



Questions and Answers – Equal pay: Commission proposes measures on pay transparency to ensure equal pay for equal work

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The right to equal pay for the same work or work of equal value between female and male workers has been a founding principle of the European Union since the 1957 Treaty of Rome. A 2006 Directive ([Directive 2006/54/EC](#)) on equal treatment of women and men in matters of employment and occupation already requires employers to ensure equal pay for equal work or work of equal value between women and men. It was complemented in 2014 by a [Commission Recommendation](#) on pay transparency. Despite this legal framework, the principle of equal pay is [not fully implemented and enforced](#). The gender pay gap in the EU remains at 14.1%, according to the latest Eurostat findings.

Lack of pay transparency is one of the key obstacles to enforcing this right. It stops workers from knowing how their pay, on average, compares to that of their colleagues of the other sex doing equal work or work of equal value. This puts them in a position where they lack information on whether they are remunerated in accordance with the right to equal pay. In addition, without pay transparency, employers do not necessarily review their payrolls, nor check if their pay systems and job grading do not omit the valuation of relevant skills (e.g. in the service economy). Lack of pay transparency thus creates a grey zone favouring the perpetuation of gender bias in the setting of salaries.

This proposal is designed to address and remedy these issues by strengthening the application of the equal pay principle through pay transparency and improved enforcement mechanisms.

What are the main elements of the proposal?

Pay transparency will empower workers to enforce their right to equal pay by giving them access to the necessary information on pay, in compliance with GDPR, so that they can evaluate whether or not they are subject to discrimination compared to their colleagues of the other sex doing the same work or work of equal value.

The proposal further empowers workers by improving their right of access to justice. Equality bodies and workers' representatives will be authorised to act on behalf of the workers who experience pay discrimination. The proposal will allow collective claims on equal pay. There will be full compensation for victims of discrimination and remedies that address structural discrimination or bias in organisations.

The proposal will also trigger action to address the systemic undervaluation of women's work at employer level. Companies with more than 250 employees will be required to report on pay gaps between female and male workers in their organisation; when that report shows a high risk of unjustified pay inequalities, remedial action will need to be taken jointly by employers and workers' representatives.

How can you assess what is 'work of equal value'?

The Court of Justice has already set main guidelines and objective criteria to evaluate what should be considered 'work of equal value' (Case C-400/93, Royal Copenhagen; Case C-309/97, Angestelltenbetriebsrat der Wiener Gebietskrankenkasse; Case C-381/99, Brunnhofer; Case C-427/11 Margaret Kenny and Others v Minister for Justice, Equality and Law Reform and Others). The legislative proposal will incorporate those guidelines to offer more clarity.

In order to define what constitutes 'work of equal value', jobs should be compared in the light of objective and gender-neutral criteria, such as education, professional and training requirements, skills, effort and responsibility, work undertaken and the nature of the tasks involved. In practice, the application of this concept means that employers have to identify key criteria that are relevant to the organisation and its business model and based on which workers doing the same work or work of equal value get comparable pay. It does not preclude employers from paying workers doing the same work or work of equal value differently, as long as such differences are based on objective, gender-neutral and bias-free criteria (for example performance and competence).

Besides clarifying the concept of 'equal value', its implementation in practice will be improved by tools or guidelines developed at EU and national level. Member States will have the flexibility to choose the appropriate tools or guidelines at national level and may develop them themselves or leave this to the social partners.

What does 'pay' include?

The proposal sets out a broad concept of 'pay' comprising not only basic salary, but also complementary components, whether in cash or in kind, that workers receive directly or indirectly, from their employers. These components include bonuses, overtime compensation, travel facilities (including cars provided by the employer and travel cards), housing allowances, compensation for attending training courses, payments in case of dismissal, overtime supplements, gratuities paid at the discretion of the employer, statutory sick pay, statutory required compensation, and occupational pensions.

The principle of equal pay does not mean that all workers must be paid equally; it means that any pay differences must be based on objective criteria, not related to sex.

What 'employers' are included in the scope of the proposal? Are the measures equally applicable for private and public employers? How about NGOs?

The principle of equal pay came into effect in 1958 and since that time, all employers in all sectors have to comply with it. The proposed Directive therefore covers employers from both the private and the public sectors. NGOs are also included in the scope insofar as they act as employers.

The requirement of equal pay applies to all employers, regardless of their private or public status. Pay inequalities can have historical reasons; they persist in both the public and in the private sector.

What 'workers' are included in the scope of the proposal?

The proposal applies 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. Domestic workers, on-demand workers, intermittent workers, voucher based-workers, platform workers, trainees and apprentices are covered by the proposal provided that they fulfil the criteria for determining the status of a worker as established by the Court of Justice (case C-66/85 Lawrie-Blum; and more recently case C-216/15 Ruhrlandklinik).

Is this proposal proportional for businesses, especially SMEs?

The proposal is carefully designed and takes into account the current difficult situation of employers, in particular in the private sector. It takes a proportionate approach, designing the measures in such a way as to minimise costs for employers. SMEs are exempted from the pay reporting obligation and from the joint pay assessment. In addition, the proposal foresees the possibility for Member States to use available resources for reporting on data instead of employers.

Transparency of pay and pay-setting mechanisms establishes trust between employers and workers. It improves job satisfaction and motivation, which in turn increase productivity. Pay transparency helps to attract and retain the best talent for the future.

The proposal will have moderate costs for business – what does that mean? What are the potential benefits?

Most employers only need to communicate information at a worker's request. Of course, if they detect unlawful pay inequalities, they will need to remedy these. The estimated cost of replying to an individual request for information, based on what exists already in some Member States, is around €20.

Larger employers will be required to be more pro-active. They should publish certain information on differences in pay by gender and provide more detailed information to their workers. The annual costs of pay reporting are estimated at between €379 and €890 (for companies with 250+ employees).

The Commission's Joint Research Centre has simulated socio-economic consequences of closing the gender pay gap by 3 percentage points. The results, reported on in the impact assessment for the proposal, show that even such small narrowing of the gender pay gap could lead to a reduction in poverty risk (in particular for single parent households, which are mostly women) and increase government fiscal revenue. These positive effects would of course vary across EU Member States depending on the country's initial wage distribution, share of female workers, household composition and structure of the personal income tax and social benefits.

Is it in line with EU law to shift the burden of proof to employers?

Yes, the [Directive on equal treatment of women and men in matters of employment](#) and occupation already establishes the shift of the burden of proof to the defendant where there is a prima facie case of discrimination.

The proposed Directive sets out that in case of gender pay discrimination where the employer did not comply with its pay transparency obligations, the worker will not even have to bring evidence of discrimination. It will be up to the employer to prove that there is no discrimination. This is in line with the Court of Justice's case law (Danfoss case; Case C-109/88, Handels- og Kontorfunktionærernes Forbund I Danmark v Dansk Arbejdsgiverforening, acting on behalf of Danfoss).

How are Member States to establish penalties and calculate fines for breaches of the equal pay principle?

Member States have to establish penalties, including fines, applicable to infringements of the equal pay principle. These penalties and fines must be effective, proportionate and dissuasive. While Member States have the discretion to set the level of fines, the Directive requires that such fines must take into account the gravity and duration of the infringement, any intent or serious negligence on the part of the employer, or any other circumstance of the case.

Did you consult on the proposal with social partners?

Yes. A broad consultation process took place in the preparation of this initiative over the years 2019-2020. Social partners were one of the main groups of stakeholders that have been consulted.

What would be the role of equality bodies?

Equality bodies are the key enforcement bodies under EU law in matters of anti-discrimination and equality. Particularly in matters of equal pay, workers may be in a precarious and vulnerable situation, as they may fear victimisation or retaliation in case they ask questions or complain.

Equality bodies will therefore also be competent as regards pay transparency rights and obligations under this Directive. They will have strengthened powers, for instance ensuring that they can act not only in support of, but also on behalf of, victims in any judicial or administrative procedure. In addition, the proposed Directive includes the option for equality bodies or workers' representatives to join claims of several victims, thus possibly addressing structural discrimination in pay structures.

This initiative also takes into account different features of national social dialogue and collective bargaining systems as well as the autonomy of social partners and their contractual freedom. It also recognises the important role of social partners in addressing gender pay inequalities.

How did COVID-19 crisis impact women employees?

The [available data shows](#) that women are disproportionately affected by the COVID-19 pandemic, particularly when it comes to work-life balance and caring responsibilities. Women have taken on a disproportionate share of caring responsibilities prompted by the closure of schools and support services, endangering hard-fought progress towards gender equality.

While the consequences of the COVID-19 crisis are seen across the board, women found themselves at the frontline – as doctors, nurses, pharmacists, teachers, or shop assistants. Their overrepresentation in lower paid sectors and occupations, such as for instance hospitality, retail, or personal services, has made them particularly vulnerable in the labour markets struck by the COVID-19 crisis. It is important not to continue with the breach of the fundamental right to equal pay and not to continue to apply the biases which worsen women's economic situation. The Commission 2021 report on gender equality reports on these developments in the EU; it will be available here [as of 5 March].

For More Information

[Press Release - Pay Transparency: Commission proposes measures to ensure equal pay for equal work](#)

[Proposal for a directive on pay transparency to strengthen the principle of equal pay](#)

[Impact Assessment](#)

[Executive summary – Impact Assessment](#)

[Factsheet – Pay transparency: equal pay for women and men for equal work](#)

[EU action for equal pay](#)

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