Article shall not apply to criminal proceedings, unless national law provides otherwise.

Article 19

Proof of equal work or work of equal value

1. 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. A single source shall exist where it stipulates the elements of pay relevant for the comparison of workers.

2. 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.

3. 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.

Article 20

Access to evidence

1. Member States shall ensure that in proceedings concerning an equal pay claim, competent authorities or national courts are able to order the respondent to disclose any relevant evidence which lies in the respondent's control, in accordance with national law and practice.

2. Member States shall ensure that competent authorities or national courts have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the equal pay claim. Member States shall ensure that, when ordering the disclosure of such information, competent authorities or national courts have at their disposal effective measures to protect such information, in accordance with national procedural rules.

3. This Article shall not prevent Member States from maintaining or introducing rules which are more favourable to claimants.

Article 21

Limitation periods

1. Member States shall ensure that national rules applicable to limitation periods for bringing equal pay claims determine when such periods begin to run, the duration thereof and the circumstances under which they may be suspended or interrupted. The limitation periods shall not begin to run before the claimant is aware, or can reasonably be expected to be aware, of an infringement. Member States may decide that limitation periods do not begin to run while the infringement is ongoing or before the end of the employment contract or employment relationship. Such limitation periods shall be no shorter than three years.

2. Member States shall ensure that a limitation period is suspended or, depending on national law, interrupted, as soon as a claimant undertakes action by bringing a complaint to the attention of the employer or by instituting proceedings before a court, directly or through the workers' representatives, the labour inspectorate or the equality body.

3. This Article does not apply to rules on the expiry of claims.

Article 22

Legal costs

Member States shall ensure that, where a respondent is successful in proceedings relating to a pay discrimination claim, 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.

Article 23

Penalties

1. Member States shall lay down the rules on effective, proportionate and dissuasive penalties applicable to infringements of the rights and obligations relating to the principle of equal pay. Member States shall take all measures necessary to ensure that those rules are implemented and shall, without delay, notify the Commission of those rules and of those measures and of any subsequent amendment affecting them.

2. Member States shall ensure that the penalties referred to in paragraph 1 guarantee a real deterrent effect with regard to infringements of the rights and obligations relating to the principle of equal pay. Those penalties shall include fines, the setting of which shall be based on national law.

3. The penalties referred to in paragraph 1 shall take into account any relevant aggravating or mitigating factor applicable to the circumstances of the infringement, which may include intersectional discrimination.

4. Member States shall ensure that specific penalties apply in the case of repeated infringements of the rights and obligations relating to the principle of equal pay.

5. Member States shall take all measures necessary to ensure that the penalties provided for pursuant to this Article are effectively applied in practice.

Article 24

Equal pay in public contracts and concessions

1. The appropriate measures that Member States take in accordance with Article 30(3) of Directive 2014/23/EU, Article 18(2) of Directive 2014/24/EU and Article 36(2) of Directive 2014/25/EU shall include measures to ensure that, in the performance of public contracts or concessions, economic operators comply with their obligations relating to the principle of equal pay.

2. Member States shall consider requiring contracting authorities to introduce, as appropriate, penalties and termination conditions ensuring compliance with the principle of equal pay in the performance of public contracts and concessions. Where Member States' authorities act in accordance with Article 38(7), point (a), of Directive 2014/23/EU, Article 57(4), point (a), of Directive 2014/24/EU, or Article 80(1) of Directive 2014/25/EU in conjunction with Article 57(4), point (a), of Directive 2014/24/EU, contracting authorities may exclude or may be required by Member States to exclude any economic operator from participation in a public procurement procedure where they can demonstrate by any appropriate means an infringement of the obligations referred to in paragraph 1 of this Article, related either to a failure to comply with pay transparency obligations or a pay gap of more than 5 % in any category of workers which is not justified by the employer on the basis of objective, gender-neutral criteria. This shall be without prejudice to any other rights or obligations set out in Directive 2014/23/EU, 2014/24/EU or 2014/25/EU.

Article 25

Victimisation and protection against less favourable treatment

1. Workers and their workers' representatives shall not be treated less favourably on the ground that they have exercised their rights relating to equal pay or have supported another person in the protection of that person's rights.

2. Member States shall introduce in their national legal systems such measures as are necessary to protect workers, including workers who are workers' representatives, against dismissal or other adverse treatment by an employer as a reaction to a complaint within the employer's organisation or to any administrative procedure or court proceedings for the purpose of the enforcement of any rights or obligations relating to the principle of equal pay.

Article 26

Relationship with Directive 2006/54/EC

Chapter III of this Directive shall apply to proceedings concerning any right or obligation relating to the principle of equal pay set out in Article 4 of Directive 2006/54/EC.

CHAPTER IV

HORIZONTAL PROVISIONS

Article 27

Level of protection

1. Member States may introduce or maintain provisions that are more favourable to workers than those laid down in this Directive.

2. The implementation of this Directive shall under no circumstances constitute grounds for reducing the level of protection in the fields covered by this Directive.

Article 28

Equality bodies

1. Without prejudice to the competence of labour inspectorates or other bodies that enforce the rights of workers, including the social partners, the equality bodies shall be competent with regard to matters falling within the scope of this Directive.

2. Member States shall, in accordance with national law and practice, take active measures to ensure close cooperation and coordination among the labour inspectorates, the equality bodies and, where applicable, the social partners with regard to the principle of equal pay.

3. Member States shall provide their equality bodies with the adequate resources necessary for effectively carrying out their functions with regard to the respect for the right to equal pay.

Article 29

Monitoring and awareness raising

1. Member States shall ensure the consistent and coordinated monitoring of and support for the application of the principle of equal pay and the enforcement of all available remedies.

2. Each Member State shall designate a body for the monitoring and support of the implementation of national measures implementing this Directive (monitoring body) and shall make the necessary arrangements for the proper functioning thereof. The monitoring body may be part of an existing body or structure at national level. Member States may designate more than one body for the purpose of awareness-raising and data collection, provided that the monitoring and analysis functions provided for in paragraph 3, points (b), (c) and (e), are ensured by a central body.

3. Member States shall ensure that the tasks of the monitoring body include the following:

(a) raising awareness among public and private undertakings and organisations, the social partners and the public to promote the principle of equal pay and the right to pay transparency, including by addressing intersectional discrimination in relation to equal pay for equal work or work of equal value;

(b) analysing the causes of the gender pay gap and devising tools to help assess pay inequalities, making use, in particular, of the analytical work and tools of the EIGE;

(c) collecting data received from employers pursuant to Article 9(7), and promptly publishing the data referred to in Article 9(1), points (a) to (f), in an easily accessible and user-friendly manner that allows comparison between employers, sectors and regions of the Member State concerned, and ensuring that the data from the previous four years is accessible if available;

(d) collecting the joint pay assessment reports pursuant to Article 10(3);

(e) aggregating data on the number and types of pay discrimination complaints brought before the competent authorities, including equality bodies, and claims brought before the national courts.

4. By 7 June 2028 and every two years thereafter, Member States shall, in a single submission, provide the Commission with the data referred to in paragraph 3, points (c), (d), and (e).

Article 30

Collective bargaining and action

This Directive shall not affect in any way the right to negotiate, conclude and enforce collective agreements or to take collective action in accordance with national law or practice.

Article 31

Statistics

Member States shall, on an annual basis, provide the Commission (Eurostat) with up-to-date national data for the calculation of the gender pay gap in unadjusted form. Those statistics shall be broken down by sex, economic sector, working time (full-time/part-time), economic control (public/private ownership) and age and shall be calculated on an annual basis.

The data referred to in the first paragraph shall be transmitted from 31 January 2028 for reference year 2026.

Article 32

Dissemination of information

Member States shall take active measures to ensure that the provisions which they adopt pursuant to this Directive, together with the relevant provisions already in force, are brought by all appropriate means to the attention of the persons concerned throughout their territory.

Article 33

Implementation

Member States may entrust the social partners with the implementation of this Directive in accordance with national law and/or practice with regard to the role of the social partners, provided that Member States take all the necessary steps to ensure that the results sought by this Directive are guaranteed at all times. The implementation tasks entrusted to the social partners may include:

(a) the development of analytical tools or methodologies as referred to in Article 4(2);

(b) financial penalties equivalent to fines, provided that they are effective, proportionate and dissuasive.

Article 34

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 7 June 2026. They shall immediately inform the Commission thereof.

When informing the Commission, Member States shall also provide it with a summary of the results of an assessment regarding the impact of their transposition measures on workers and employers with fewer than 250 workers and a reference to where such assessment is published.

2. When Member States adopt the measures referred to in paragraph 1 they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 35

Reporting and review

1. By 7 June 2031, Member States shall inform the Commission about the implementation of this Directive and its impact in practice.

2. By 7 June 2033, the Commission shall submit a report to the European Parliament and to the Council on the implementation of this Directive. The report shall examine, *inter alia*, the employer thresholds provided for in Articles 9 and 10, as well as the 5 % trigger for the joint pay assessment provided for in Article 10(1). The Commission shall, if appropriate, propose any legislative amendments that it considers to be necessary on the basis of that report.

Article 36

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 37

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 10 May 2023.

For the European Parliament	*For the Council*
The President	*The President*
R. METSOLA	J. ROSWALL