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REPORT

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 1)

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
- Analysis of the final compromise text with a view to agreement

Delegations will find attached the provisional agreement on the above proposal, subject to the agreement by the Committee of Permanent Representatives, with a view to reaching a first-reading agreement with the European Parliament.

Changes compared to the Commission's proposal are marked in bold and deletions in **█** .

The lawyer-linguists are expected to carry out the legal-linguist revision of the document.

2021/0050 (COD)

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

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 Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(-1) Article 11 of the United Nations Convention of 18 December 1979 on the Elimination of All Forms of Discrimination against Women (CEDAW), which all Member States have ratified, provides that State Parties 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.

¹ OJ C , p.

- (1) Articles 2 and 3(3) of the Treaty on European Union (**TEU**) 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.
- (3) 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 (*hereinafter principle of equal pay*) is applied. *Article 157(3) TFEU provides for the adoption 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.*
- (3a) *The Court of Justice has held that the scope of the principle of equal treatment for men and women cannot be confined to the prohibition of discrimination based on the fact that a person is of one or other sex.² In view of its purpose and the nature of the rights which it seeks to safeguard, it also applies to discrimination arising from the gender reassignment of a person.*
- (3b) *In some Member States, it is currently possible for persons to legally register themselves as having a third, often neutral, gender. This Directive does not affect relevant national rules giving effect to such recognition as regards matters of employment and pay.*
- (4) 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.

² *P v S and Cornwall County Council, Case C-13/94, ECLI:EU:C:1996:170, K. B. C 117/01, EU:C:2004:7, Richards C 423/04, EU:C:2006:256, MB Case C 451/16*

- (4a) *Article 23 of the Universal Declaration of Human Rights states 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.*
- (5) The European Pillar of Social Rights³, 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 Council⁴ 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 *gender-neutral criteria* and should be drawn up so as to exclude any discrimination on grounds of sex.
- (7) The 2020 evaluation⁵ of *the relevant provisions in Directive 2006/54/EC* found that the implementation 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 social partners to take appropriate action to enforce the right to equal pay.

³ https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles_en

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).

⁵ 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.

- (8) Following a thorough evaluation of the existing framework on equal pay for equal work or work of equal value⁶ and a wide-ranging and inclusive consultation process⁷, the gender equality strategy 2020-2025⁸ announced binding measures on pay transparency.
- (8a) 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 stand in strong contrast to its low visibility and recognition.***
- (8b) 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 and work of equal value. Strengthening the implementation of this principle through further measures is particularly important to ensure that the progress which has been made in addressing disparities in pay is not compromised.***

⁶ 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.

⁷ https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2020-33490_en

⁸ Communication from the Commission 'A Union of Equality: Gender Equality Strategy 2020-2025' of 5 March 2020, COM(2020)152 final.

- (8c) *The Union gender pay gap persists and 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 pay discrimination. All these constitute structural obstacles that form complex challenges to achieve good quality jobs and equal pay and have long-term consequences such as pension gap and feminisation of poverty.*
- (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.
- (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'). ⁹ 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.
- (11a) An important element of eliminating pay discrimination is pay transparency prior to the employment therefore this Directive should also apply to the applicants for employment.*
- (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.

⁹

- (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 Court¹⁰, 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 and food 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.***
- (13-a) In order to ensure a uniform presentation of the information required by this directive, pay levels should be expressed as the gross annual pay and the corresponding gross hourly pay. The calculation of these may be based on the actual pay specified in regard to the worker, regardless if it is set annually, monthly, hourly or otherwise.***
- (13a) 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, provided they comply with the obligations set in this Directive.***

¹⁰ 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 Woolwich 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.

(13b) 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. 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 national circumstances and different roles concerning workers' representation.

- (14) 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, 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. *Women with disabilities or women of diverse racial and ethnic origin including Roma women, young or elderly women* are among groups who *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 courts, equality bodies designated pursuant to Article 20 of Directive 2006/54/EC, 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. *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 other protected grounds than sex.*

- (15) 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 by objective and gender-neutral factors. Such 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 guidelines¹, 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, **including** educational, professional and training requirements, skills, effort, **responsibility and working conditions and irrespectively 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. These factors have been identified by the above guidelines as essential and sufficient for evaluating the tasks performed in an organisation regardless of which economic sector the enterprise belongs to. 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 these criteria for the specific job or position concerned. Additional criteria may also be taken into account, if relevant and justified. When relevant, updated Union guidelines may be developed by the Commission in consultation with the European Institute for Gender Equality (EIGE).**
- (15a) **National models for wage-setting varies and may be based on collective agreements and/or elements decided by the employer. This directive does not intend to affect the different national models of wage setting.**

- (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. ***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, 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, 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***.
- (17) The Court has clarified¹¹ 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 ***and where these 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 clarified that the comparison is not limited to workers employed at the same time as the claimant.¹² ***Additionally, when performing the actual assessment, it should be recognized that a difference in pay may be explained by factors unrelated to sex.***

¹¹ Case C-320/00 Lawrence, ECLI:EU:C:2002:498.

¹² Case 129/79 Macarthys, ECLI:EU:C:1980:103.

- (18) Member States should *ensure that training*, 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 this concept, especially for *micro*, small and medium-sized enterprises. *Taking into account national law, collective agreements and/or practice, Member States may 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 **equal pay**.

- (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. *Applicants for employment should receive information about the initial pay or its range prior to the job interview or otherwise prior to the conclusion of the labour contract in such a manner as to ensure an informed and transparent manner and make an informed negotiation on the pay in a published job vacancy notice or prior to the job interview. The information should be provided by the employer or in a different manner, for instance by the social partners.*
- (21) In order to disrupt the perpetuation of *the gender* pay gap ■ affecting individual workers over time, employers should *ensure that vacancy notices and job titles are gender-neutral, and 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 and proactively try to obtain the information about the current pay and 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 *administrative* burden for employers, paying specific attention to micro, *small and medium* 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 are set taking into account the Commission Recommendation on micro, small and medium-sized enterprises¹³.*

¹³ *Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, C(2003) 1422.*

- (23) Employers should make accessible to workers **which** criteria **are** 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 related to pay progression may 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. Member States may exempt micro and small-sized employers from the obligation related to pay progression, for instance by allowing them to make the pay progression criteria available upon request by workers.**
- (24) All workers should have the right to obtain information, upon their request, on their pay and on the **average** pay level, broken down by sex, for the category of workers doing the same work or work of equal value. **They should have the possibility to receive the information also through their representatives or the equality body.** Employers **should** inform workers of this right on an annual basis **as well as the steps to be taken in order to exercise that right.** Employers may also, on their own initiative, opt for providing such information without workers needing to request it.

- (25) Employers with at least **100** workers should regularly report on pay *as provided by this directive. This information should be published by the Member States' monitoring body* in a suitable and transparent manner. *Employers may also publish these reports on their website or otherwise make them publicly available, for instance by including the information in their management report, where applicable in the management report drawn up under Directive 2013/34 of the European Parliament and the Council.* Companies subject to the requirements of Directive 2013/34/EU of the European Parliament and of the Council¹⁴ may also 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 less than 100 workers.*
- (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. *Reporting and joint pay assessments contribute to increased awareness of gender bias in pay structures and pay discrimination and addressing them in an effective and systemic way and 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 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.

¹⁴ 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).

- (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 ***employers not covered by the obligation which 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.
- (28) 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 additional burden on the latter. The monitoring body should make these data public, ***including by publishing them on an easily accessible website***, allowing to compare the data of individual employers, sectors and regions of the Member State concerned.
- (28a) ***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 with the rights and obligations laid down in this Directive.***

- (29) 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 workers' representatives do not agree that the difference in average pay level between female and male workers of at least 5% can be justified by objective and gender-neutral criteria or if such a justification is not provided by the employer. 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 this purpose. Joint pay assessments should lead, *within a reasonable time*, to the elimination of gender discrimination in pay *through the adoption of remedial measures*.
- (30) Any processing or publication of information under this Directive should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council¹⁵. 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 **█**.
- (30a) *This Directive should ensure that persons with disabilities have adequate access to information provided under this Directive to applicants for employment and workers. Such information should be provided to these 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 2016/2102¹⁶ applies.*

¹⁵ 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.

¹⁶ **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.**

- (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, 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.
- (32) *All* 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 penalties should not prevent parties from exercising their right of access to court.
- (33) Involving equality bodies, besides 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 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) ■ 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 pro-active compliance with pay transparency measures, creating peer pressure, increasing employers' awareness and willingness to act preventively, **and address the systemic nature of pay discrimination. Member States may decide 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. **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 to bring pay discrimination claims or assist and support victims in bringing such claims.**
- (36) Compensation should cover in full the loss and damage sustained as a result of gender pay **discrimination**¹⁷. 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 moral prejudice (**such as moral suffering from the undervaluation of work performed**). **Where appropriate, the compensation can take into account harm caused by pay discrimination based on sex that intersects with other protected grounds of discrimination.** No prior fixed upper limit for such compensation should be allowed.

¹⁷ Case C- 407/14, María Auxiliadora Arjona Camacho v Securitas Seguridad España SA, ECLI:EU:C:2015:831, para. 45.

- (37) In addition to compensation, other remedies should be provided. Courts *or competent 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.
- (38) Following the case law of the Court¹⁸, Directive 2006/54/EC *establishes* provisions to ensure that the burden of proof shifts to the defendant 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 the Case C-109/88 (Danfoss case) the Court held that when a system of pay is totally lacking in transparency, the burden of proof should be shifted to the defendant, irrespective of the worker showing a prima facie case of pay discrimination. This should in particular be the case when the employer did not comply with the pay transparency obligations under Articles 5 to 9 of this Directive, for instance refusing to provide information requested by the workers or not reporting on gender pay gap, where relevant. This should not apply where the employer proves that the infringement of those obligations was manifestly unintentional and of a minor character.*

¹⁸ 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 and provide that the limitation period for bringing claims is at least three years. ***Member States should ensure that the limitation periods do not begin to run before the claimant knows, or can reasonably be expected to know about the infringement. Member States should be able to decide that the limitation period does not begin to run for as long as the infringement is ongoing or before the termination of the employment contract.***
- (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, ***Member States should enable courts to assess whether the losing claimant had reasonable grounds for bringing the claim to court and to order that the losing claimant does not have to bear its 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 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 between men and women for the same work or work of equal value.

Such penalties should include fines which *may be based, for instance, 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 up to the Member States to decide for which infringements of the rights and obligations relating to equal pay fines are the most appropriate penalty*.

(43) 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 act and further deter such infringements. Such penalties 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 Council¹⁹ , Directive 2014/24/EU of the European Parliament and of the Council²⁰ , Directive 2014/25/EU of the European Parliament and of the Council²¹ 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 *gender* pay gap between 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, penalties 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.

¹⁹ 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.

²⁰ 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.

²¹ 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.

- (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. *According to the case law²² 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. 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.*
- (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 ■ .

²² C-404/18 *Hakelbracht and others* ECLI:EU:2019:523.

- (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 set up or designate a dedicated monitoring body. This body, which may be part of an existing body pursuing similar objectives, should have specific tasks in relation to the implementation of the pay transparency measures foreseen in this Directive and gather certain data to monitor pay inequalities and the impact of the pay transparency measures *Member States may designate several bodies, provided that the monitoring and analysis functions set out in this Directive are ensured by a single, central body.*
- (49) 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. *Regulation 530/1999²³ 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 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 Eurostat should be collected for statistical purposes in the meaning of Regulation 223/2009²⁴ 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.

²³ 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).

²⁴ *Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics.*

- (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.
- (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) 2018/1725²⁵ and delivered an opinion²⁶ *on 27 April 2021*,

²⁵ 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).

²⁶ https://edps.europa.eu/system/files/2021-04/21-04-27_2021-0251_d0905_comments_en.pdf

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* 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.
 - 2a. *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 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) ‘**gender** 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 **gender** 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;
 - (fa) ‘*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(3);

- (g) ‘category of workers’ means workers performing the same work or work of equal value grouped *in a non-arbitrary manner and* based on *gender neutral criteria referred* in Article 4(3) of this Directive, *by the workers’ employer and where applicable in cooperation with the worker’s representatives in accordance with the national law and/or practice in each Member States.*
- (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) ■ 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. *Where provided for in national law, social partners may carry out these functions;*
- (l) ‘workers’ representatives’ means *the workers’ representative 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) 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 *worker* related to pregnancy or maternity leave within the meaning of Council Directive 92/85/EEC²⁷.
 - (d) *any less favourable treatment of a worker based on sex within the meaning of the Council Directive (EU) 2019/1158²⁸, including related 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 Directive 2000/78/EC.*
3. *Paragraph 2(e) does not entail additional obligations for employers to gather data as referred to in this Directive related to other protected grounds of discrimination than sex.*

²⁷ 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).

²⁸ *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)*

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*.
2. Member States shall, *in consultation with equality bodies*, take the necessary measures ensuring 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 line with the criteria set out in this Article. These tools or methodologies *shall allow employers and/or social partners to easily establish and use* gender-neutral job evaluation and classification systems *that exclude any pay discrimination on grounds of sex*.
- 2a. *Where appropriate, the Commission may update Union-wide guidelines, in consultation with the European Institute for Gender Equality (EIGE).*
3. *Pay structures shall 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 these exist. These criteria shall not be based, whether directly or indirectly, on workers' sex. These objective criteria ■ shall include skills, effort, responsibility and working conditions, and, if appropriate, any other factors which are relevant to the specific job or position. These criteria shall also be applied in an objective gender-neutral manner, excluding any direct or indirect discrimination based on sex. In particular, it shall be ensured that relevant soft skills are not 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 the initial pay ■ or its range, based on objective, gender-neutral criteria, to be attributed for the position concerned *and, where applicable, the relevant provisions of the collective agreement applied by the company in relation to the job*. Such information shall be *provided in such a manner 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 and* previous employment relationships.
 - 2a. *Employers shall ensure that vacancy notices and job titles are gender neutral and recruitment processes are led in a non-discriminatory manner, so as not to undermine the right to equal pay.*

Article 6

Transparency of pay setting and career progression policy

The employer shall make easily accessible to its workers **which criteria are** used to determine pay, **pay** levels and, **pay** progression for workers. These 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 under paragraph 1.**

Article 7

Right to information

1. Workers, shall have the right to **request and** receive **in writing, in accordance with paragraphs 1a and 3**, 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 **■** .
 - 1a. **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. They shall also have the possibility to request and receive the information through an equality body. If the information is inaccurate or incomplete, the worker shall, personally or through their workers' representatives, have the right to request additional and reasonable clarifications and details regarding any of the data provided and receive a substantiated reply.**
2. 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 shall undertake to exercise that right.**

3. Employers shall provide the information referred to in paragraph 1 within a reasonable period of time, *which shall not exceed two months from when the request is made.*
5. Workers shall not be prevented from disclosing their pay for the purpose of enforcing the principle of equal pay. *In particular, Member States shall put in place measures to prohibit contractual terms aiming to restrict workers from disclosing information about their pay.*
6. Employers may require that any worker 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 ■ shall 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 salary and complementary or variable components.

- 1a. Employers with at least 250 workers shall, by [one year after the date of transposition] and annually thereafter, provide the information set out in paragraph 1.*
- 1b. Employers with 150 to 249 workers shall, by [one year after the date of transposition] and every three years thereafter, provide the information set out in paragraph 1 for the previous year.*
- 1c. Employers with 100 to 149 workers shall, by [five years after the date of transposition] and every three years thereafter, provide the information set out in paragraph 1 for the previous year.*
- 1d. Member States shall not prevent employers with fewer than 100 workers to provide the information 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.*
2. The accuracy of the information shall be confirmed by the employer's management, *following consultation of workers' representatives who shall have access to the methodologies applied.*
3. **■** The information referred to in paragraph 1, points (a) to (g) *shall be communicated to the authority in charge of compiling and publishing such data pursuant to Article 26, [paragraph 3, point (c)]. The employer may publish the information referred to in paragraph 1, points (a) to (f) on its website or otherwise make it publicly available.*
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 employer** shall provide **the information** to the labour inspectorate and the equality body upon their request. The information from the previous four years, if available, shall also be provided upon request.
7. Workers and their representatives, labour inspectorates and equality bodies shall have the right to ask the employer for additional clarifications and details regarding any of the data provided, including explanations concerning any gender pay differences. The employer shall respond to such request 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 **within a reasonable period of time** in close cooperation with the workers' representatives, the labour inspectorate and/or the equality body.

Article 9

Joint pay assessment

1. Member States shall take appropriate measures to ensure that employers **subject to pay reporting pursuant to Article 8** conduct, in cooperation with their workers' representatives, a joint pay assessment where **all** 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 **criteria**.

(ba) the employer has not remedied such unjustified difference in average pay level within six months of the date of submission of the pay reporting in accordance with article 8.

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 *average* pay levels between female and male workers in each category of workers;
 - (d) the reasons for such differences in *average* pay levels and objective, gender-neutral justifications, if any, as established jointly by *the* workers' representatives and the employer;
 - (da) *the proportion of female and male workers who benefited from any improvement in pay following their return from maternity or paternity leave, parental leave, and carers leave, if such improvement occurred in the category of workers during the period that the leave was taken;*
 - (e) measures to address such differences if they are not justified on the basis of objective and gender-neutral criteria;
 - (f) *an evaluation of* the effectiveness of ■ measures *from* previous joint pay assessments.

3. Employers shall make the joint pay assessments available to workers, workers' representatives *and communicate them to* the monitoring body ■ pursuant to Article 26, *paragraph 3, point (d). The joint pay assessment shall be made available to* the equality body and ■ labour inspectorate *upon their request*.
4. *When implementing the measures from the joint pay assessment, the employer shall remedy the unjustified pay differences within a reasonable period of time, in close cooperation, in accordance with national law and/or practices,* with the workers' representatives. *The* labour inspectorate ■ and/or equality body *may be asked to participate in the process*. Such action shall include the *analysis of the existing* gender-neutral job evaluation and classification *systems or establishment where it's missing* to ensure that any direct or indirect pay discrimination on grounds of sex is excluded.

Article 9a

Accessibility of information

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

Article 9b

Support to small and medium-sized employers

1. *In order to limit the costs and administrative burden on employers, Member states shall provide support, in the form of technical assistance and training, to employers with less than 250 workers and workers' representatives to comply with the obligations laid down in this Directive.*

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*** 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 labour inspectorate*** 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, *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 social partners and encourage the exercise of the right to collective bargaining on measures to tackle pay discrimination and the adverse impact on the valuation of jobs predominantly carried out by workers of one sex.

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 any *administrative or judicial* 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.

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 *against* based on sex or if no infringement of any of the rights or obligations relating to 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, moral prejudice, *any harm caused by other relevant factors which may include intersectional discrimination, 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 **■** .

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 *judicial* or administrative proceedings *regarding alleged* direct or indirect *pay* discrimination, where an employer *did not implement the pay transparency* obligations *as* 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. *This shall not apply where the employer proves that the infringement of the obligations set out in Articles 5 through 9 was manifestly unintentional and of a minor character.*
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.
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

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 exists when it stipulates the elements of pay relevant for comparison of workers.*
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 comparator can be established, it shall be allowed to use any other evidence to prove alleged pay discrimination, including statistics or a comparison of how a worker would be treated in a comparable situation.*

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, *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 18

Limitation periods

1. Member States shall *ensure that* rules *apply* to limitation periods for bringing claims regarding equal pay **■** . 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. Member States may decide that the limitation period does not begin to run as long as the infringement is still ongoing or before the termination of the employment contract. They shall be set at no less than three years.*
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 *before the court* or bringing the claim to the attention of the employer *directly or through* workers' representatives, labour inspectorate or equality body.
 - 4a. *This Article does not regulate the question of the rules on the expiration of claims.*

Article 19

Legal and judicial costs

Member States shall ensure that in cases where a defendant prevails on a pay discrimination claim, the court can assess, according to the national law, whether the losing claimant had reasonable grounds for bringing the claim to court, and order that the losing claimant does not have to bear its costs.

Article 20

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 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 *penalties guarantee a real deterrent effect for the infringements of the rights and obligations relating to the principle of equal pay*. These shall *include* fines *the setting of which is based on national law*.
 - 2a. *The penalties shall take into account any relevant aggravating or mitigating factor applicable to the circumstances of the infringement, which may include intersectional discrimination.*
3. Member States shall *ensure that* specific penalties *apply* in case of repeated infringements of the rights and obligations relating to equal pay ■ .
4. Member States shall take all measures necessary to ensure that the penalties provided for are effectively applied in practice.

Article 21

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 ■ .
2. Member States shall consider for 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)(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 *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 ■ , 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 ■ .

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. **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 25

Equality bodies

1. Without prejudice to the competence of labour inspectorates or other bodies that enforce the rights of workers, including the social partners, national 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 **in accordance with national law and practice** to ensure close cooperation and coordination between the ■ equality bodies, **labour inspectorates or the social partners with regards to matters related to 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 ■ .

Article 26

Monitoring and awareness-raising

1. Member States shall ensure the consistent **and coordinated** monitoring **and support** of the implementation of the principle of equal pay ■ and the enforcement of all available remedies.
2. Each Member State shall designate a body ('monitoring body') for the monitoring and support of the implementation of national legal provisions implementing this Directive and shall make the necessary arrangements for the proper functioning of such body. The monitoring body may be part of existing bodies or structures at national level. **Member States may designate several bodies for the purpose of awareness raising and data collection, provided that the monitoring and analysis functions set out in paragraphs 3b, 3c and 3e, are ensured by a single, 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, social partners and the general public to promote the principle of equal pay and the right to pay transparency, **including through addressing intersectional discrimination in matters related to equal pay.**
 - (b) **analysing** the causes of the gender pay gap and devise tools to help ■ assess pay inequalities, **making use, in particular, of the analytical work and tools of the European Institute on Gender Equality.**

- (c) **collecting** data received from employers pursuant to Article 8(3), and promptly publish *the data referred to in Article 8, paragraph 1, points (a) to (f) in an 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, shall 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 **every two years, 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

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.

Article 28

Statistics

1. Member States shall provide **annually** the Commission (Eurostat) with up-to-date **national data for the calculation of the** 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.
2. ***The first annual gender pay data shall be transmitted not before 31 January 2028 for reference year 2026.***

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, *in accordance with national law and/or practice regarding the role of 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. *This may include:*

- a) *The development of analytical tools and methodologies referred to in article 4(2)*
- b) *Financial penalties equivalent to fines provided they are effective, proportionate and dissuasive*

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 *workers and employers with less than 250 workers* 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. ***Within two years of the submission*** of the information █ by Member States ***in accordance with paragraph 1***, the Commission shall submit a report to the European Parliament and the Council on the implementation of this Directive. ***The report shall examine, inter alia, the employer thresholds provided for in articles 8 and 9, as well as the 5% trigger for the joint pay assessment provided for in article 9(1). The Commission shall*** propose, where appropriate, legislative amendments ***it deems necessary***.

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

The President

For the Council

The President

