

Gender pay gap: Council adopts new rules on pay transparency

The Council has adopted new rules to combat pay discrimination and help close the gender pay gap in the EU.

Under the **pay transparency directive**, EU companies will be required to share information about how much they pay women and men for work of equal value, and take action if their gender pay gap exceeds 5%.

The new directive also includes provisions on **compensation** for victims of pay discrimination and penalties, including **finances**, for employers who break the rules.

Why pay transparency?

Women in the EU earn on average 13% less than their male counterparts, and the gender pay gap has largely stagnated over the last decade.

While a number of factors contribute to this difference, pay discrimination has been identified as one of the key obstacles to achieving gender pay equality.

Unequal pay puts women at **greater risk of poverty** and contributes to the EU's **pension pay gap**, which in 2018 stood at around 30%.

Accessing information

The new rules will make it compulsory for employers to inform job seekers about the **starting salary or pay range** of advertised positions, whether in the vacancy notice or ahead of the interview. Employers will also be prevented from asking candidates about their **pay history**.

Once in the role, workers will be entitled to ask their employers for information about **average pay levels**, broken down by sex, for categories of employees doing the same work or work of equal value. They will also have access to the **criteria** used to determine pay and career progression, which must be objective and gender neutral.

Reporting obligation

Companies with more than 250 employees will be required to **report annually** on the gender pay gap in their organisation to the relevant national authority. For smaller organisations (initially those with over 150 employees), the reporting obligation will take place every three years.

If the report reveals a **pay gap of more than 5%** that cannot be justified by objective, gender-neutral criteria, companies will be required to take action in the form of a **joint pay assessment** carried out in cooperation with workers' representatives.

Access to justice

Under the new directive, workers who have suffered gender pay discrimination can receive **compensation**, including full recovery of back pay and related bonuses or payments in kind.

While the **burden of proof** in pay discrimination cases has traditionally fallen on the employee, it will now be up to the employer to prove that they have not violated EU rules on equal pay and pay transparency. Penalties for violations must be effective, proportionate and dissuasive and will include fines.

Broadening the scope

For the first time, **intersectional discrimination** (the combination of multiple forms of inequality or disadvantage, such as gender

and ethnicity or sexuality) has been included in the scope of the new rules. The directive also contains provisions ensuring that the needs of **workers with disabilities** are taken into account.

Background

The right to equal pay between women and men for equal work or work of equal value is enshrined in Article 157 TFEU and in Directive 2006/54/EC on equal pay; nevertheless, implementation and enforcement of this principle has long been challenging. This is in part because pay discrimination often goes undetected due to a lack of pay transparency, meaning that victims are prevented from bringing claims.

Gender pay transparency was included as a key priority in the EU Gender Equality Strategy 2020-2025, and on 4 March 2021 the Commission published its proposal for a directive. The European Parliament and the Council, led by the Czech presidency, reached a political agreement on 15 December 2022. The European Parliament adopted the directive at its plenary on 30 March 2023.

Next steps

The pay transparency directive will come into force upon publication in the EU's Official Journal. EU countries will then have up to three years to "transpose" the directive by adapting their national legislation to take account of the new rules.

Two years after the transposition deadline, the requirement to report gender pay information every three years will be extended to companies employing over 100 workers (initially, the reporting obligation will only apply to companies with 150 or more employees).

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