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#### NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	13078/21
No. Cion doc.:	6750/21
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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

With a view to the informal videoconference of the members of the Social Questions Working Party on 12 November 2021, delegations will find attached a new Presidency compromise text for all the Chapters.

The changes in relation to the initial Commission proposal (doc. 6750/21) and to the document 12704/21 are marked in **bold** and deletions with [...]. Changes in relation to the previous document (doc. 13078/21) are marked in **bold underline** and deletions with **[...]**.

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**to strengthen the application of the principle of equal pay for equal work  
or work of equal value between men and women through  
pay transparency and enforcement mechanisms**

THE 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<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Articles 2 and 3(3) of the Treaty on European Union enshrine the right to equality between women and men as one of the essential values and tasks of the Union.
- (2) Articles 8 and 10 of the Treaty on the Functioning of the European Union ('TFEU') provide that the Union shall aim to eliminate inequalities, to promote equality between men and women and to combat discrimination based on sex in all its activities.

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<sup>1</sup> OJ C , p.

- (3) Article 157(1) of the 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 **(hereinafter principle of equal pay)** is applied.
- (4) Article 23 of the Charter of Fundamental Rights of the European Union provides that equality between women and men must be ensured in all areas, including employment, work and pay.
- (5) The European Pillar of Social Rights<sup>2</sup>, 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.
- (6) Directive 2006/54/EC of the European Parliament and of the Council<sup>3</sup> provides that for the same work or for work of equal value, 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 should be based on the same criteria for both men and women and should be drawn up so as to exclude any discrimination on grounds of sex.

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<sup>2</sup> [https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles\\_en](https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles_en)

<sup>3</sup> 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).

- (7) The 2020 evaluation<sup>4</sup> found that the implementation of the equal pay principle 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 social partners to take appropriate action to enforce the right to equal pay.
- (8) Following a thorough evaluation of the existing framework on equal pay for equal work or work of equal value<sup>5</sup> and a wide-ranging and inclusive consultation process<sup>6</sup>, the gender equality strategy 2020-2025<sup>7</sup> announced binding measures on pay transparency.
- (9) The gender pay gap is caused by various factors, part of which can be attributed to direct and indirect gender pay discrimination. 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 doing the same work or work of equal value, and enable victims of discrimination to enforce their right to equal pay. This needs to be complemented by provisions clarifying existing legal concepts (such as the concept of ‘pay’ and ‘work of equal value’) and measures improving enforcement mechanisms and access to justice.

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<sup>4</sup> [SWD\(2020\)50](#). See also the 2013 Report on the implementation of Directive 2006/54/EC to the European Parliament and the Council, COM (2013)861 final.

<sup>5</sup> Evaluation of the relevant provision in Directive 2006/54/EC implementing the Treaty principle on ‘equal pay for equal work or work of equal value’, SWD(2020)50; Report on the implementation of the EU Action Plan 2017-2019 on tackling the gender pay gap, COM(2020)101.

<sup>6</sup> [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2020-33490\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2020-33490_en)

<sup>7</sup> Communication from the Commission ‘A Union of Equality: Gender Equality Strategy 2020-2025’ of 5 March 2020, COM(2020)152 final.

- (10) The application of the principle of equal pay between men and women should be enhanced by eliminating direct and indirect pay discrimination. This does not preclude employers to pay differently workers doing the same work or work of equal value on the basis of objective, gender-neutral and bias-free criteria such as performance and competence.
- (11) This Directive should apply to all workers, including part-time workers, fixed-term contract workers or 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 the law, collective agreements and/or practice in force in each Member State, taking into account the case-law of the Court of Justice of the European Union ('the Court'). In its case law, the Court established criteria for determining the status of a worker<sup>8</sup>. Provided that they fulfil those criteria, domestic workers, on-demand workers, intermittent workers, voucher based-workers, platform workers, trainees and apprentices should 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. **[...] Applicants for employment should receive, without having to request it, information about the initial pay level or its range prior to the job interview or otherwise prior to the conclusion of the labour contract in such a way as to allow them to negotiate in a transparent manner and make an informed decision on the pay.**
- (12) In order to remove obstacles for victims of gender pay discrimination to enforce their right to equal pay and guide employers in ensuring respect of this right, the core concepts related to equal pay, such as 'pay' and 'work of equal value', should be clarified in line with the case law of the Court. This should facilitate the application of these concepts, especially for **micro**, small and medium-sized enterprises.

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<sup>8</sup> Case C-66/85, *Deborah Lawrie-Blum v Land Baden-Württemberg*, ECLI:EU:C:1986:284; Case C-428/09, *Union Syndicale Solidaires Isère v Premier ministre and Others*, ECLI:EU:C:2010:612; Case C-229/14, *Ender Balkaya v Kiesel Abbruch- und Recycling Technik GmbH*, ECLI:EU:C:2015:455; Case C-413/13, *FNV Kunsten Informatie en Media v Staat der Nederlanden*, ECLI:EU:C:2014:2411; Case C-216/15, *Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH*, ECLI:EU:C:2016:883; Case C-658/18, *UX v Governo della Repubblica italiana*, ECLI:EU:C:2020:572.

(13) The principle of equal pay[...] should be respected with regard to wage or salary and any other consideration, whether in cash or in kind, which the workers receive directly or indirectly, in respect of their employment from their employer. In line with the case-law of the Court<sup>9</sup>, 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, which the worker receives directly or indirectly, whether in cash or in kind, should be taken into account. These may include but are not limited to** bonuses, overtime compensation, travel facilities, [...] housing allowances, compensation for attending training, payments in case of dismissal, statutory sick pay, statutory required compensation and occupational pensions. It should include all elements of remuneration due by law, [...] collective agreement **and/or practice in force in each Member State.**

(13a) (new) Member States **should not be obliged to set up new bodies for the purpose of this Directive. Tasks deriving from the Directive may be conferred to the established bodies, including social partners, in accordance with the national law and/or practice.**

(13b) (new) In order to protect workers and to address a fear of victimisation in the application of the principle **of equal pay**, workers **should be able to** be represented by a representative **of their choice**. Member States should have a possibility to take into account national circumstances and different roles concerning workers’ representation.

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<sup>9</sup> For example, Case C-58/81, Commission of the European Communities v Grand Duchy of Luxembourg, ECLI:EU:C:1982:215; Case C-171/88 Rinner-Kulhn v FWW Spezial-Gebaudereinigung GmbH, ECLI:EU:C:1989:328; Case C-147/02 Alabaster v Woolwhich plc and Secretary of State for Social Security, ECLI:EU:C:2004:192; Case C-342/93 - Gillespie and Others ECLI:EU:C:1996:46; Case C-278/93 Freers and Speckmann v Deutsche Bundespost, ECLI:EU:C:1996:83; Case C-12/81, Eileen Garland v British Rail Engineering Limited, ECLI:EU:C:1982:44; Case C-360/90, Arbeiterwohlfahrt der Stadt Berlin e.V. v Monika Bötzel, ECLI:EU:C:1992:246; Case C-33/89, Maria Kowalska v Freie und Hansestadt Hamburg, ECLI:EU:C:1990:265.

- (14) Article 10 of the Treaty on the Functioning of the European Union provides that, in defining and implementing its policies and activities, the Union shall 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 shall be no direct or indirect discrimination on grounds of sex, notably 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 Directive 2000/43/EC or Directive 2000/78/EC), on the other hand. **Among groups who may face such combined forms of discrimination are for example women with a migrant background, Roma women, women with disabilities, young or elderly women.** This directive should therefore clarify that, in the context of gender-based pay discrimination, such a combination should be taken into account, thus removing any doubt that may exist in this regard under the existing legal framework. This should ensure that the courts or other competent authorities 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 **sanctions** imposed. **[...]****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 other protected grounds than sex.**

- (15) In order to respect the right to equal pay between men and women, employers must have pay setting mechanisms **or pay structures** in place ensuring that there are no pay differences between male and female workers doing the same work or work of equal value that are not justified by objective and gender-neutral factors. Such pay **settings mechanisms or pay structures** should allow for the comparison of the value of different jobs within the same organisational structure **and may be based on the existing European Union guidelines, indicators and gender-neutral models**. In line with the case law of the Court, the value of work should be assessed and compared based on objective criteria, such as educational, professional and training requirements, skills, effort and responsibility, work undertaken and the nature of the tasks involved.<sup>10</sup> **These objective criteria should always include skills, effort, responsibility and working conditions, to be weighed by the employer depending on the relevance of these criteria for the specific job or position concerned. Additional criteria may also be taken into account, if relevant.**
- (16) The identification of a valid comparator is an important parameter in determining whether work may be considered of equal value. It enables the worker to show that they were treated less favourably than the comparator of a different sex performing equal work or work of equal value. In situations where no real-life comparator exists, the use of a hypothetical comparator should be allowed, allowing a worker 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 pay discrimination, [...]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.

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<sup>10</sup> For example, Case C-400/93, Royal Copenhagen, ECLI:EU:C:1995:155; Case C-309/97, Angestelltenbetriebsrat der Wiener Gebietskrankenkasse, ECLI:EU:C:1999:241; Case C-381/99, Brunnhofer, ECLI:EU:C:2001:358; Case C-427/11, Margaret Kenny and Others v Minister for Justice, Equality and Law Reform and Others [2013] ECLI:EU:C:2013:122, paragraph 28.



- (17) The Court has clarified<sup>11</sup> that in order to compare 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. 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 setting up those conditions. This may be the case when pay conditions are regulated by statutory provisions or collective labour agreements relating to pay applicable to several companies, or when such conditions are laid down centrally for more than one organisation or business within a holding company or conglomerate. Furthermore, the Court clarified that the comparison is not limited to workers employed at the same time as the claimant.<sup>12</sup>
- (18) Member States should develop specific tools and methodologies to support and guide the assessment of what constitutes work of equal value. This should facilitate the application of this concept, especially for **micro**, small and medium-sized enterprises. **Taking into account national law, collective agreements and/or practice, Member States may choose to entrust the development of specific tools and methodologies to the social partners or to develop them in cooperation or after consultation with the social partners.**
- (19) Job classification and evaluation systems may, if not used in a gender-neutral manner, in particular when they assume traditional gender stereotypes, result in gender-based pay discrimination. In such case, they contribute to and perpetuate the pay gap by evaluating male and female dominated jobs differently in situations where the worth of 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 to ensure 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 whose content is different but of equal value and so support the principle of work of equal value.

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<sup>11</sup> Case C-320/00 *Lawrence*, ECLI:EU:C:2002:498.

<sup>12</sup> Case 129/79 *Macarthys*, ECLI:EU:C:1980:103.

- (20) The lack of information on the envisaged pay range of a job position creates an information asymmetry which limits the bargaining power of applicants. 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. It would also ensure an explicit and non-gender biased basis for pay setting and would disrupt the undervaluation of pay compared to skills and experience. This transparency measure would also address intersectional discrimination where non-transparent pay settings allow for discriminatory practices on several discrimination grounds. The information to be provided to applicants prior to employment, if not published in a job vacancy notice, could be provided to the applicant prior to the job interview by the employer or in a different manner, for instance by the social partners.
- (21) In order to disrupt the perpetuation of a pay gap between female and male workers affecting individual workers over time, employers should not be allowed to enquire **and proactively try to obtain the information** about the prior pay history of the applicant for a job.
- (22) Pay transparency measures should protect workers' right to equal pay while limiting as much as possible costs and burden for employers, paying specific attention to micro and small enterprises. Where appropriate, measures should be tailored to the size of employers taking into account employers' headcount. **The staff headcount as a criterion to be applied for determining whether an employer is subject to pay reporting and joint pay assessment should be expressed as a number of employees as defined by the Eurostat structural business statistics. [...]**

- (23) Employers should make accessible to workers a description of the criteria used to determine pay levels and pay progression. **The pay progression refers to the process of how a worker moves to a higher pay level. [...] Criteria could include, for instance, individual performance, skills development, and/or seniority. When implementing this obligation, Member States should pay particular attention to avoiding excessive administrative burden for micro and small enterprises. Member States may also provide, as mitigating measures, ready-made templates to support small and micro enterprises in complying with the obligation. Pay progression criteria in micro and small enterprises may be made available upon request by workers.**
- (24) All workers should have the right to obtain information, upon their request, on their pay and on the pay level, broken down by sex, for the category of workers doing the same work or work of equal value. Employers must inform workers of this right on an annual basis. Employers may also, on their own initiative, opt for providing such information without workers needing to request it.
- (25) Employers with at least 250 workers should regularly report on pay, in a suitable and transparent manner, such as including the information in their management report. **To maximise the coverage of pay transparency of workers, Member States may make regular reporting on pay mandatory for employers with less than 250 workers.** Companies subject to the requirements of Directive 2013/34/EU of the European Parliament and of the Council<sup>13</sup> may also choose to report on pay alongside other worker-related matters in their management report.

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<sup>13</sup> Directive 2013/34/EU, as amended by Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ L 330, 15.11.2014, p. 1).

- (26) 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. At the same time, the **sex**-disaggregated data should assist competent public authorities, workers' representatives and other stakeholders to monitor 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. In cases where differences in average pay for the same work or work of equal value between female and male workers cannot be justified by objective and gender-neutral factors, the employer should take measures to remove the inequalities.
- (27) To reduce the burden on employers, Member States could decide to 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' (company/organisational level) to workers' (individual level) data, including benefits in cash and in-kind, are available. Member States could decide to gather this information not only for those employers covered by the pay reporting obligation under this Directive, but also with regard to **micro**, small and medium-sized enterprises. 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.
- (28) In order to make the information on the pay gap between female and male workers at organisational level widely available, Member States [...] aggregate the data on the pay gap received from employers without putting additional burden on the latter. [...] These data **should be made** public, allowing to compare the data of individual employers, sectors and regions of the Member State concerned.

- (29) Joint pay assessments should trigger the review and revision of pay structures in organisations with at least 250 workers that show pay inequalities. The joint pay assessment should be carried out by employers in cooperation with workers' representatives; if workers' representatives are absent, they should be designated **by workers** for this purpose. Joint pay assessments should lead to the elimination of gender discrimination in pay.
- (30) Any processing or publication of information under this Directive should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>14</sup>. Specific safeguards should be added to prevent the direct or indirect disclosure of information of an identifiable co-worker. On the other hand, workers should not be prevented from voluntarily disclosing their pay for the purpose of enforcing the principle of equal pay [...].
- (31) It is important that social partners discuss and give particular attention to matters of equal pay in collective bargaining. The different features of national social dialogue and collective bargaining systems across the Union and the autonomy and contractual freedom of 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 social partners to pay due attention to equal pay matters, including discussions at the appropriate level of collective bargaining and the development of gender-neutral job evaluation and classification systems.
- (32) Workers should have the necessary procedures at their disposal to facilitate the exercise of their right to access justice. National legislation making use of conciliation or the intervention of an equality body compulsory or subject to incentives or **sanctions** should not prevent parties from exercising their right of access to court.

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<sup>14</sup> 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.

- (33) Involving equality bodies, besides other stakeholders, is instrumental in effectively applying the principle of equal pay. The powers and mandates of the equality bodies should therefore be adequate to fully cover gender 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 that workers who believe to be discriminated against face when they seek to enforce their right to equal pay, equality bodies, as well as associations, organisations, bodies 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 decide to assist workers on their behalf or in their support, which would allow workers who have suffered discrimination to effectively claim their rights and the principle of equal pay to be enforced.
- (34) Equality bodies and workers' representatives should also be able to represent one or several workers who believe to be discriminated against based on sex in violation of the principle of equal pay [...]. Bringing claims on behalf of or supporting several workers is a way to facilitate proceedings that would not have been brought otherwise because of procedural and financial barriers or a fear of victimisation and also 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 equal pay and gender equality in society as a whole. The possibility of collective redress would motivate proactive compliance with pay transparency measures, creating peer pressure and increasing employers' awareness and willingness to act preventively. **Member States should be able to set qualification criteria for the representatives involved in the judicial proceedings, in order to ensure quality of the representation.**
- (35) 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.

- (36) Compensation should cover in full the loss and damage sustained as a result of gender pay discrimination<sup>15</sup>. It should include full recovery of back pay and related bonuses or payments in kind, compensation for lost opportunities (**such as access to certain benefits depending on pay level**) and moral prejudice (**such as moral suffering from the underevaluation of work performed**). No prior fixed upper limit for such compensation should be allowed.
- (37) In addition to compensation, other remedies should be provided. Courts **or competent national authorities** 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 about their right to equal pay; to establish a mandatory training for human resources staff on equal pay and gender-neutral job evaluation and classification.

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<sup>15</sup> Case C-407/14, *María Auxiliadora Arjona Camacho v Securitas Seguridad España SA*, ECLI:EU:C:2015:831, para. 45.

- (38) Following the case law of the Court<sup>16</sup>, Directive 2006/54/EC established provisions to ensure that the burden of proof shifts to the defendant when there is a *prima facie* case of discrimination. Member States should not be prevented from introducing, at any appropriate stage of the proceedings, rules of evidence which are more favourable to workers making a claim. In any legal or administrative proceedings concerning direct or indirect discrimination, in case the employer did not comply with the pay transparency obligations set out by the Directive, the burden of proof should be automatically shifted to the defendant, irrespective of the worker showing a *prima facie* case of pay discrimination.
- (39) Although it is necessary only to establish a presumption of discrimination before the burden of proof shifts to the employer, it is not always easy for victims and courts to know how to establish even that presumption. Pay transparency measures have the potential to support the use of the reversal of the burden of proof, by helping workers determine the average pay levels for women and men performing the same work or work of equal value. Enabling workers to provide *prima facie* evidence which allows discrimination to be presumed would swiftly trigger the reverse burden of proof to the benefit of the worker.

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<sup>16</sup> Case C-109/88, *Handels- og Kontorfunktionærernes Forbund I Danmark v Dansk Arbejdsgiverforening, acting on behalf of Danfoss*, ECLI:EU:C:1989:383.



- (40) In accordance with the case-law of the Court, national rules on time limits for the enforcement of rights under this Directive should be such that they cannot be regarded as capable of rendering virtually impossible or excessively difficult the exercise of those rights. Limitation periods create specific obstacles for victims of gender 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 interrupted or suspended. **Member States should consider the limitation periods not to begin to run before the violation of the principle of equal pay or infringement of the rights or obligations under this Directive has ceased and the claimant knows, or can reasonably be expected to know, about the violation or infringement.** Member States should [...] provide that the limitation period for bringing claims is at least three years. **Member States may set up a higher limitation period for example by requiring the claimant to act within five years from the moment they know about the violation or infringement.**
- (41) Litigation costs create a serious disincentive for victims of gender pay discrimination to claim their right to equal pay, leading to insufficient protection and enforcement of the right to equal pay. In order to remove this strong procedural obstacle to justice, **the court should be able to assess whether the losing claimant had reasonable grounds for bringing the claim to court and to order each party to bear its own costs. This should in particular apply where a defendant did not comply with the pay transparency obligations set out in this directive.**

- (42) Member States should provide for effective, proportionate and dissuasive **sanctions** 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 between men and women for the same work or work of equal value. Such **sanctions** should include fines, which should be set at a **[...]** level having due regard to the gravity and duration of the infringement, to any possible intent to discriminate or serious negligence, and to 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 grounds of discrimination. Member States should consider 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 to bring pay discrimination claims or assist and support victims in bringing such claims.
- (43) Member States should establish specific **sanctions** 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 act and further deter such infringements. Such **sanctions** may 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.

- (44) Obligations on employers stemming from this Directive are part of the applicable obligations in the fields of environmental, social and labour law whose compliance Member States have to ensure under Directive 2014/23/EU of the European Parliament and of the Council<sup>17</sup>, Directive 2014/24/EU of the European Parliament and of the Council<sup>18</sup>, Directive 2014/25/EU of the European Parliament and of the Council<sup>19</sup> in regard to participation in public procurement procedures. In order to comply with these obligations 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 pay gap between female and male workers that cannot be justified by gender-neutral factors in any category of workers carrying out equal work or work of equal value. In addition, Member States should consider for contracting authorities to introduce, as appropriate, **sanctions** and termination conditions ensuring compliance with the principle of equal pay in the performance of public contracts and concessions. They may also take into account non-compliance with the principle of equal pay by the bidder or one of his subcontractors when considering the application of exclusion grounds or a decision not to award a contract to the tenderer submitting the most economically advantageous tender.
- (45) The effective implementation of the right to equal pay requires adequate judicial and administrative protection against any adverse treatment as a reaction to an attempt to exercise workers' rights relating to equal pay between men and women, to any complaint to the employer or to any legal or administrative proceedings aimed at enforcing compliance with the right to equal pay.

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<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> 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.

- (46) In order to improve the enforcement of the equal pay principle, 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.
- (47) This Directive lays down minimum requirements, thus respecting the Member States' prerogative to introduce and maintain more favourable provisions. Rights acquired under the existing legal framework should continue to apply, unless more favourable provisions 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 equal pay between men and women for the same work or work of equal value.
- (48) In order to ensure proper monitoring of the implementation of the right to equal pay between men and women for the same work or work of equal value, Member States should **[...]make sure that the tasks** in relation to the implementation of the pay transparency measures foreseen in this Directive **are carried out** and gather certain data to monitor pay inequalities and the impact of the pay transparency measures.

- (49) Compiling wage statistics broken down by gender 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. [...] Regulation [...] 530/1999<sup>20</sup> **of the Council** requires Member States to compile four-yearly structural earnings statistics at micro level that provide harmonized data for the calculation of the gender pay gap. Annual high-quality statistic [...] 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 data should be [...] collected for statistical purposes in the meaning of Regulation 223/2009<sup>21</sup> of the European Parliament and of the Council.**
- (50) This Directive aims at a better and more effective implementation of the principle of equal pay [...] through the establishment of common minimum requirements which should apply to all undertakings and organisations across the European Union. Since this objective cannot be sufficiently achieved by the Member States and should therefore be 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 that objective.
- (51) The role of 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 they take all the necessary steps to ensure that the results sought by this Directive are guaranteed at all times.

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<sup>20</sup> Council Regulation (EC) No 530/1999 of 9 March 1999 concerning structural statistics on earnings and on labour costs (*OJL 63, 12.3.1999, p. 6*).

<sup>21</sup> **Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics.**

- (52) 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 and medium-sized enterprises. Member States are therefore invited to assess the impact of their transposition act, on small and medium-sized enterprises in order to ensure that they are not disproportionately affected, giving specific attention to micro-enterprises, to alleviate the administrative burden, and to publish the results of such assessments.
- (53) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725<sup>22</sup> and delivered an opinion<sup>23</sup> on **27 April 2021**.

HAVE ADOPTED THIS DIRECTIVE:

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<sup>22</sup> 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).

<sup>23</sup> [https://edps.europa.eu/system/files/2021-04/21-04-27\\_2021-0251\\_d0905\\_comments\\_en.pdf](https://edps.europa.eu/system/files/2021-04/21-04-27_2021-0251_d0905_comments_en.pdf)

## 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**[...] 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 the 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.(new) [...] Applicants for employment shall also be covered by the scope of this Directive for the purposes of Article 5. [...].

#### *Article 3*

#### **Definitions**

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

**(-a)new ‘principle of equal pay’ means the principle of equal pay for equal work or work of equal value between men and women;**

- (a) ‘pay’ means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind which the worker receives directly or indirectly (‘complementary or variable components’), in respect of his/her employment from his/her employer;
- (b) ‘pay level’ means gross annual pay[...] **and** the corresponding gross hourly pay;
- (c) ‘pay gap’ means the difference of average pay levels between female and male workers of the employer, expressed as percentage of the average pay level of male workers;
- (d) ‘median pay level’ means the pay of the worker that would have half of the workers earn more and half less than they do;
- (e) ‘median pay gap’ means the difference between the median pay level of female and median pay level of male workers expressed as 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) ‘category of workers’ means workers performing the same work or work of equal value grouped by the workers' employer **or otherwise** based on **objective, gender-neutral** criteria [...] **as specified in regard to the employer concerned in accordance with national law, collective agreements and/or practice;**



- (h) ‘direct discrimination’ means the situation where one person is treated less favourably on grounds of sex than another person is, has been or would be treated in a comparable situation;
- (i) ‘indirect discrimination’ means the situation where 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 by a legitimate aim, and the means of achieving that aim are appropriate and necessary;
- (j) ‘equality body’ means the body or bodies designated pursuant to Article 20 of Directive 2006/54/EC, for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex;
- (k) ‘[...] **control body**’ means the [...] body or bodies **responsible [...], in accordance with national law and/or practice, for control and/or inspection functions [...] in regard to matters of equal pay. Where applicable, social partners may carry out these functions;**
- (l)(new) ‘workers’ representatives’ means [...] the workers’ representative in accordance with national law and/or practice;**
- (m)(new) ‘micro enterprise’ means an enterprise which employs fewer than 10 persons;**
- (n)(new) ‘small enterprises’ means an enterprise which employs fewer than 50 persons;**

2. For the purposes of this Directive, discrimination includes:
- (a) harassment and sexual harassment, within the meaning of Article 2(2) 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) instruction to discriminate against persons on grounds of sex;
  - (c) any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Council Directive 92/85/EEC<sup>24</sup>;
  - (d) new any less favourable treatment of a worker on grounds of sex related to any of the family leaves or flexible working arrangements within the meaning of the Council Directive (EU) 2019/1158<sup>25</sup>;**
  - (e) [...]discrimination based on a combination of sex and any other ground or grounds of discrimination protected under Directive 2000/43/EC or Directive 2000/78/EC.**
3. **Paragraph 2(e) does not entail additional obligations for employers, extending the obligations under this Directive, to other protected grounds than sex.**

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<sup>24</sup> 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).

<sup>25</sup> **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. 79–93)**

**Equal work and work of equal value**

1. Member States shall take the necessary measures, to ensure that employers **have a pay setting mechanism in place [...]****guaranteeing** that women and men are paid equally for the same work or work of equal value.
  2. Member States shall take the necessary measures **ensuring** that **analytical** tools or methodologies are **made available to support and guide employers in their assessment and comparison** of the value of work in line with the criteria set out in this Article. These tools or methodologies may include gender-neutral job evaluation and classification systems. **The format for such tools or methodologies may be set in accordance with national law, collective agreements and/or practice.**
  3. **[...] Pay setting shall enable assessment of whether workers are in comparable situations in regard to the value of work, on the basis of objective, gender-neutral criteria which shall not be based, whether directly or indirectly, on workers' sex. These objective criteria shall include all the factors which are [...] relevant to the actual activity (or work) performed. They shall include, but shall not be limited to [...] skills, effort, responsibility and working conditions[...]. These criteria shall also be applied in a gender-neutral manner.**
- 3a(new) Taking account national law, collective agreements and/or practice, Member States may entrust the social partners to take the measures referred to in paragraphs 1 to 3, or to take the necessary measures in cooperation with the social partners, provided that the obligations under this Article are adequately fulfilled at all times.**
4. **[Moved to Article 16a new]**
  5. Where a job evaluation and classification system is used for determining pay, it shall be based on the same **objective, gender-neutral** criteria[...] and drawn up so as to exclude any **direct or indirect** discrimination on grounds of sex.

## 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 the initial pay level or its range, based on objective, gender-neutral criteria, to be attributed for the position concerned. Such information shall be indicated in a published job vacancy notice or otherwise provided to the applicant, **sufficiently in advance, either** prior to the job interview without the applicant having to request it **or in any case [...] prior to the conclusion of the contract.**
2. An employer shall not~~[...]~~ ask applicants about their pay history during their previous employment relationships.

#### *Article 6*

##### **Transparency of pay setting and pay progression policy**

1. The employer shall make easily accessible to its workers a description of the criteria used to determine **pay**, pay levels **and, where applicable,** pay progression for workers. These criteria shall be **objective and** gender-neutral.
- 2.(new) Member States may adopt measures to support small and micro enterprises in complying with the obligation under paragraph 1.**

**Right to information**

1. Workers, shall have the right, **in accordance with national law and/or practice**, to **request and receive in writing** information on their individual pay level and the average pay levels, broken down by sex, for categories of workers doing the same work as them or work of equal value to theirs, in accordance with paragraphs **1a and 3**.
- 1a.(new)** Workers shall have the possibility to request **and receive** the information referred to in paragraph 1 through their representatives, **in accordance with national law and/or practice**. An equality body **may also request and receive the information referred to in paragraph 1 upon the request of a worker, in accordance with national law and/or practice**.
2. Employers shall inform all workers, on an annual basis, of their right to receive the information referred to in paragraph 1.
- 2a.(new)By way of derogation to paragraph 2, employers qualifying as small or micro enterprises shall inform all workers on a biannual basis of their right to receive the information referred to in paragraph 1.**
3. Employers shall provide the information referred to in paragraph 1 within a reasonable period of time upon a worker's request. The information shall be provided in accessible formats for workers with disabilities upon their request.
4. **[Moved to 1a]**
5. Workers shall not be prevented from disclosing their pay for the purpose of enforcing the principle of equal pay [...].

6. Employers may require that any worker **or their representative** having obtained information **other than that concerning their own pay or pay level** pursuant to this Article shall not use that information for any other purpose than to defend **the** right to equal pay [...].

#### *Article 8*

##### **Reporting on pay gap between female and male workers**

1. Employers with at least 250 workers shall **annually** provide the following information concerning their organisation, in accordance with paragraphs 2 **[...]** and 5:
- (a) the pay gap between all female and male workers;
  - (b) the pay gap between all female and male workers in complementary or variable components;
  - (c) the median pay gap between all female and male workers;
  - (d) the median pay gap between all female and male workers 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 pay gap between female and male workers by categories of workers broken down by ordinary basic salary and complementary or variable components.

##### **1a(new) Criterion to be applied for determining whether an employer is subject to pay reporting and joint pay assessment shall be the staff headcount.**

2. The accuracy of the information shall be confirmed by the employer's management.

3. [...]
4. Member States may decide to compile the information set out in paragraph 1, points (a) to (f) themselves, on the basis of administrative data such as data provided by employers to the tax or social security authorities. This information shall be made public in accordance with **Article 26, paragraph 3, point (c).** [...]
5. The employer shall provide the information referred to in paragraph 1, point (g) to all workers and their representatives[...]. **The information shall also be communicated to the authority in charge of aggregating data from employers pursuant to Article 26, paragraph 3, point (c). The employer** shall provide **the information** to the **control body** and the equality body upon their request. The information from the previous four years, if available, shall also be provided upon request.
6. [...]
7. [...] The employer **shall respond to [...]** requests from workers, their representatives **and the control body** for additional clarifications and details regarding any of the data provided, including explanations concerning any gender pay differences. **Equality body may also request such clarifications upon request by a worker.** The employer shall **respond** within a reasonable time by providing a substantiated reply. Where gender pay differences are not justified by objective and gender-neutral factors, the employer shall remedy the situation in close cooperation with the workers' representatives, the **control body** and/or the equality body.

**Joint pay assessment**

1. Member States shall take appropriate measures to ensure that employers with at least 250 workers conduct, in cooperation with their workers' representatives, a joint pay assessment where both of the following conditions are met:
  - (a) the pay reporting conducted in accordance with Article 8 demonstrates a difference of average pay level between female and male workers of at least 5 per cent in any category of workers;
  - (b) the employer has not justified such difference in average pay level by objective and gender-neutral factors.
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 cannot be justified by objective and gender-neutral factors 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) identification of any differences in pay levels between female and male workers in each category of workers;
  - (d) the reasons for such differences in pay levels and objective, gender-neutral justifications, if any, as established jointly by the workers' representatives and the employer;



- (e) measures[...] to address such differences if they are not justified on the basis of objective and gender-neutral criteria;
- (f) **an evaluation [...]** of any measures **from** previous joint pay assessments.
3. Employers shall make the joint pay assessments available to workers, workers' representatives **and communicate them[...] to the authority in charge of collecting the joint pay assessment** pursuant to Article 26, **paragraph 3, point (d)**. The **joint pay assesement shall be made available to the** equality body and the **control body, upon their request**.
4. **[...] When implementing the measures from the joint pay assesment**, the employer shall remedy the **unjustified pay differences**, in close cooperation with the workers' representatives, **taking into account national law and/or practices. [...] The control body** and/or equality body **may be asked to participate in the process**. Such action shall include the establishment of gender-neutral job evaluation and classification to ensure that any direct or indirect pay discrimination on grounds of sex is excluded.

#### *Article 10*

#### **Data protection**

1. To the extent that any information provided pursuant to measures taken under Articles 7, 8, and 9 involves the processing of personal data, it shall be provided in accordance with Regulation (EU) 2016/679.
2. Any personal data **processed** by employers pursuant to Articles 7, 8 or 9, shall not be used for any other purpose than to implement the principle of equal pay [...].

3. Member States may decide that, where the disclosure of information pursuant to Articles 7, 8 and 9 would lead to the disclosure, either directly or indirectly, of the pay of an identifiable co-worker, only the workers' representatives, **the control body** or the equality body shall have access to that information. The representatives or equality body shall advise workers regarding a possible claim under this Directive without disclosing actual pay levels of individual workers doing the same work or work of equal value. **For purposes of monitoring pursuant to[...] Article 26 the information shall be made available[...]** without restriction.

#### *Article 11*

#### **Social dialogue**

Without prejudice to the autonomy of social partners and in accordance with national law and practice, Member States shall **take adequate measures to ensure the effective involvement of social partners, through discussing** the rights and obligations under this Directive [...] **upon their request.**

## CHAPTER III

### *Remedies and enforcement*

#### *Article 12*

#### **Defence of rights**

Member States shall ensure that, after possible recourse to conciliation, judicial procedures for the enforcement of rights and obligations related 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 procedures shall be easily accessible to workers and to those who act on their behalf, even after the labour relationship in which the discrimination is alleged to have occurred has ended.

#### *Article 13*

#### **Procedures on behalf or in support of workers**

1. Member States shall ensure that associations, organisations, equality bodies and workers' representatives or other legal entities which have, in accordance with the criteria laid down by national law, a legitimate interest in ensuring equality between men and women, may engage, **in accordance with national law and/or practice**, in any judicial or administrative procedure to enforce [...] the rights or obligations related to the principle of equal pay [...]. They may act on behalf or in support of a worker who is **an alleged** victim of an infringement of any right or obligation related to the principle of equal pay [...], with the latter's approval.
2. Equality bodies and workers' representatives shall also have the right to act on behalf or in support of several workers, with the latter's approval, **in accordance with the criteria laid down by national law**.

## Article 14

### Right to compensation

1. Member States shall ensure that any worker who has suffered harm as a result of an infringement of any right or obligation related to the principle of equal pay [...] shall have the right to claim and to obtain full compensation or reparation, as determined by the Member State, for that harm.
2. The compensation or reparation referred to in paragraph 1 shall ensure real and effective compensation **or reparation as the Member States so determine** for the loss and damage sustained, in a way which is dissuasive and proportionate to the damage suffered.
3. The compensation **or reparation** shall place the worker who has suffered harm in the position in which that person would have been if he or she had not been discriminated based on sex or if no infringement of any of the rights or obligations relating to equal pay between men and women for equal work or work of equal value had occurred. **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 and moral prejudice **as well as [...]** interest on arrears.
4. The compensation or reparation may not be restricted by the fixing of a prior upper limit.

## Article 15

### Other remedies

Member States shall ensure that **in case of an infringement of rights or obligations related to the principle of equal pay [...]** the courts or other competent authorities, **in accordance with national[...] rules**, may **issue**, at the request of the claimant and at the expense of the defendant:

- (a) an [...] order **to stop** the infringement;

- (b) an [...] order [...] to take [...] measures to comply with [...] **the rights** or **obligations** related to the principle of equal pay [...] or to stop an infringement thereof.

Non-compliance with any of these orders shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance **with the order**.

## *Article 16*

### **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 court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the defendant to prove that there has been no direct or indirect discrimination in relation to pay.
2. Member States shall ensure that, in [...] legal or administrative proceedings **regarding alleged [...]pay** discrimination, where an employer failed to comply with [...] their pay transparency **obligations** set out in Articles 5 through 9 of this Directive, it shall be for the employer to prove that there has been no such discrimination.
3. **[...]**
4. This Directive does not prevent Member States from introducing evidential rules which are more favourable to the claimant in proceedings instituted to enforce any of the rights or obligations relating to equal pay between men and women for equal work or work of equal value.
5. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case.
6. This Article shall not apply to criminal procedures, unless otherwise provided by national law.

## *Article 16a (new)*

### **Proof of equal work or work of equal value**

1. When the court or competent authority assesses whether female and male workers are carrying out the same work or work of equal value, it shall take into account, upon the request of the claimant, whether the differences in pay are attributed to a single source establishing the pay conditions. In such a situation, 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 that single source.
2. The assessment of [...] whether workers are in a comparable situation shall also not be limited to workers employed at the same time as the worker concerned.
3. [In a situation where no real [...] comparable situation can be established, the claimants shall be allowed to compare themselves with how a worker of the other sex would be treated in a comparable situation [...] or [...]make use of other evidence allowing to prove alleged pay discrimination[...].]

## *Article 17*

### **Access to evidence**

1. Member States shall ensure that in proceedings concerning **an equal pay** claim [...], national courts or competent authorities are able to order the defendant to disclose any relevant evidence which lies in their control, **in accordance with national law and practice**.
2. Member States shall ensure that national courts **or competent authorities** have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the **equal pay** claim. They shall ensure that, when ordering the disclosure of such information, national courts have at their disposal effective measures to protect such information.

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

### *Article 18*

#### **Limitation periods**

1. Member States shall **ensure that** rules **apply** to limitation periods for bringing claims regarding equal pay between men and women for equal work or work of equal value. Those rules shall determine when the limitation period begins to run, the duration thereof and the circumstances under which it is interrupted or suspended, **taking into account that the limitation periods shall not begin to run before the claimant knows, or can reasonably be expected to know about the infringement.**
2. **[...]**
3. Member States shall ensure that the limitation periods for bringing claims are set at three years at least.
4. Member States shall ensure that a limitation period is suspended or, depending on national law, interrupted, as soon as a claimant undertakes action by lodging a claim or bringing the claim to the attention of the employer, workers' representatives, **the control body** or equality body.

### *Article 19*

#### **Legal and judicial costs**

**[...] Member States shall ensure that in cases where defendant [...] prevails on a pay discrimination claim, the court shall be able to assess whether or not the losing claimant had reasonable grounds for bringing the claim to court and, based on this assessment, benefit from the possibility to [...] order each party to bear its own costs, if it considers that the losing claimant had reasonable grounds for bringing the claim to court. [...]**

**Sanctions**

1. Member States shall lay down the rules on **effective, proportionate and dissuasive sanctions** 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 they are implemented and**, 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 **sanctions include fines guaranteeing a real deterrent effect for the infringements of the rights and obligations relating to the principle of equal pay, taking into account relevant factors such as gravity and duration of the infringement, serious negligence on the part of employer or any other aggravating or mitigating factor applicable to the circumstances of the case. [...]**
3. Member States shall establish specific **sanctions** to be imposed in case of repeated infringements of the rights and obligations relating to equal pay between men and women **[...]**.
4. Member States shall take all measures necessary to ensure that the **sanctions** provided for are effectively applied in practice.



**Equal pay matters in public contracts and concessions**

1. The appropriate measures that the 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 the obligations relating to equal pay between men and women for equal work or work of equal value.
2. Member States shall consider for contracting authorities to introduce, as appropriate, **sanctions** 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)(a) of Directive 2014/23/EU, Article 57(4)(a) of Directive 2014/24/EU, or Article 80(1) of Directive 2014/25/EU in conjunction with Article 57(4)(a) of Directive 2014/24/EU, they 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 the infringement of the obligations referred to in paragraph 1, related either to a failure to comply with pay transparency obligations or a pay gap of more than 5 per cent in any category of workers which is not justified by the employer on the basis of objective, gender-neutral criteria. This is without prejudice to any other rights or obligations set out in Directive 2014/23/EU, Directive 2014/24/EU or Directive 2014/25/EU.

## *Article 22*

### **Victimisation and protection against less favourable treatment**

1. Workers and their representatives shall not be treated less favourably on the ground that they have exercised their rights relating to equal pay between men and women **or supported another person in the protection of their rights.**
2. Member States shall introduce in their national legal systems such measures as necessary to protect workers, including those who are workers' representatives as provided for by national law and/or practice, against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with any rights or obligations relating to equal pay between men and women.

## *Article 23*

### **Relationship with Directive 2006/54/EC**

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

## CHAPTER IV

### Horizontal provisions

#### *Article 24*

#### 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. Implementation of this Directive shall under no circumstances constitute grounds for reducing the level of protection in the fields covered by this Directive. **This shall be without prejudice to the right of Member States and the social partners to lay down, in the light of changing circumstances, legislative, regulatory, collective or contractual arrangements other than those in force on [to insert the date of adoption of this Directive], provided that the minimum requirements laid down in this Directive are complied with.**

#### *Article 25*

#### Equality bodies

1. Without prejudice to the competence of **control body** or other bodies that enforce the rights of workers, including the social partners, [...] equality bodies established in accordance with Directive 2006/54/EC shall be competent with regard to matters falling within the scope of this Directive.
2. Member States shall take active measures to **promote** close cooperation and coordination between the [...] equality bodies and [...] **control bodies [...] with regard to matters relating to the principle of equal pay.**
3. Member States shall provide equality bodies with the adequate resources necessary for effectively carrying out their functions with regard to the respect for the right to equal pay between men and women for the same work or work of equal value. [...]

### Monitoring and awareness-raising

1. Member States shall ensure the consistent monitoring **and support** of the implementation of the principle of equal pay [...] and the enforcement of all available remedies.
2. **[...]**
3. Member States shall ensure that the **following** tasks [...]are carried out:
  - (a) **raising** awareness among public and private undertakings and organisations, social partners and the general public to promote the principle of equal pay and the right to pay transparency;
  - (b) **analysing** the causes of the gender pay gap and devise tools to help [...] assess pay inequalities;
  - (c) **aggregating** data received from employers pursuant to Article 8, **and promptly publish the data referred to in Article 8, paragraph 1, points (a) to (f) in a easily, accessible and user-friendly manner, allowing comparison between employers, sectors and regions of the Member State concerned. The information from the previous four years, if available, should also be accessible;**
  - (d) **collecting** the joint pay assessment reports pursuant to Article 9(3);
  - (e) **aggregating** data on the number and types of pay discrimination claims brought before the courts and complaints brought before the competent public authorities, including equality bodies.
4. Member States shall **biannually, in one single submission**, provide the Commission with the data referred to in paragraph 3, points (c), (d), and (e) [...].

## *Article 27*

### **Collective bargaining and action**

1. This Directive shall not affect in any way the right to negotiate, conclude and enforce collective agreements and to take collective action in accordance with national law or practice.
- 2.(new) In accordance with national law and practice, Member States may allow for the social partners to maintain, negotiate, conclude and enforce collective agreements which establish arrangements on pay transparency provided that the results sought by this Directive are ensured.**

## *Article 28*

### **Statistics**

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

**The first annual gender pay data shall be transmitted [date to be inserted] for reference year [year to be inserted].**

## *Article 29*

### **Dissemination of information**

Member States shall take active measures to ensure that the provisions 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 30*

### **Implementation**

Member States may entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so, provided that Member States take all the necessary steps to ensure that the results sought by this Directive are guaranteed at all times.

## *Article 31*

### **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [**three** years after the entry into force]. They shall immediately inform the Commission thereof.
2. When informing the Commission, Member States shall also accompany it with a summary of the results of their assessment regarding the impact of their transposition act on small and medium-sized enterprises and a reference to where such assessment is published.
3. When Member States adopt those provisions, 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 shall be laid down by Member States.

## *Article 32*

### **Reporting and review**

1. By [*eight years after the entry into force*] Member States shall communicate to the Commission all information on how this Directive has been applied and what has been its impact in practice.
2. On the basis of the information provided by Member States, the Commission shall submit a report to the European Parliament and the Council on the implementation of this Directive and propose, where appropriate, legislative amendments.

## *Article 33*

### **Entry into force**

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

## *Article 34*

### **Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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