

06 Apr 2026



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[European Union: Equal Pay and the Pay Transparency Directive - more than just transparency](#)

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First published 17 Apr 2023 and reviewed 12 September 2024

17 Apr 2023 • 8 minute read

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In brief

The [Pay Transparency Directive](#) must be implemented by all EU member states by 7 June 2026.

The measures in the Directive are significant and touch on many aspects of the employment lifecycle. They include pre-employment pay transparency requirements, broad worker and representative rights to workforce pay information. The most significant and onerous requirement is likely to be the requirement to conduct detailed pay audits in certain circumstances, including an equal value assessment, and to address pay gaps in co-operation with worker representatives.

The EU Commission has deliberately applied a longer transposition period for the Directive than normal with the stated aim of "ensuring that employers will have non-discriminatory pay structures in place so as to ensure full application of the new rules at the time of transposition". Significant advance planning is required to address both the basic compliance steps required by the Directive, and to mitigate the substantial risk of equal pay liability arising as a result of the joint pay assessment provisions of the Directive.

Key takeaways

- The Directive came into force on 7 June 2023 and member states have three years to transpose its provisions into national legislation. In practice, this means local implementation by 7 June 2026, although legislation could be implemented earlier in some member states.

- The Directive is about more than just transparency. It is likely to lead to a significant increase in worker and representative involvement in addressing pay equity, and potentially onerous requirements to conduct regular equal pay audits including an assessment of equal value.
- Identifying areas of non-compliance now is key. Employers with operations in the EU should assess how the Directive will impact their current recruitment, pay, progression and reporting practices and formulate their compliance strategy accordingly - bearing in mind that the Directive sets out minimum standards and some member states may enhance worker and representative rights in local legislation.
- The Directive is likely to raise the profile of equal pay and pay transparency rights across the EU and perhaps more widely, particularly where they become a focus for trade unions or works councils. This is likely to drive an uptick in equal pay litigation.
- Even where any pay differentials are justified on an objective and gender-neutral basis, increased openness around workforce pay may lead to employee relations issues where pay differences are perceived to be unfair albeit not discriminatory. Employers should prepare for increased employee and stakeholder pressure to address such perceived unfairness.

Background

In March 2021, the European Commission proposed legislation aimed at better enforcement of the fundamental right to equal pay. Broadly, lack of pay transparency was identified as one of the key obstacles to achieving equal pay, alongside inconsistency across the EU in enforcement mechanisms and on key concepts such as 'pay' and 'work of equal value'.

Negotiations between the European Parliament and the Council of the EU resulted in a political agreement at the end of 2022. There were some changes from the Commission's original proposals, for example around the headcount that triggers gender pay gap reporting obligations which was reduced from employers with at least 250 workers to those with at least 100 (although some of the most significant provisions will be phased in based on employer size).

The key provisions

The headline measures are summarised below:

- **Reporting on (and addressing) gender pay gaps**

Employers whose worker population is over the reporting threshold will be required to report on various aspects of the gender pay gap (including in relation to complementary or variable elements of pay); this includes reporting on pay gaps by categories of workers. Broadly, 'categories of workers' means workers performing the same work or work of equal value. As with the right to pay information, this means that an employer will need to have assessed upfront which workers are undertaking work of equal value in order to be able to comply.

The reporting threshold is 100 workers, but it may be some time before employers with that worker threshold will be subject to the reporting obligations. Member states will be able to implement reporting requirements on a phased basis should they wish, although employers with at least 150 workers will have to make their

first report by 7 June 2027; for those employers with at least 250 workers it will be annually thereafter and for those with between 150 and 249 workers every three years. There is scope for member states to delay the first reporting requirements for employers with between 100 and 149 workers to 7 June 2031.

The employer's management will be obliged to confirm the accuracy of the reported information following consultation with workers' representatives who will need to have access to the methodologies applied.

Additionally, the employer will have to provide a substantiated response to any requests from workers, their representatives, or the relevant labour inspectorate or equality body for clarification about the data provided in the report. This will include providing an explanation for any gender pay difference.

As a further potential sting in the tail, where a difference is not justified by objective and gender-neutral factors, employers are obliged to remedy the situation within a reasonable period of time in close co-operation with the workers' representatives, the labour inspectorate and/or the equality body. In contrast to the joint pay assessment provision noted below, there appears to be no 5% minimum threshold applicable to this provision.

- **Joint pay assessments**

Where pay reporting reveals a gender pay gap of at least 5% in any category of workers which cannot be justified on objective and gender-neutral factors and has not been remedied within six months of submission of the report, employers will be obliged to conduct a "pay assessment" - otherwise known as an equal pay audit. This has to be conducted in co-operation with workers' representatives with the objective of identifying, remedying and preventing unjustified pay gaps.

This is a potentially onerous and time-consuming obligation, which could leave employers exposed to material equal pay liabilities. The audit requirement extends to conducting detailed assessments of equal value. The requirement for audits to be conducted in co-operation with workers' representatives means the audit process will be subject to significant scrutiny by employees.

- **Equal value**

Although the concept exists in overarching EU legislation equal value will be an unfamiliar concept for many national legislators and employers. It requires an assessment of all roles to determine by reference to scoring criteria the relative "value" of each role. Where roles which are on their face quite different receive the same scores (or scores within the same narrow range), those roles are deemed comparable for equal pay purposes. Often those roles have never previously been considered comparable. Pay for those roles may well have been set by different decision-makers within an organisation applying different criteria.

The result of an equal value analysis like this can be to reveal very sizeable liabilities for equal pay as between workers whose roles have never previously been considered comparable. The potential costs employers may face could be enormous, as those who are familiar with the public sector equal pay litigation in the UK will attest. In those cases, brought on behalf of large groups of workers, liabilities in those cases ran into tens and in some cases hundreds of millions of pounds.

Employers would be well-advised to act now to audit their current pay landscape on their own terms to understand whether they have areas of exposure before the Directive comes into force.

- **Remedies and enforcement of worker equal pay rights**

Where their equal pay rights have been breached, member states must ensure that workers are entitled to unlimited compensation in respect of all losses sustained; this must include full recovery of back pay and related bonuses or payments in kind (together with interest), compensation for 'lost opportunities, non-material damage, any damage caused by other relevant factors which may include intersectional discrimination'. They will also be required to establish specific penalties for infringements of the equal pay rule, including fines.

In equal pay litigation, where an employer has not fulfilled its transparency obligations under the Directive, the burden of proof will be on the employer to prove that there was no discrimination in relation to pay.

- **Pre-employment pay transparency**

Job applicants will be entitled to receive from prospective employers information about the initial pay (or pay range) for a particular position. The information will need to be provided in a manner that ensures an informed and transparent negotiation on pay such as in a published job vacancy notice or prior to interview. "Pay" is broadly defined for the purposes of the Directive and includes the basic or minimum wage or salary as well as any other consideration, whether in cash or in kind, that a worker receives in respect of employment and would include variable pay and benefits.

- **Pay history**

Employers will be prohibited from asking applicants about their pay from current or previous employment relationships.

- **Transparency on pay setting**

Employers will be required to make easily available to workers information on the criteria used to determine pay, pay levels and pay progression; these must be objective and gender-neutral.

- **Right to pay information**

Workers will have the right to request and receive (within two months) written information on their individual pay level and the average pay levels, broken down by sex, for categories of workers doing the same work or work of equal value. The request can be made directly or through worker representatives or an equality body. Employers must inform workers annually of their right to the relevant information and how to exercise this.

- **Confidentiality provisions**

Contractual terms intended to restrict workers from disclosing information about their pay will be prohibited.

In practice

Even where they already have national legislation addressing pay transparency and/or pay gap reporting requirements, EU member states will need to amend this to align with the minimum standards set out in the Directive. For many, the requirements to conduct equal pay audits and equal value assessments will be entirely new.

Notwithstanding member states still have nearly two years left to transpose the Directive into national legislation, employers should already be considering their compliance strategy for each member state in which they operate. Bearing in mind that the key driver behind the Directive is to make it easier to bring equal pay claims, employers should scrutinise their existing pay practices and take appropriate steps to address any issues identified as soon as possible

This update was first published on 17 April 2023 and was last reviewed on 12 September 2024

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