

THE EU PAY TRANSPARENCY DIRECTIVE

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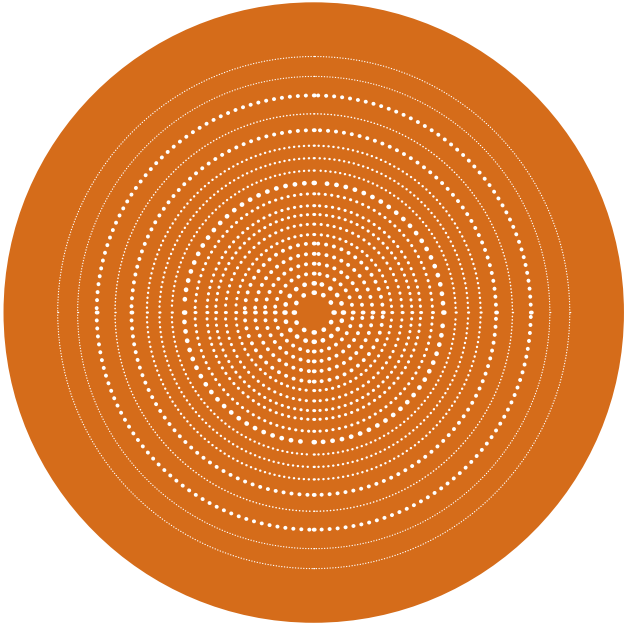
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SECTION 1 INTRODUCTION

While the principle of “equal pay for male and female workers for equal work or work of equal value” has been enshrined in European treaties since 1957 and is currently set out in Article 157 of the Treaty on the Functioning of the European Union¹, the gender pay gap is one of the most persistent and salient issues of labor markets across the globe.

This gap, deeply rooted in our society, can be partly explained by a large number of inequalities women face in terms of access to work, career progression, and pay caused by factors such as sectoral segregation, an unequal share of paid and unpaid work, the glass ceiling phenomenon and pay discrimination. However, although these factors have been identified, the vast majority of the gender pay gap in the EU remains unexplained and cannot be linked to the characteristics of the worker or the workplace².

Despite considerable research and debate among academics, policymakers and the general public on the reasons for the gender pay gap and the best policy instruments for reducing it, the gender pay gap remains at around 13% in the European Union³ having narrowed by just 2.8% over the last ten years⁴. This is why tackling the gender pay gap and its root causes has become one of the key objectives of the EU Gender Equality Strategy between women and men 2020-2025⁵. Indeed, creating a harmonized system of equal protection at the EU level would prevent the temptation for a “race to the bottom” to capitalize on the higher costs borne by other actors⁶.

To this end, several directives have already been implemented in European legislation to promote women's participation in the labor market (e.g., the directive on work-life balance, gender balance on boards of directors). The next step, aimed at reducing pay discrimination, is to significantly increase pay transparency within companies, by granting employees the right to obtain

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- 1 Treaty on the Functioning of the European Union (2007), Article 157.
 - 2 European Commission. (2021). *The gender pay gap situation in the EU*. https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/equal-pay/gender-pay-gap-situation-eu_en.
 - 3 European Commission. (2021). *The gender pay gap situation in the EU*. https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/equal-pay/gender-pay-gap-situation-eu_en.
 - 4 European Commission. (2022, November 7). Factsheet on the gender pay gap [Factsheet].
 - 5 European Commission. (2020). The Gender Equality Strategy 2020-2025. <https://ec.europa.eu/newsroom/just/items/682425/en>.
 - 6 European Commission Impact Assessment Accompanying ‘Proposal for a Directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency mechanisms’ SWD(2021) 41 final, p23-24.

information on their pay levels, obliging employers to disclose this information, integrating equal pay into the collective bargaining process and introducing pay audits in companies. This proposal was a priority for President von der Leyen, who believes that pay transparency is a major ingredient in equal pay⁷.

In this light, the European Council formally adopted the Pay Transparency Directive⁸ in April 2023. The directive imposes a number of extensive obligations on employers, including the preparation of reports on the pay disparity between men and women, the examination of these reports, and mandatory pay assessments in situations where the reports show pay disparities of 5% or more. Additionally, it calls for companies to conduct their hiring and compensation decisions in a more open and impartial manner. Lastly, it plans to implement enforcement strategies to guarantee that workers claim their pay equity entitlements⁹. EU countries will then have 3 years to implement it in their national system.

However, doubts persist as to the effectiveness of these measures. Indeed, while greater pay transparency would uncover unjustified pay differences between men and women for equal work or work of equal value and help victims of pay discrimination to seek redress and assert their right to equal pay, such policies can only help to raise awareness of the gender pay gap and correct it if they are properly designed and implemented. Several obstacles to the success of the directive can be identified in the way it has been drafted, leaving us concerned about its implementation in the various EU Member States. Finally, the question of over-reliance on pay transparency as a tool to tackle the gender pay gap can be raised, as it still places much of the burden on women to enforce their right to equal pay¹⁰.

As a result of the above-mentioned context of combatting to reduce the gender pay gap, the research question of this thesis is formulated as follows:

To what extent can pay transparency, and more specifically the EU Pay Transparency Directive, contribute to reducing the gender pay gap?

In order to answer the research question, the following sub-questions can be formulated:

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- 7 European Commission Press Release “Pay Transparency: Commission proposes measures to ensure equal pay for equal work” (2021). https://ec.europa.eu/commission/presscorner/detail/en/ip_21_881.
- 8 Directive (EU) 2023/970 of the European Parliament and of the Council. (2023, May 10).
- 9 Westbrook, D. B. B. (2023, May 16). European directive to enhance gender equality in pay. De Brauw Blackstone Westbrook. <https://www.debrauw.com/articles/european-directive-to-enhance-gender-equality-in-pay>.
- 10 Hooton, V. E., & Pearce, H. (2023). As clear as mud: Assessing the relationship between proposed pay transparency mechanisms and data protection obligations in EU law. *European Labour Law Journal*, 0(0). <https://doi.org/10.1177/20319525231178985>.