

Law & Policy Group

GRIST

EU employers face pay transparency disclosure mandates

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9 Mar 2021

Pay transparency measures and improved enforcement of equal pay legislation feature in a proposed directive published by the European Commission on 4 Mar 2021 that will now be considered by the European Parliament and other European Union (EU) organizations. The proposal aims to provide a legal framework for identifying hidden or nonintentional pay inequalities, and workers would have the right to access information about how their average pay compares to what their colleagues are paid for doing the same or equal work.

Existing equal pay protections in the EU include the 1957 Treaty of Rome, which provides men and women the right to equal pay for work of value; a 2006 directive that requires all employers to ensure equal pay for equal work or work of equal value; and a 2014 Commission recommendation on pay transparency. The current gender pay gap across the EU is 14.1%, and the gender pensions gap is 30%.

Highlights

- The proposed directive would apply to private and public employers, and 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. This could include part-time, fixed-term contract workers, individuals that have an employment contract with a temporary agency, platform workers, trainees and apprentices.
- Job candidates would have to be notified about a role's initial pay or pay range (based on objective gender-neutral criteria) in the job vacancy notice, or prior to a job interview. Employers could not ask job candidates about their salary history.
- Pay includes basic pay and other complementary pay that workers receive directly or indirectly from their employers, whether in cash or in kind. The proposal specifies the criteria that employers must

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follow to evaluate work of equal value and the comparison of jobs, including education, professional and training requirements, skills, effort and responsibility, work undertaken, and the nature of the task. Pay differences are permitted, but must be based on objective criteria unrelated to gender, such as an individual's competence and performance.

- Workers would be allowed to ask their employer for information on their pay levels, the average pay levels broken down by gender for categories of workers doing the same work, or work of equal value. Employers would have to annually inform all workers of their right to receive such information, and must provide the data within a reasonable time.
- Employers would have to allow their workers to review the gender neutral criteria used to make decisions on pay and career progression.
- Employers with 250 or more employees must report annually on their gender pay gap and make public certain pay information — the commission says that publication of pay data would enable “certain comparison” between employers. In addition, employers would have to provide workers and their representatives with information on the gender pay gap by categories of workers, broken down by ordinary basic salary and complementary or variable components. This information would not have to be made public.
- Employers with 250 or more employees would have to conduct a joint pay assessment with workers' representatives where the gender pay gap exceeds 5% for the same category of employees, and cannot be explained by gender-neutral factors. The pay assessment would have to be shared with employees and the appropriate authorities, such as equality bodies and labor inspectorates.
- National equality authorities and workers' representatives would be authorized to act on behalf of workers who experience pay discrimination, and would be allowed to bring collective equal pay claims.
- Workers who bring successful actions would be compensated fully, and organizations would have to remedy structural discrimination or bias. In certain cases, workers might not have to show evidence of discrimination (the burden of proof), and employers that have not complied with the directive's pay transparency obligations would have to prove they had not discriminated.
- National laws would specify the penalties and fines for breaches of the equal pay principle. Penalties must be “effective, proportionate and dissuasive,” and take into account the gravity and duration of the infringement.

Related resources

- [EU treaties](#) (Europa)
- [EU action for equal pay](#) (European Commission)

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- [Directive on equal pay principle](#) (European Commission, 4 Mar 2021)
- [FAQs](#) (European Commission, 4 Mar 2021)
- [Factsheet](#) (European Commission, 4 Mar 2021)
- [Directive 2006/54/EC on equal opportunities and equal treatment of men and women in matters of employment and occupation](#) (EurLex, 26 Jul 2006)

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