

Equal pay for work of equal value

**The EU equal pay framework and the opportunities
presented by the Pay Transparency Directive**

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The EU equal pay framework



Image: Benchmarking Europe 2021, ETUI

- The **principle of equal pay for men and women for work of equal value** was first set out in Treaty of Rome 1957 and is implemented in secondary EU legislation and rich CJEU case-law
- Article 4 of Gender Equality Directive 2006 prohibits direct and indirect discrimination in pay based on sex, and requires that, where used, job classification systems are gender-neutral
- But this **has not been sufficient to eliminate pay discrimination and gender bias in pay scales**, including undervaluation of work predominantly performed by women

The EU equal pay framework



Image: Benchmarking Europe 2021, ETUI

- In 2012 and 2020, reviews were conducted on the effectiveness of the equal pay framework, **which revealed some persistent issues:**
 - lack of clear definition of ‘work of equal value’
 - lack of transparency in pay setting mechanisms and information on pay levels of men and women
 - difficulty in finding a suitable male comparator
 - procedural issues e.g. burden of proof, high legal fees, low compensation etc, that discourage individual workers from making claims

The EU equal pay framework

The Pay Transparency Directive aims to address these issues through (among others):

- **rules on determining value of work and gender-neutral job evaluation and classification systems – Article 4**
- rights to information on pay levels, pay scales and starting salary – Articles 5-8
- obligations on employers larger than 100 workers to report on pay gaps – Articles 9-10
- **provision on social dialogue – Article 13**
- provisions on remedies and enforcement – Articles 14-25 – with **Article 19 on comparator**
- requirement to set up a monitoring body – Article 29

→ **New opportunities to address the issue of undervaluation of women's work, which is explicitly recognised in the Preamble**

Article 4(4) – Assessing the value of work

Skills

Effort

Responsibility

Working
Conditions

Other Relevant
Factors

- The value of work is to be assessed and compared by reference to objective, gender-neutral criteria agreed with workers representatives, which must include **skills, effort, responsibility, working conditions** and any other factors relevant to the job or position
- These 4 key criteria are generally used in job evaluation (see e.g. ILO) and set out in legislation or CAs, usually further specified by sub-criteria
- Identifying these gender-neutral (sub-)criteria can **ensure that the attributes of work performed predominantly by women are not overlooked or undervalued** – e.g. such as soft skills, which are specifically identified

Article 19(3) – Hypothetical comparison

- Comparison is necessary with a worker of the other sex doing the same work or work of equal value
- But in female-dominated jobs and sectors, it might be difficult or impossible to find an appropriate male comparator, often preventing the lowest-paid from making claims
- The possibility of is hypothetical comparison is mentioned in the Preamble of the Directive, but also implicit in the wording of Article 19(3)

Article 19

...

3. Where no real comparator can be established, any other evidence may be used to prove alleged pay discrimination, including statistics or a comparison of how a worker would be treated in a comparable situation.

Article 19(3) – Hypothetical comparison

- But how does this work in practice? It will be for courts to develop a practice, or for this issue to be further specified in legislation
- There are already some precedents, however – e.g. anti-discrimination directives state that direct discrimination can be established by reference to how a person ‘would have been treated’
- But what about cross-sectoral comparisons, which are important to address low pay in female-dominated sectors?

Article 19

...

3. Where no real comparator can be established, any other evidence may be used to prove alleged pay discrimination, including statistics or a comparison of how a worker would be treated in a comparable situation.

Article 13(2) – Collective bargaining

- Art 13, first sentence, requires MS to ensure effective involvement of the social partners ... where applicable upon their request
- But second sentence goes further, implying that MS should encourage collective bargaining on equal pay measures, specifically mentioning the question of (under)valuation
- Again, unclear how this will be implemented in practice at the national level, but potentially an important springboard for unions - and perhaps new direction in EU legislation?

Article 12

...

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

Many other provisions...

- Role for workers' representatives in various provisions
- An obligation to remedy the situation where there is a gap of more than 5%, and to follow up on such measures
- Reversal of burden of proof when pay transparency obligations are not complied with
- Where a worker has been unsuccessful in their claim, courts may decide not to impose the entire legal costs on them
- Limitation periods must be at least three years, so workers and unions have much more time to build a robust claim
- Monitoring body that collects data, raises awareness, analyses the causes of the gender pay gap

**While there is much room for improvement, there are also many positive developments
→ proper implementation will be essential, and trade unions are key actors**