

Proposal for a Directive on Pay Transparency: equal pay for women and men for equal work

Background note for the members of the EEA EFTA Forum

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“Equal work deserves equal pay. And for equal pay, you need transparency. Women must know whether their employers treat them fairly. And when this is not the case, they must have the power to fight back and get what they deserve.”

Ursula von der Leyen, President of the European Commission, 2021 European Parliament’s Committee on Women’s Rights and Gender Equality

1. CONTEXT: WHY?

Equal pay for equal work of equal value between women and men has been a right in the EU since 1957 and was one of the **founding principles** of the Union. However, in the **EU women earn less than men** and the gender pay gap stood at **14,1%** in 2021. The gender pay gap has a **long-term negative impact on the quality of life** for women. Women are at increased risk of exposure to poverty and there is also a persisting pension pay gap in the EU (33% in 2021).

In the past the EU has attempted to ensure equal pay with legislation¹ which was complemented by a Commission Recommendation on pay transparency. In 2020 the European Commission made an analysis looking back at the relevant legal provisions. The assessment concluded that the **right of equal pay was not adequately applied or enforced** in practice and that pay transparency was lacking in many of the EU’s Member States. Therefore, the EU has **proposed a new Directive** to ensure pay transparency and therefore equal pay for equal work, to address these issues.

The **European Pillar of Social Rights** adopted by the European Union in Gothenburg in 2017 includes gender equality and the right to equality among its 20 principles. The current

¹ Directive 2006/54/EC

Commission President Ursula von der Leyen promised in her political priorities that the European Commission would bring forward **new binding pay transparency measures**. It is worth noting that this measure is only one piece of a broader puzzle to [ensure equal pay](#).

2. CONTENT: WHAT?

The objective of the [proposal](#) is to tackle the **persistent inadequate enforcement of equal pay and to ensure that this right is upheld across the EU**, by establishing pay transparency standards to **empower workers** to claim their right to equal pay. Since the proposed legislation is a Directive, EU Member States have more flexibility in the approach they use to implement the proposed legislation.

It is worth noting that when the Commission published the proposal, it was **not marked as EEA relevant** as is usually done with EU legislation deemed to have relevance for the EEA EFTA States.

There are two specific core elements of equal pay, firstly **measures to ensure pay transparency** for workers and employers, and secondly better access to **justice for victims of pay discrimination**.

Workers	Employers (with over 250 employees)
Information about pay-level at job interview	Public reporting of gender pay gap
No obligation to disclose previous pay history	Internal reporting on pay difference among female and male workers in the same category
Right to full compensation for gender pay discrimination including back pay and legal fees	Joint pay assessment if gender pay gap in the same category of workers is more than 5% and not justifiable on objective gender-neutral factors
Individual and collective claims on equal pay	Easier to identify hidden or non-intentional pay inequalities

The core of the *pay transparency measures* is that **employers must provide information** about the initial pay level or its range in the vacancy note. Workers also have the **right to request information** from their employers on individual pay levels and average pay. Employers with over 250 employees must **publish information on the pay gap** between female and male

workers doing the same work for the same value. Finally, where there is a gender gap of at least 5% in such instances, and the employer cannot objectively justify the gap, employers must carry out a **pay assessment** in cooperation with workers' representatives.

Regarding *access to justice for victims of pay discrimination* the main proposed measures are that workers who suffered discrimination can get compensation, including back pay. Further, the burden to prove that discrimination did not take place lies with the employer, not the worker. The EU Member States should establish specific penalties for infringement. Finally, equality bodies and workers' representatives can act in legal or administrative proceeding on behalf of workers.

3. STATE OF PLAY: WHERE ARE WE?

In 2021 the proposal was sent to the European Parliament and Council for approval. If, and when, the proposal is approved the EU Member States will have two years to implement the Directive into national law. The [Council](#) agreed on a common position in December 2021. The [European Parliament](#) backed the binding pay transparency measures on 5 April 2022.

The file is currently in *trilogues* (inter-institutional negotiations between the Council, European Parliament, and the Commission). The Parliament is currently pushing to expand the [scope](#) of the legislation. Members of Parliament have asked to broaden requirements to disclose information to EU companies with at least 50 employees. Another topic for discussion was the status of non-binary individuals in this respect. The current Czech presidency of the EU Council has [admitted](#) that the Council and Parliament have “very distant” positions on this file, but the relevant Czech minister hoped to gradually negotiate the directive. Next year, the Swedish presidency of the EU will take over and might want to try to move this file ahead.

In the [EEA context](#), this proposed legislation might **not be EEA-relevant** since it was not marked so by the European Commission. However, the relevant EFTA Working Group is following the development of the legislation. If the proposed act had an EEA relevance it would most likely fall under the XVIII Annex of the EEA Agreement on Health and Safety at Work, Labour Law, and Equal Treatment for Men and Women. No EU legislation will be [adopted into the EEA Agreement](#) before negotiations between the EU and EEA EFTA States and subsequent adoption into the EEA Agreement by the EEA Joint Committee.

It is also important to view this proposal in conjunction with another important labour policy initiatives of the EU, especially the proposed [Minimum Wage Directive](#), which the EEA EFTA

Forum already [opined](#) on in 2021. The Forum already questioned the EEA relevance of the Directive and highlighted the fact there were significant differences between the EEA States in terms of wage setting and wage level. There, the EU has formally finished negotiations and published the legal act formally. According to the [final version of the act](#), it is not marked as EEA relevant. There had been exchanges between the EU and EEA EFTA States on the EEA relevance of the act.