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Application of the New EU Remuneration Transparency Directive

SUMMARY

Equal pay, non-discrimination and the setting of conditions for fair remuneration for work are among the cornerstones of a dignified and fair organization of society and the labour market.

The EU Remuneration Transparency Directive emphasizes the principle of fair remuneration and underlines in particular the importance of Article 28 of the Charter of Fundamental Rights and Freedoms of the Czech Republic.

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Keywords:

Working conditions; equal pay; discrimination; *gender pay gap*; transparency; confidentiality clause; fair pay; social conciliation; social dialogue; social partnership; decent and dignified work; participatory rights; collective bargaining; collective agreement; employee representative; trade union; legal order; directive; internal regulation; control; sanctions; comparable employee; conditions of trade union activity; trade union plurality; European Pillar of Social Rights.

Legal framework and relevant legal standards:

Resolution of the Presidium of the Czech National Council No. 2/1993 Sb., on the proclamation of the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic ("Charter")

Act No. 89/2012 Sb., the Civil Code ("Civil Code")

Act No. 262/2006 Sb., the Labour Code

Act No. 2/1991 Sb., on Collective Bargaining

Act No. 435/2004 Sb., on Employment

Government Decree No. 285/2024 Sb., on the Coefficient for Calculating the Minimum wage in 2025 and 2026

Communication No 286/2024 Sb. of the Ministry of Labour and Social Affairs on the announcement of the minimum wage, the lowest levels of guaranteed salary and the range of the amount of the supplement for work in a difficult working environment for 2025

Act No. 198/2009 Sb., on Equal Treatment and Legal Means of Protection against Discrimination and on Amendments to Certain Acts (Anti-Discrimination Act)

Act No. 251/2005 Sb., on Labour Inspection

International Labour Organization Convention No. 111 concerning Discrimination (Employment and Occupation)

European Social Charter

European Pillar of Social Rights

Directive of the European Parliament and of the Council (EU) 2023/970 reinforcing the application of the principle of equal pay for men and women for equal work or work of equal value through pay transparency and enforcement mechanisms

Directive of the European Parliament and of the Council (EU) on the improvement of working conditions at work through platforms

Treaty on the Functioning of the European Union

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1 Focus, introduction and general remarks

Decent working conditions, fair wages, equal pay, or the elimination of inequalities, discrimination and unfair pay - these are also the basic objectives towards which the daily work of trade unions is directed. Many collective agreements contain explicit provisions in which the employer undertakes to act in a fair, equitable and non-discriminatory manner in the remuneration of employees at all times. Despite this, trade unions, as well as employees themselves, often face practical challenges in demonstrating and 'proving' unequal pay. However, better times are on the horizon thanks to a new directive that is supposed to ensure transparency of remuneration not only in the Czech Republic but also throughout the European Union.

Namely, Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 reinforcing the application of the principle of equal pay for men and women for equal work or work of equal value through pay transparency and enforcement mechanisms.

The presented text (analysis) does not aim to provide complete statistical information on the position of men and women on the labour market in terms of remuneration, but rather to point out the importance of the cited directive, its content and profile within the Czech legal environment. The main issues that we will try to address in the analysis presented here include not only the question of the existing legal basis for ensuring equal pay for work, but also the possibilities of activities of employee representatives in relation to the control and promotion of the values of decent work, fair working conditions and equal pay.

The *gender pay gap* (GPG) is an indicator that measures the value of the pay gap between men and women. There is no uniform way of measuring it, but it is usually calculated as the percentage difference between the average hourly gross earnings of employed men and women. The average gap in earnings between men and women in the Czech Republic is still around 17% (in monetary terms it is over CZK 8,000 per month), with the largest gap being achieved by women over 40 (where the GPG is as high as 23%). In view of the continuing problem in the Czech Republic, the Czech government agreed on the "Gender Equal Pay Action

Plan 2023-2026" at the end of 2022. This is the first ever separate document adopted by the government that deals with income inequality between men and women, the so-called gender pay gap. Within Europe, the Czech Republic still has a higher GPG3. However, the problem is perceived by people all over the world, with the GPG or gender wage gap being observed worldwide. Compared to the Czech Republic, economies such as Mexico, the USA, Canada or Japan are also worse off (source OECD data 2022[1], more recent data are not yet available). It is also worth mentioning Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 (with effect from June 2023), which strengthens the application of the principle of equal pay for men and women for equal work or work of equal value through pay transparency and enforcement mechanisms. The aim is to reduce the gender pay gap, in particular by increasing transparency (in employment relations, this means, for example, an explicit end to confidentiality clauses).[2]

In the Czech Republic, the public debate mentions a gender pay gap of about 18% to 20%. These values are significant as they demonstrate the importance of the necessary implementation of the Directive in the Czech legal system. At the same time, however, the question remains whether, and to what extent, the rules mentioned in the Directive are already contained in Czech legislation, and whether it is not more necessary to focus on the effectiveness of their enforcement.

The study's brief also implies that the *European Union is currently stepping up its efforts to reduce pay inequalities. This effort will be strongly reflected in the application of the new EU Pay Transparency Directive (Directive 2023/970 of 10 May 2023), which aims to eliminate related discrimination and contribute to the elimination of pay gaps. The Directive will have a*

[1] OECD. Gender Wage Gap. Dostupné z: Gender wage gap | OECD.
[2] SÚIP. Roční souhrnná zpráva o výsledcích kontrolních akcí SÚIP za rok 2024. s. 40. Dostupné z: https://www.suip.cz/documents/20142/43684/SUIP_souhrnna_zprava_o_vysledcich_kontrolnich_akci_za_rok_2024.pdf/fb9eda2f-67a1-67eb-54f3-0c3e88e9f9d4?t=1749454931506

significant impact on company processes, rights and obligations in terms of employees' access to information, employers' reporting obligations or access to justice.

Trade unions can play an active, positive role in the implementation of the Directive in the framework of social dialogue and collective bargaining, in defending the respective rights of employees, in providing related information and advice, etc.

The EU Strategy for Gender Equality 2020-2025 is the basis for the Commission's work on gender equality and sets out policy objectives, including pay transparency, and key initiatives for the period.

The principle of equal pay is enshrined in Article 157 of the Treaty on the Functioning of the European Union. This requires Member States to ensure "the application of the principle of equal pay for men and women for equal work or work of equal value".

The prohibition of discrimination on grounds of sex with regard to all aspects and conditions of remuneration is laid down in Article 4 of Directive 2006/54/EC.

A substantial part of the study must therefore necessarily be directed at examining the activities of employee representatives in exercising participatory rights and defending the economic and social interests of employees.

Within the study, the supporting parts will be interlinked as far as possible with reference to the position of both individual employees and, in particular, employee representatives, the conduct of social dialogue, collective bargaining, collective agreements and ensuring fair and transparent remuneration conditions.

Therefore, the present text addresses the issues of the status and role of the social partners in establishing fair working conditions, eliminating discriminatory practices and establishing decent wages, including minimum wages, through collective bargaining and collective agreements. The ambition of the preparer was not to present an economic study presenting statistical and economic data (here the space is left for further analyses within the project), but rather to point out the importance of collective bargaining, social dialogue and social

partnership as a basic tool for achieving fair working conditions and eliminating possible discriminatory behaviour or preventing unequal treatment.

The study looks at social dialogue and collective bargaining through the lens of the legal guarantee of the access of employee representatives to the standardization of working conditions and the representation of employee interests. Within the framework of the assignment, the study focuses on the legal anchoring of collective bargaining not only at the national level, but also in regulations of a supranational nature.

The status of employees changes over time. The same is true of the perception of the nature of contractual relationships under which dependent work is performed. In relation to the understanding of the subjects of labour law, the perception of the position of employee representatives, the importance of social dialogue and the functionality of collective bargaining are evolving. On the one hand, the degree of individualization of social relations and the extent of autonomy of the will target individuality (i.e., the employees, who take care of their own affairs in the best possible way), but at the same time it also opens up a great deal of space for the exercise of participatory rights and the activity of employee representatives. The following text will highlight the growing perceived importance of collective bargaining as an essential tool for standardizing employees' working conditions, as well as the evolution in the perception of the definition of an employee and the extension of collective bargaining options to some self-employed workers.

Labour law, as well as its integral part - collective labour law - evolves over time and must reflect changing social demands. However, in promoting social dialogue and collective bargaining as a central tool for the harmonious achievement of fair pay and decent working conditions, there are practical problems and challenges to be faced in maximizing the potential of collective bargaining. This is the case, for example, in connection with the definition of the scope of collective agreements (the range of persons to whom they apply and whose conditions of work they regulate), or obstacles to effective collective bargaining in connection with the legal failure to address the situation of plurality of trade unions, etc.

The present study, reflecting the assignment, deals with the evaluation of the above aspects and offers not only a brief description of the situations mentioned, but also outlines possible solutions.

In any case, it can be concluded that the reflection on the role of the social partners and their position in collective bargaining and ensuring fair working conditions is and will be topical and deserves attention from the legislators.[3]

However, the basic reason why individuals take on the status of employee is simple - it is to raise funds to cover costs on living. The labour market is undergoing constant evolution. Labour demand and supply rates vary in sinusoids over time. At times, labour demand prevails (e.g., following the post-COVID period in the tertiary food service sector when employee shortages emerge), and at other times labour supply prevails. The employment or employability rate of people of working age varies from stage to stage. The shape of the labour market determines the shape of one's own working conditions. The labour market is a market like any other. The significance of the labour market lies in the distinct and special commodity (although it must be admitted that the International Labour Organization, for example, has long insisted that labour is not a commodity) of which the human being is the fundamental carrier. The regulation of the conditions for the performance of dependent work, as a special subject of social relations, results from a number of labour law norms and is influenced by the basic supporting ideas of the entire labour law, primarily its functions - the protective function and, where appropriate, the organizational function.

The protective function of labour law aims precisely with regard to the special aspect of labour law - the carrier of the commodity and the performer of dependent work - at the employee, as a natural person to ensure decent working conditions (e.g., fair wages), opportunities to reconcile family and working life and respect for the special nature of the carrier of the subject

[3] Text studie koncepčně systematicky vychází a rozšiřuje již dříve zpracovávanou problematiku *Role kolektivního vyjednávání při zajištění pracovních podmínek včetně spravedlivé odměny za práci* (ASO 2021)

matter of regulation. The description seems rather complex, but the opposite is true. The labour market and the labour sector in general cannot be imagined without people - employees. People are an integral part of the labour market, without which the labour market could not function. However, as technology, the socio-economic situation (e.g., the impact of the COVID-19 pandemic) and the associated demands of employers evolve, the labour market itself is logically evolving. Labour law must respond optimally to developments so that the changing interests of the parties to the legal relationship (employees and employers) are sufficiently protected.

In some cases, such as the long-standing issue of tackling unequal pay, the focus should not only be on new challenges (as there is in fact no new challenge), but on the applicability and enforceability of the guarantees and standards inherent in the current labour market arrangements.

The current social developments, including the consequences of the COVID-19 pandemic or the war conflict in Ukraine, and the mobility of the Ukrainian workforce bring with them a number of challenges to which the labour market must respond. However, a response cannot be expected only from the legislator. Trade unions and social dialogue and collective bargaining also play an important role. In collective agreements, trade unions should strive to ensure that social protection of employees is guaranteed, e.g., by using these calls to ensure that the maximum benefit for employees is drawn from them.[4] Finally, and not only in the context of examining the impact of the Pay Transparency Directive, employee representatives are often mentioned as one of the fundamental actors, and social dialogue and collective bargaining as one of the basic tools and means to achieve fair conditions and the elimination of discriminatory behaviour.

[4] HORECKÝ. Jan. Nové trendy podporující roli a význam kolektivního vyjednávání - Role kolektivního vyjednávání v době rostoucí digitalizace práce. Odborná studie. Právní institut. 2020. s. 6. Dostupné z: https://ipodpora.odbory.info/soubory/uploads/Nov%C3%A9_trendy_podporuj%C3%ADc%C3%AD_roli_a_v.pdf

Collective bargaining and collective agreements should reflect the demands of employees and guarantee fair working conditions, including conditions of equal and non-discriminatory remuneration.

In the modern world of work, social dialogue, or its integral *executive* component in the form of collective bargaining, is increasingly becoming an essential tool for achieving fair working conditions and decent work. The role of collective bargaining is growing. Although collective labour relations are among the original relations already at the creation of the labour law itself (collective regulation of working conditions with the cooperation of employee representatives, which has been present in the Czech environment in various variations practically all the time since the delimitation of the labour law sector - e.g. in the form of works councils introduced in 1945[5], and although they also appeared as an integral and determining component of employment and economic relations during the socialist era (the Revolutionary Trade Union Movement participated in the creation of the economic plan, etc.), they have become particularly important in the present context of respect for the economic and social model of the European Union. Employee participation in the corporate agenda is becoming an important part of creating a fair European social and business environment.

Social dialogue and collective bargaining are influenced by both internal and external factors. External factors that are relevant for achieving positive results of social dialogue and collective bargaining include, with regard to the focus of the study, e.g., the extent of employee representatives who are entitled to collective bargaining, as well as the extent to which parties can exercise their autonomy in negotiating appropriate working conditions (the possibility of deviating from the primary parameters of working conditions set by law and legislation). The modern requirements of the work (the effects of digitalization and robotization of work), the conditions in which work can be carried out (e.g., telework, *homeoffice*) and the potential of

[5] Dekret presidenta republiky č. 104/1945 Sb., o závodních a podnikových radách. Dostupné z: https://www.zakonyprolidi.cz/cs/1945-104

the membership base and the extent to which coalition law is applied are also important aspects.

Collective bargaining, by its nature, is an essential legal tool to achieve improved fair working conditions, including wage. Collective bargaining should result in a state of social reconciliation under conditions of socio-economic optimum. Collective agreements will bring more social security for employees (in particular the guarantee of a decent wage) and a less conflict-ridden environment for employers (satisfied employees).

The question that needs to be addressed is the impact of collective bargaining and its assumptions and the threats it faces. One may first of all ask to what extent collective bargaining contributes to achieving the aforementioned social reconciliation, to what extent it guarantees fair working conditions (including equal pay) and to what extent collective bargaining is a counterpart to itself, when, for example, under the current legal situation, a collective agreement (and the benefits derived from it) applies to all employees, regardless of whether they are members of a trade union or not. Could, for example, a well-managed social dialogue and a well-negotiated collective agreement have a negative impact on trade unionism because "*everything works as it should and I am fine, so I am not going to join a union - who would pay for them either!"?* Similarly, fundamental issues include those relating to procedural arrangements and possible legal obstacles to collective bargaining (e.g., plurality of trade unions).

The following text seeks answers to some of the questions raised and seeks to confirm the idea that good social partnership and good social dialogue lead, through collective agreements, to fair working conditions (primarily including wage) and higher benefits (productivity) for employers.

Addressing pay equity and strengthening the principle of equal, transparent and non-discriminatory pay, as well as promoting collective bargaining, must be among the core policies of nation states in the future, not only at European (global) level but also within their own national labour markets. Social partnership is one of the central motives for the

possibility of achieving fair working conditions or decent pay. Employee representatives routinely set central objectives in their programmes that aim specifically to ensure fair working conditions. It is no different in the case of the Association of Independent Trade Unions or the largest trade union headquarters in the Czech Republic, the Czech-Moravian Confederation of Trade Unions (CMCTU). In its programme, it directly sets itself the task of preventing the adoption of laws that would allow the dismissal of an employee from his or her job without stating a legal reason, or direct and indirect discrimination. It also emphasizes the consistent implementation of the European social partners' agreements on combating harassment or the exposure of workers to psychological or physical violence and stress at work. CMCTU will thus advocate that the legislation contained in particular in the Labour Code, the Civil Code, the Civil Service Act, the Act on Local Government Officials and the Act on the Service Relationship of Members of the Security Forces guarantees employees a sufficient degree of protection directly from the law and thus ensures them decent working conditions, in particular, fair wages and salaries, safe work, working hours, leave, equal treatment, professional and career development and to enable them to reconcile their work, private and family life.[6]

2 Definition of basic terms

The text of the study deals with the issue of equal pay and fair working conditions, or their guarantee in legislation and applicability in real relations. All of this is taking into account the decent work agenda. For further interpretation, it is therefore important to define the basic concepts - also in a broader context - that the text of the study then deals with and that are the subject of the analytical focus.

[6] Program ČMKOS na období 2022-2026, s. 140

2.1 The Transparent Remuneration Directive and its relevance in the Czech context

The EU Strategy for Gender Equality 2020-2025 (see summary) is the basis for the Commission's work on gender equality and sets out policy objectives, including pay transparency, and key initiatives for the period.

The principle of equal pay is enshrined in Article 157 of the Treaty on the Functioning of the European Union. This requires Member States to ensure "the application of the principle of equal pay for men and women for equal work or work of equal value".

The prohibition of discrimination on grounds of sex with regard to all aspects and conditions of remuneration is laid down in Article 4 of Directive 2006/54/EC (see summary).

2.1.1 On the nature of the Directive in general

The Directive is an instrument by which Member States are trying to harmonize the European labour market environment at supranational level in the context of national conditions, or with a national scope. The effects of the Directive are based on its nature as a legal instrument of harmonization. Its essential characteristic is its universal application to the Member States of the European Union (i.e., within the European economic market), irrespective of whether those Member States are signatories to the Directive - i.e., a somewhat different principle applies than is known from the operation of international conventions negotiated and issued by the International Labour Organization. However, the universal scope of the Directive does not imply that it is automatically enforceable by employees.

Directives, in terms of their enforceability and hierarchical placement within EU law, fall under the so-called secondary law. Secondary law is the body of law (rules) that derives from the principles and objectives of the Treaties (e.g., the EU) and primary law. In addition to directives, other legislative and non-legislative acts can also be classified as secondary law. Legislative acts are decisions taken by one of the two legislative procedures set out in the EU Treaties. There are currently five types of legislative acts, namely regulations, directives, decisions, recommendations and opinions. The perception of the existence of other legislative and non-legislative acts within the framework of secondary law is essential, especially in terms

of creating a unified whole by which the objectives of the Member States are brought to life in reality.

The Directives set binding targets for EU Member States to achieve a certain result, but leave them the choice of how to achieve these targets.

Once a Directive is adopted at EU level, Member States must take measures to incorporate (transpose) it into national law. National authorities must inform the European Commission of these measures.

Transposition must take place within the time limit set in the Directive (usually 2 years). If a country fails to transpose the Directive into national law, the Commission may initiate infringement proceedings.[7]

The Directive, as part of the secondary law of the European Union, requires transposition into national law in order to realize its intended objective. In other words, the wording, objectives and values of the Directive must be reflected by the national legislator, which also applies to the application of the rules arising from the Directive (EU) 2023/970, which strengthens the application of the principle of equal pay for men and women for equal work or work of equal value through pay transparency and enforcement mechanisms.

The Directives are part of EU secondary law. Therefore, they are adopted by the EU institutions in accordance with the Treaties. Once adopted at EU level, EU Member States will implement them in their national laws and regulations. However, it is up to each individual Member State to adopt its own laws on how to apply these rules.

The Directive is a binding act of general application. Article 288 of the Treaty on the Functioning of the European Union provides that a directive is binding as regards the result to be achieved in the Member States to which it is addressed (one, several or all), leaving the

[7] Druhy právních předpisů EU. Dostupné z: https://commission.europa.eu/law/law-making-process/types-eu-law_cs

national authorities the power to choose the form and methods to achieve the result. In other words, it does not contain clear binding rules that can be invoked by individual employees against their employer. Finally, there is a fundamental difference with another legal instrument under secondary EU law that is commonly used, i.e. a regulation.

A directive is different from a regulation or a decision because, unlike a regulation, which is directly applicable in the Member States once it enters into force, a directive is not directly applicable in the Member States but must first be transposed into national law in order to be applicable in each Member State; unlike a decision, a directive is of general application.

In real practice, it is therefore not possible to confuse the effects of the adoption of a Directive with the effects of the adoption and issuance of a Regulation, as is the case, for example, in relation to a change in national legislation on the protection of personal data. In a practical comparison of the effects of Directive (EU) 2023/970, which strengthens the application of the principle of equal pay for men and women for equal work or work of equal value through pay transparency and enforcement mechanisms, and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27. April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)[8], the provisions of which can be invoked directly and do not require legislation to implement (finally, resulting in the repeal of the Data Protection Act)[9].

The Directive, as a legal instrument aimed at harmonization, although it does not provide for direct competence, cannot be ignored by the Government of the Czech Republic, but must be gradually implemented into the Czech legal system.

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[8] Nařízení Evropského parlamentu a Rady (EU) 2016/679 ze dne 27. dubna 2016 o ochraně fyzických osob v souvislosti se zpracováním osobních údajů a o volném pohybu těchto údajů a o zrušení směrnice 95/46/ES (obecné nařízení o ochraně osobních údajů). [online]. *Eur-lex.europa.eu* [cit. 2025-28-05]. Dostupné z: https://eur-lex.europa.eu/eli/reg/2016/679/oj?locale=cs

[9] Zákon č. 101/2000 Sb., o ochraně osobních údajů

In order for the Directive to have effect at national level, Member States must first adopt a law to implement it into national law (i.e. e.g. amendments to provisions of the Labour Code, even in the context of a flexible amendment). National measures must enable the results set out in the Directive to be achieved. National authorities must inform the European Commission of these measures.

Transposition into national law must take place within the time limit set when the Directive is adopted (usually two years), with specific conditions for implementation arising from the specific wording of the Directive. In the case of the Directive we are discussing, this is a staggered implementation, depending on the size of the employer, with a baseline date for implementation of Article 34 of the Directive of 7 June 2026.

If a country fails to implement the Directive, the Commission can launch infringement proceedings and ask the Court of Justice of the European Union to rule against the country (failure to comply with the Court's ruling could lead to another negative ruling, which could result in fines).

According to Article 260(3) of the Treaty, if a Member State fails to notify measures to implement a directive, the Commission may require the Member State concerned to pay a fine.

The actual substantive implementation must adhere to the values that derive from the objectives of the Directive, but also to the conditions that are typical for the Member State. Thus, there can be both maximum and minimum harmonization.

It is important to distinguish between minimum and maximum (or full) harmonization requirements in directives.

In the case of minimum harmonization, the Directive sets minimum standards, often taking into account the fact that legal systems in some Member States have already set higher standards. In such a case, Member States have the right to set higher standards than those laid down in the Directive.

In the case of maximum harmonization, Member States must implement rules with minimum and maximum standards set out in the Directive.

The ideas of the Directive must be transposed into national law, otherwise their effectiveness is lost or significantly weakened. Insofar as the directive aims to ensure equal treatment in relation to pay and fair working conditions, or to minimize and eliminate gender-based pay inequalities, it actually concerns specific target groups - female and male employees.

The debate on equal pay and the gender pay gap has been an integral part of public discourse in the Czech Republic for quite a long time. This is not a new topic. Even under the current arrangements, there are rules for enforceability of ideas, which are (repeatedly) incorporated into the text of the Directive. However, from the point of view of the scope of the Directive, it is necessary to emphasize its general nature and the issue of protection of natural persons in the event of inadequate and incorrect implementation of the Directive.

In principle, as stated, the Directive has effect only after transposition into national law, i.e. as a result of substantive changes in legislation. However, the Court of Justice of the European Union adds to this extension in its decisions, as it considers that a directive that has not been implemented may have certain direct effects. However, this presupposes that

- it has not been transposed into national law or has been transposed incorrectly.
- the terms of the Directive are unconditional and sufficiently precise,
- the terms of the Directive give rights to individuals.

If these conditions are cumulatively met, the individual may invoke the wording of the Directive against the Member State before the national courts. However, a natural person cannot claim against another natural person in respect of the direct effect of a directive if it has not been transposed into national law (Case C-41/74 Yvonne van Duyn v Home Office[10] is an example of vertical direct effect; Case C-152/84 M.H. Marshall v Southampton and South-

[10] Rozsudek Soudního Dvora EU C-41/74 ze dne 4. prosince 1974 *„Yvonne van Duyn“*. Dostupné z: https://eur-lex.europa.eu/legal-content/CS/ALL/?uri=CELEX:61974CJ0041

West Hampshire Area Health Authority (Teaching)[11] is an example of the lack of horizontal direct effect). In the event of disputes, it would only be possible to claim the desired effects of the Directive against the State, e.g., in the context of control investigations. In any event, however, the Directives, even in the view of the Court of Justice of the European Union, do not create a right for individual employees to enforce the wording of the Directive against a particular employer. If, for example, the Directive was not implemented in time in connection with the obligation to report on remuneration conditions to employers or to negotiate with the trade union when the pay gap between men and women exceeds 5%, the employee representative cannot demand that the employer fulfil its obligation to negotiate on the basis of the Directive, and thus cannot seek sanctions against the employer from the competent labour inspectorate. On the other hand, if the failure to comply with the implementation obligation could be linked to the occurrence of damage, the state may be sued for compensation. The Court of Justice allows individuals to obtain compensation from the State for directives whose implementation is deficient or delayed under certain conditions (e.g., judgment in Case C-6/90 Francovich)[12].

2.1.2 Key points and main objectives of the Directive

Directive (EU) 2023/970 reinforcing the application of the principle of equal pay for men and women for equal work or work of equal value through pay transparency and enforcement mechanisms was issued and adopted in the context of the fulfilment of the fundamental value objectives and ideas contained therein. Given the rules of the implementation process and the nature of EU secondary law, values and objectives must be expressed in a sufficiently concrete and graspable way. However, they are not expected or required to be implemented identically in each Member State. Of course, from the perspective of the application of the Directive in the conditions of the Czech labour market and the Czech legal environment, it is

[11] Rozsudek Soudního Dvora EU C-152/84 ze dne 26. února 19886 *„Marshall“*. Dostupné z: https://eur-lex.europa.eu/legal-content/CS/TXT/?uri=celex:61984CJ0152

[12] Rozsudek Soudního Dvora EU ve věci C-6/90 a C-9/90 ze dne 19. listopadu 1991 „Francovich“. Dostupné z: https://curia.europa.eu/arrets/TRA-DOC-CS-ARRET-C-0006-1990-200407021-05_00.html

necessary to take into account the wording of the Directive as well as the possibilities and local conditions - including, for example, the existing legal framework regulating remuneration of employees, the prohibition of discrimination and unequal treatment, or the right to fair remuneration for work, regardless of gender.

In brief, the objectives of the Directive (as seen by the European legislator) can be summarized in a few points. Firstly, the Directive lays down minimum rules for reinforcement:

- compliance with the principle of equal pay for men and women for equal work or work of equal value,
- prohibition of any direct or indirect discrimination in pay on the grounds of sex,
- transparency of pay and stronger enforcement of the right to equal pay.

The key points of the Directive include its scope, as it focuses not only on employees in the private sector, but also on the public sector (i.e., including employees in the salaried sector, in contributory organizations, in the public service and administration, or in the civil service). The personal scope of the Directive is aimed at all employees with a contract of employment or employment relationship defined by law, collective agreement and/or practice, as well as employees working under some of the agreements for work outside the employment relationship.

Remuneration means the basic or minimum wage or salary plus any remuneration in cash or in kind which the worker receives directly or indirectly.

Discrimination in terms of the Directive is harassment and sexual harassment, less favourable treatment and instructions to discriminate against persons on the grounds of sex, discrimination on the grounds of membership of two or more groups and covers direct and indirect discrimination.

Equal pay for equal work or work of equal value is to be achieved by the activity of individual Member States. European Union (EU) countries ensure that employers have pay systems that exclude any pay discrimination based on gender.

The evaluation of comparable work is to be based on criteria including skills, effort, responsibility and working conditions and other criteria relevant to the particular job or position. The criteria must be applied in an objective, gender-neutral manner that excludes any direct or indirect discrimination on the basis of sex.

The measures on transparency of remuneration are not only for the employees themselves, but also for the job applicants, as follows:

- job applicants have the right to be informed by the prospective employer before the interview about the starting salary for the job or its range and, where applicable, details of the collective agreement provisions applied by the employer in relation to the job,

Persons performing dependent work - employees - have the right to request (directly or through employees' representatives or the national equal treatment body) information on their individual pay and on the average gender-disaggregated pay for categories of employees who perform the same work as them or work of equal value as them, and will not be prevented from publishing their pay for the purposes of enforcing the principle of equal pay.

Employers may not ask job applicants about their current or previous salary, and, as part of the terms and conditions of employment adjustment

- ensure that vacancy notices and job titles are gender neutral and that the recruitment process is non-discriminatory,
- make available to their employees the criteria on the basis of which wages, pay levels and pay progression are determined, which must be objective and gender-neutral,
- inform all their employees annually of their right to request and receive in writing information on their individual wage and the average wage divided by sex of colleagues performing the same work or work of equal value,
- provide information such as gender pay gaps and the proportion of male and female employees receiving additional or variable components (this obligation will be phased

in from 7 June 2027 for employers with more than 100 employees, depending on the size of the enterprise),

- work with employee representatives to identify, correct and prevent discriminatory pay gaps when their pay reports reveal a gender pay gap of more than 5% that cannot be justified on objective, gender-neutral criteria and that has not been eliminated within 6 months.

The Directive lays down obligations on Member States. Member States shall

- ensure the availability of analytical tools or methodologies to assess and compare the value of different jobs at employer level,
- provide technical assistance and training to help employers with fewer than 250 employees meet the requirements of the Directive,
- take measures to ensure the active involvement of the social partners, without prejudice to the autonomy of the social partners and in accordance with national law and practice.

The essential objectives of the European legislator are to establish means of control and to promote the values of fair, transparent and equal remuneration. They concern both the regulation of the individual relationship between the employee and the employer and the relationship between the employer and the controlling bodies (whether trade union or public control).

Member States must ensure that:

- employees had the right to go to court to enforce their rights to equal pay if conciliation failed,
- associations, organizations, equality bodies and employees' representatives or other legal entities with a legitimate interest in ensuring equality between men and women may take part in any administrative or judicial proceedings,

- Workers whose rights have been violated can claim full compensation, including back pay, related bonuses or benefits in kind, compensation for lost opportunities and non-pecuniary damage,
- the competent authorities or national courts can require the cessation of the infringement and the application of the equal pay principle, and that employers disclose all relevant evidence,
- Employers had to prove that discrimination had not taken place if a claim is brought against them,
- the limitation period for bringing an action relating to the principle of equal pay was not less than 3 years,
- sanctions, which should include fines, are effective, proportionate and dissuasive,
- economic operators (including the subcontracting chain) comply with the obligations related to the principle of equal remuneration when performing public contracts or concessions,
- workers and their representatives are not penalized for exercising their equal pay rights.

Equality bodies have the power to decide on matters that fall within the scope of the Remuneration Transparency Directive. Therefore, Member States must set the conditions for functional control

- must provide their equal treatment bodies with adequate resources for the effective exercise of their functions with regard to compliance with the right to equal pay,
- must ensure consistent and coordinated monitoring and promotion of the application of the principle of equal pay,
- may apply more favourable conditions for workers than those set out in the Directive,
- must provide Eurostat with national data for calculating the gender pay gap on an annual basis from 31 January 2028,

- must report to the European Commission on the implementation of the legislation by 7 June 2031 - this is the basis for the Commission's report to the European Parliament and the Council of the European Union by 7 June 2033.

Finally, in summary, it is important to note the effectiveness of the Directive, i.e., the point in time by which Member States must implement the content of the Directive. The Directive must be transposed into national law by 7 June 2026. These rules should also apply from that date.

2.1.3 Transparency in remuneration

The basic idea behind the Directive is to increase transparency in remuneration in order to prevent pay misdetermination and unequal treatment.

Transparency can be understood as the possibility of knowing the remuneration rules in advance and in a way that is accessible to employees.

Transparency in terms of the Directive can be defined by several specific points and steps:

- have remuneration schemes (Art. 4/1)
- provide job applicants with information on the starting wage or collective agreement (Article 5/1)
- not to ask job applicants about their remuneration history (Article 5/2)
- ensure gender-neutral advertising and non-discriminatory recruitment practices (Article 5/3)
- ensure that its employees have easy access to criteria for determining staff remuneration (etc.), which must be objective and gender-neutral (Art. 6)
- provide staff members, upon request, with written information on their individual level of remuneration and on the average levels of remuneration by gender for categories of staff members who perform the same work or work of equal value (Article 7/4)
- inform the employee of the possibility to request the above information (Article 7/3)

- not to prevent staff members from disclosing the amount of their remuneration (Article 7/5)
- report on the gender pay gap and related obligations (Article 9) and, where appropriate, carry out a joint assessment (Article 10)
- compensation in the event of a breach of obligations relating to the principle of equal pay (Article 16)
- not to persecute workers in response to a complaint, administrative action or legal proceeding brought to enforce rights or obligations regarding the principle of equal pay (Article 25/2).

2.1.4 Summary and practical breakdown of impacts

The content of the Directive aims to enforce equal pay rules and to increase the effectiveness of the application of the principle of non-discrimination, equal treatment and the elimination of pay inequalities between men and women. From the perspective of the addressee, the measures related to the Directive can be divided into several levels and areas.

The essential points of the Directive, or the instruments to achieve the objective, can be divided into two categories, namely

i. Rules on employers' obligations towards individual employees (e.g., by informing them about wage conditions during the selection process and in job offers)

ii. Rules on employers' obligations towards supervisory authorities and public authorities (e.g., mandatory reporting of gender pay statistics).

The objective of the Directive is not new in the Czech legal environment and in the Czech labour market. This is primarily to emphasize and support the requirements for fair remuneration for work already laid down in general principles and principles (even today) (as follows from Article 28 of the Charter of Fundamental Rights and Freedoms), as well as the rules of equal treatment and non-discrimination (arising from the Labour Code and the Anti-

Discrimination Act), or the provisions that are commonly included in the introductory provisions of collective agreements.

The objectives of the Directive apply to all employees, both employed and serving, as well as to employees working under performance and activity agreements.

From the perspective of employee representatives - trade unions - the Directive emphasizes the participatory rights of employees and further elaborates on the rights of trade unions (e.g., in fulfilling the obligation to discuss with the trade union the results of the report and the remuneration rules in case they result in unequal remuneration).

2.1.4.1 Summary of rules relating to the relationship with individual employees

Among the substantive rules that should contribute to improving the position of men and women in the labour market (i.e., promoting equal treatment and non-discrimination as already enshrined in the Labour Code in particular) are

1. **The employer's obligation to inform the employee about the remuneration conditions already in the job advertisement (job offer) or selection procedure**

Article 5 of the Directive guarantees job applicants the right to be informed by the potential employer of the starting salary for a given position, or a range thereof, based on objective, gender-neutral criteria. The employer bears the burden of proving compliance with the obligation.

2. **Prohibition on the negotiation of universal confidentiality clauses on an employee's salary**

The Directives explicitly grant employees the right to free disposal of their remuneration information in Article 7. Employees must not be prevented from disclosing information about their remuneration for the purposes of enforcing the principle of equal pay (the right to information and the general inadmissibility of confidentiality clauses do not automatically justify either the employee or the trade union in disclosing information about the employer's specific remuneration arrangements).

3. **Employee's right to wage information for the same and similar position**

Employers shall provide easy access to the criteria used to determine employee compensation, compensation levels and compensation practices. The criteria applied must be objective and gender-neutral. The right to information (i.e., the provision of information) must be fulfilled by the employer immediately and without undue delay, but within two months at the latest.

4. **Right to equal pay and access to judicial protection**

The Directive guarantees employees the right not only to equal pay, access to information, but also to judicial protection. It thus complements the rules established in the Czech Republic to protect against discrimination, unequal treatment and the assertion of individual employee rights (including the shared burden of proof).

2.1.4.2 Summary of the rules concerning employers' obligations towards supervisory authorities, public authorities and trade unions

Of the substantive rules that should contribute to improving the position of men and women on the labour market, as well as between employees in general (i.e. the promotion of equal treatment and the prohibition of discrimination in general, as they are already enshrined in the Labour Code and the Anti-Discrimination Act in particular), and which concern the specific established relationship between the employee and the employer, these are

1. **Introduction of reporting and information obligations regarding remuneration conditions for employers with more than 250 employees.**

Affected employers will be obliged to carry out annual information reports containing gender pay statistics.

2. **Introduction of a reporting and information obligation for employers with fewer than 250 employees**, who will be required to comply with the reporting obligation at three-year intervals

3. **Introduction of the reporting and information obligation for employers with less than 100** employees is optional under the Directive, but may be based on a decision of the national states (i.e. beyond the Directive adopted during implementation).

4. **Trade union rights to information**

The trade union, as the employees' representative, may participate in receiving information on remuneration conditions on the basis of the exercise of participatory rights and must have access to the methodologies used by the employer.

It is essential that if the remuneration reports show a gender pay gap of at least 5%, and if the employer does not provide a meaningful justification for the difference (in the context of the existing case law of the Supreme Court of the Czech Republic, a mere reference to the employer's special conditions and the nature of the work performed is not sufficient), the employers concerned will be legally obliged to carry out a joint evaluation and assessment of the remuneration rules with the trade union.

Article 13 of the Directive explicitly stresses the importance of social dialogue and the obligation of the State to introduce rules for the appropriate and effective involvement of trade unions in order to achieve the objectives of the Directive and to ensure equal pay. The specifics of the remuneration rules and the employer's more detailed obligations may be contained in a collective agreement.

This offers another effective way for trade unions to improve social dialogue and achieve fair and decent working conditions for all employees, regardless of gender or type of employment relationship.

2.2 Social dialogue

Social dialogue, or understanding of the content of the term, has no legal definition in the Czech Republic (it is not defined terminologically in any of the legal regulations). What is certain is that the terms social dialogue and collective bargaining cannot be confused. Collective bargaining is a somewhat narrower concept than social dialogue itself. While social

dialogue can be understood as any negotiation between employee representatives and the employer on all issues related to work (and social issues - e.g., in the case of reconciliation of family and work life linked to the provision of a number of benefits, such as employee kindergarten, subsidized meals for family members, or recreational allowances, etc.), collective bargaining already has its own definition, as it is a formalized process of social dialogue aimed at concluding a collective agreement.

Social dialogue can also be broadly defined, for example, as "*bargaining, consultations, joint actions, discussions and information sharing between employers and employees"*[13]. A well-functioning social dialogue is a key tool for shaping working conditions, involving a range of different actors at different levels. It strikes a balance between the interests of workers and employers and contributes to economic competitiveness and social cohesion.

At the national level, social dialogue is based on the right of all employees to join trade unions, or to elect, establish and become a member of one of the forms of employee representatives provided for by law[14]. At the supranational level, social dialogue is primarily understood as the negotiations of the European social partners with the aim of regulating the social rights and working conditions of employees within the European economic market. Social dialogue is an essential element of the European social model. It enables the social partners (management and workers' representatives) to actively contribute to the development of European social and employment policy, including through agreements, and derives its legal basis from the wording of Articles 151 to 156 of the Treaty on the Functioning of the European Union.

The construction is in line with the background and the process of adopting the Directive. The practical issue related to the wording of the Directive is the identification of the competent

[13] EUROFOND. Sociální dialog. [online]. *eurofoun.europa.eu* [cit. 2025-16-06]. Dostupné z: https://www.eurofound.europa.eu/cs/topic/social-dialogue

[14] HORECKÝ, Jan. STRÁNSKÝ, Jaroslav. *Sociální dialog a jeho účastníci*. In JUDr. Dana Hrabcová, Ph.D. Sborník příspěvků z mezinárodní vědecké konference Pracovní právo 2011 na téma Sociální dialog. 1. vydání. Brno: Masarykova univerzita, 2011. s. 27 – 41.

employee representative. The Directive in no way establishes or establishes the privileged position of trade unions. Nevertheless, in practice, it can be concluded that it is the trade unions, in accordance with Czech national legislation, that will implement the rights arising from the Directive.

2.2.1 Social dialogue and collective bargaining actors

The Directive develops the content of social dialogue by establishing the rights of employee representatives to information, consultation and, for example, confirmation of the accuracy of statistical data provided by the employer. The achievement of the Directive's objective is also to be supported by the development of social dialogue. Specific steps to ensure fair remuneration can be the content of mutual agreements between the social partners and, finally, the appropriate content of collective agreements. However, the fundamental question of collective bargaining and achieving possible anchoring of rules is which entities are entitled to bargain collectively. The scope of employee representatives and their powers may vary. The Czech legal environment grants trade unions a privileged position and a monopoly for collective bargaining, since the Charter and the Labour Code are based on the assumption that only the trade union is entitled to conclude a collective agreement on behalf of the employee and that any substitution of the collective agreement by other arrangements is considered contrary to the law and different agreements and contracts will not be taken into account.[15]

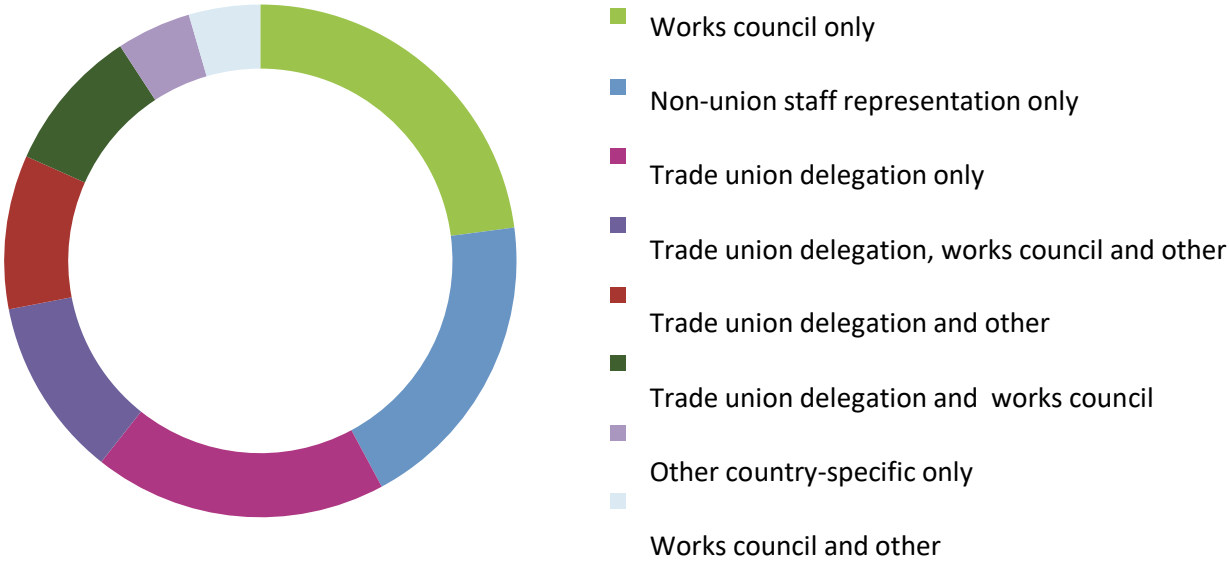
In the Czech legal environment, it is possible to identify other participants in social dialogue as foreseen by law (note, not entities authorized for collective bargaining), which are the so-called quasi-subjects[16] in the form of a works council, a European works council and a representative for occupational safety and health. However, only trade unions have the right to collective bargaining and the ability to conclude collective agreements.

[15] Ustanovení § 22 a § 28 zákoníku práce
[16] HORECKÝ, Jan. STRÁNSKÝ, Jaroslav. *Sociální dialog a jeho účastníci*. op.cit. s. 27 – 41.

The extension of the various ways of representing employees' interests is defined by national legislation in its own way, an example being the Austrian and German systems, in which works councils constitute a body which, although not having the right to conclude tariff agreements (but having special powers to enter into company agreements which can intervene in the field of remuneration in specific cases)[17] and where the activity of employee representatives and the autonomy of the will of the parties are limited.[18]

Considering the role of employee representatives is essential from a collective bargaining perspective. The range of participants in social dialogue is quite broad and the specific entitlements of each form must always be taken into account. The following chart (2019) shows the intensity of employee representation in its various forms and shapes.[19]

Table: Configuration of employee representation structures (%)



[17] V souladu s ustanovením § 77 odst. 3 zákona o podnikové ústavě („betriebsverfassungsgesetz“) se jedná o situaci, kdy tak předvídá výslovně tarifní smlouva, viz Dostupné z: https://www.mayr-arbeitsrecht.de/blog/betriebsvereinbarung-lohnabsprache/

[18] Srov. Bundesarbeitsgericht Urteil vom 11. April 2018, 4 AZR 119/17. Dostupné z: https://juris.bundesarbeitsgericht.de/cgi-bin/rechtsprechung/document.py?Gericht=bag&Art=pm&Datum=2018&anz=23&pos=5&nr=20968&linked=urt

[19] EUROFOUND AND CEDEFOP (2020), *European Company Survey 2019: Workplace practices unlocking employee potential*, European Company Survey 2019 series, Publications Office of the European Union, Luxembourg. s. 114

2.2.2 Collective bargaining

Collective bargaining is a closer part of social dialogue. Although collective bargaining and social dialogue are often synonymously confused (usually at the supranational level), a fundamental qualitative difference must be perceived in the national conditions of the Czech Republic. While social dialogue is any communication between social partners on all issues related to the performance of dependent work, collective bargaining is a qualitatively different institution. In contrast to social dialogue, collective bargaining is bound by a number of rules which also result from legal regulations (e.g. Act No. 2/1991 Sb., on Collective Bargaining) and is rather a formalized process of conducting social dialogue aimed at concluding a normative legal act - a collective agreement - which is binding for the contracting parties and, above all, guarantees employees individually enforceable rights through legal (judicial) means.

Strong social dialogue and a strong position of employee representatives and their respect by the employer promotes quality and fair working conditions. Importance can also be attached to the level and extent of trade union activity. Social dialogue and collective bargaining at a broader - sectoral or regional - level, not only within companies, contributes to fair pay and working conditions. The fight against social dumping and the gradually opening up of scissors in labour costs and remuneration, as well as other aspects of the labour market such as the gender pay gap, can be tackled at a higher level with a broader scope. Higher levels of trade union membership and the consequent power of trade unions and the collective agreements they negotiate have the effect of reconciling the working and social conditions of employees and society in general.

Experience in measuring working conditions and conducting social dialogue shows that trade unions built on a strong membership base and dense coverage and scope are able to negotiate working conditions more universally. The standards then apply to multiple workplaces or entire sectors and regions. Increasing the attractiveness of trade union membership and

promoting social dialogue and collective bargaining should become a goal not only of the enterprise social partners but also of national interests.[20]

2.3 Fair working conditions and equal pay

Fair working conditions are a fundamental right of every employee. At the same time, fair working conditions are a fundamental objective for social dialogue and collective bargaining. Achieving fair working conditions (wages; working time arrangements, etc.) are among the main attributes of social dialogue and collective bargaining.

However, a precise definition of fair working conditions is difficult to find. In the context of the Directive, we can at least explicitly mention the rule of equal treatment - i.e., the situation where the basis for determining the remuneration of employees does not include the criterion of gender (especially in relation to identical work).

The basic legal documents of the Member States, as well as those of the European Union and supranational entities, contain a reference to the guarantee of fair working conditions. Their fulfilment, however, is largely related to the socio-economic, political, cultural and social factors of a given Member State. There is a gradual harmonization within the European Union. However, exceptions must be maintained.

The guarantee of fair working conditions can be found, for example, in the Charter of Fundamental Rights of the European Union[21] or in the European Pillar of Social Rights, which in Chapter II directly defines the categories of fair working conditions. In addition to remuneration, fair working conditions include secure and adaptable employment, information on working conditions and protection in the event of dismissal, social dialogue

[20] RHINEHART, Lynn. McNICHOLAS, Celine. Collective bargaining beyond the worksite. Economic Policy Institute. [online]. *epi.org* [cit. 2025-28-04]. s. 2. Dostupné z: https://www.epi.org/publication/collective-bargaining-beyond-the-worksite-how-workers-and-their-unions-build-power-and-set-standards-for-their-industries/

[21] Listina základních práv Evropské unie. [online]. *fra.europa.eu* [cit. 2025-28-04]. s. 2. Dostupné z: https://fra.europa.eu/cs/eu-charter/article/31-slusne-spravedlive-pracovni-podminky

and employee involvement, work-life balance, a healthy, safe and well-adapted working environment and data protection.[22]

Figure: European Pillar of Social Rights[23]

Modern trends affecting collective bargaining across the developed world and especially within the European economic area are related to changing trends not only in terms of changes in the subject matter of production but also in relation to modern approaches to human resources. The social partners and trade unions (employee leaders) must be involved in creating a harmonious working environment and finding ways to establish and maintain the concept of *decent and dignified work* (globally referred to as the *decent work* agenda). The *decent work* agenda has historically been the responsibility of the social partners and workers' representatives in particular. According to the Director-General, the common future

[22] Evropský pilíř sociálních práv [online]. *ec.europa.eu* [cit. 2025-28-04]. s. 2. Dostupné z: https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-social-rights-20-principles_cs#kapitola-ii-spravedliv-pracovn-podmnky

[23] Tamtéž

depended on how the ILO and its Member States could cope with the current social demands of the labour market, all within the concept of the decent work challenge.[24] Decent work is an integral part of the Agenda for Sustainable Development.

Figure: Decent Work as part of the Agenda for Sustainable Development[25]

Decent work becomes an explicit goal and means to achieve a fair labour market and to ensure sustainable development in the future. Particularly in the implementation of labour standards in less developed countries (although the validity of the *Decent Work for All* agenda is universal), decent work is often cited as probably the most powerful concept and effective tool at the disposal of the international community, and one that it has developed over the

[24] SOMAVIA, Juan. *Report of the Director-General: Decent Work*. International Labour Office Geneva. Dostupné z: https://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm

[25] ILO. Decent work and the 2030 Agenda for sustainable development. [online]. *ilo. org* [cit. 2025-28-08]. Dostupné z: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-lisbon/documents/event/wcms_667247.pdf

years, providing unprecedented policy opportunities that can offer effective, proportionate and, above all, efficient responses to the current globalization trend.[26]

In implementing the Decent Work Agenda, the ILO sets out the basic cognitive elements of the potential activity under consideration - work. Not all work can be identified with decent and dignified work. Nor can the concept of decent work be understood to mean only that a person has a right to work, i.e., any work, but work that enables him or her to live in society and meet ordinary needs.

In fact, the concept of decent work is based on the belief that work should be a source of human dignity, family stability, peace and democracy, and the implementation of the concept of decent work rests on four fundamental pillars:

- striving to create enough jobs and employment opportunities while developing the conditions for business,
- guarantee of labour rights (respect for the rights of the employee)
- increasing social protection and
- promoting social dialogue.[27]

The decent work project, or decent work as such, must be understood in the modern context as a tool for achieving economic and social growth, including sustainable development. Trade unions can make a major contribution to decent work through a number of provisions in collective agreements. The conditions for promoting equal pay are then common to the whole concept of decent work.

2.3.1 Fair remuneration

The directive on transparency of remuneration and enforcement of the principles of equal pay aims to enshrine fair working conditions regardless of the gender of employees.

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[26] REPORT I (A)/ILC 96-2007. Director - General introduction to the International Labour Conference. *Decent work for sustainable development*. International Labour Office: Geneva, s. 2.
[27] GALVAS, Milan a kol. *Pracovní právo*. Brno: Masarykova univerzita, 2012, s. 63.

Fair working conditions are a complex set of factors that encompass a variety of factors that determine the work environment. One of the backbones of fair working conditions is the area of remuneration - fair pay. Following modern trends in the world of work, both working conditions and remuneration itself are affected by changing labour market demands (see, for example, the relationship of digitalization or retraining to the requirements and content of collective agreements). Fair remuneration can be understood as a situation in which employees are not only not treated unequally, but are also paid a decent wage for their work. Collective bargaining makes an essential contribution to the fulfilment of both of these conditions.

With reference to the above guarantee of fair working conditions, reference may also be made to the guarantee of fair remuneration arising from national legislation. The right to fair remuneration is enshrined in the Czech legal environment, for example, in the Charter of Fundamental Rights and Freedoms in Article 28 - Employees have the right to fair remuneration for work and to satisfactory working conditions. The details of fair remuneration are subsequently set out in the Labour Code in the provisions of Section 110.

The basic criteria for fair remuneration are based on the prohibition of unequal treatment and on an objective assessment of the performance of the same work by the employee. All employees of an employer are entitled to the same wage, salary or remuneration for the same work or for work of equal value. Equal work or work of equal value means work of equal or comparable complexity, responsibility and exertion, performed under the same or comparable working conditions, with the same or comparable work performance and results. The complexity, responsibility and strenuousness of the work shall be assessed according to the training and practical knowledge and skills required to perform the work, the complexity of the subject matter of the work and the work activity, the organizational and managerial demands, the degree of responsibility for damage, health and safety, the physical, sensory and mental strain and the exposure to the negative effects of the work. Working conditions are assessed according to the difficulty of working regimes resulting from the distribution of

working time, for example, into shifts, rest days, night work or overtime, the harmfulness or difficulty due to other negative effects of the working environment and the riskiness of the working environment. Work performance is judged by the intensity and quality of the work performed, work ability and work competence, and work results are judged by quantity and quality. Collective agreements may introduce specific rules and control mechanisms.

Collective bargaining is involved in setting fair pay conditions. The difficulty of setting a precise threshold of fairness is related to various socio-economic, geographical or political factors. However, collective bargaining can make a significant contribution to guaranteeing at least minimum wage rates if all aspects are taken into account.

3 *De lege lata* legal regime

Equal pay between men and women and the elimination of any de facto pay inequalities are among the Directive's main objectives. However, this is not a completely new agenda, which is also reflected in the fact that the Czech legal order already contains a number of legal rules aimed at promoting equal treatment, or prohibiting unequal treatment on the basis of gender, including in the case of remuneration.

The impact of the Directive on employers cannot be overwhelming. Unless there is already unequal remuneration in the employer's current situation. The legal framework of the Directive will be supplemented by some additional obligations of the employer - of a more administrative and statistical nature, which will facilitate and enable the exercise of control and real compliance with the rules and the achievement of the objectives of the Directive.

3.1 Legal definition of equal treatment and non-discrimination

The basic parameters that can be relied upon under the current legal system (before the implementation of the Directive) are, first of all, legal provisions of various legal strengths and levels. The present analysis does not aim to make a complete enumeration of all the legislation that is available to eliminate forms of unequal treatment and discrimination between men and women in relation to work and remuneration. On the other hand, mention should be

made of existing instruments to support a clear possible realistic implementation of the Directive's objectives on the basis of already established models of conduct and regulation of labour relations.

The prohibition of gender-based pay discrimination is enshrined in Czech legislation, in particular the Labour Code and the Anti-Discrimination Act, as well as at international level, including EU law and constitutional documents. This means that employers must not discriminate between male and female employees on the basis of sex in employment relations, including remuneration, even for work of equal value or equal work.

In terms of the application practice of individual employers, this may primarily concern the Charter of Fundamental Rights and Freedoms, or more specifically the provisions of Section 16 of the Labour Code. Employers are obliged to ensure equal treatment of all employees with regard to their working conditions, remuneration for work and the provision of other benefits and benefits of monetary value, training and the opportunity to achieve promotion or other advancement in employment. Any discrimination in employment relations is prohibited, in particular discrimination on the grounds of sex, sexual orientation, racial or ethnic origin, nationality, citizenship, social origin, gender, language, health, age, religion or belief, property, marital and family status and relationship or obligations to the family, political or other opinion, membership and activity in political parties or political movements, trade unions or employers' organizations; discrimination on the grounds of pregnancy, maternity, paternity or gender identification shall be deemed to be discrimination on grounds of sex.

In the area of remuneration, the general provisions of the Labour Code in Part Six - *Remuneration for work, remuneration for on-call work and deductions from income from the basic employment relationship* must be relied upon. In practice, employers are obliged to reflect and respect the basic legal rules set out in more detail in the provisions of Section 110 of the Labour Code when setting remuneration systems, especially with regard to maintaining equal remuneration.

The general setting of the basic criteria is contained in the Labour Code in the provisions of § 110. On the one hand, the criteria are specific, on the other hand, they leave the employer a fairly wide margin of discretion and their more detailed fulfilment according to specific situations and working conditions.

Equal work or work of equal value means work of equal or comparable complexity, responsibility and exertion, performed under the same or comparable working conditions, with the same or comparable work performance and results. The complexity, responsibility and strenuousness of the work shall be assessed according to the training and practical knowledge and skills required to perform the work, the complexity of the subject matter of the work and the work activity, the organizational and managerial demands, the degree of responsibility for damage, health and safety, the physical, sensory and mental strain and the exposure to the negative effects of the work.

Working conditions are assessed according to the difficulty of working regimes resulting from the distribution of working time, for example, into shifts, rest days, night work or overtime, the harmfulness or difficulty due to other negative effects of the working environment and the riskiness of the working environment. Work performance is judged by the intensity and quality of the work performed, work ability and work competence, and work results are judged by quantity and quality.

As can be seen, the list of criteria does not include any that would allow the employer to set a *priori* different remuneration conditions based on the gender of the employees. On the contrary. In accordance with the wording of Section 16 of the Labour Code, this would in principle constitute discrimination on the grounds of sex.

In the context of pay equity, there are a number of court decisions whose significance has a crucial impact on the overall labour market setting. In terms of remuneration criteria, it is necessary to consider the decision of the Supreme Court of the Czech Republic. Consideration of socio-economic conditions may be one important measure of setting the right remuneration rules, but only to a very limited extent and always with a substantial and

complete argument. From the perspective of the principle of equal pay pursuant to Section 110 of the Labor Code, the following are not relevant for assessing whether a particular job is considered equal work or work of equal value (they do not constitute a comparative criterion within the meaning of Section 110(2) of the Labor Code) the socio-economic conditions and the corresponding level of costs of living in the place where the employee performs work for the employer on the basis of an employment contract.[28]

The legal provisions contained in Section 110 of the Labor Code primarily stipulate that work performed for an employer by different employees may be considered the same work or work of equal value, for which they are entitled to the same wage, if it is identical or comparable in terms of all the comparative criteria set out in Section 110(2)-(5) of the Labor Code; if there is no agreement (comparability) in any of these comparative criteria, it is not the same work or work of equal value within the meaning of Section 110(1) of the Labor Code. However, the issue of equal treatment is broader than providing equal pay within one group of employees (doing the same job or work of equal value). Not only may the method of negotiating, determining or fixing wages differ between different groups of employees of the same employer (cf. Section 113(1) of the Labour Code), but different criteria (conditions) may also be applied so that the statutory wage considerations are taken into account in the work they perform (Section 109(4) of the Labour Code). If an employer imposes a condition on a certain group of employees, it is obliged to apply that condition equally to them, taking into account the principle of equal treatment.[29]

In practice, and taking into account the expected impact of the Directive, the cited decision is also relevant in terms of the search for a so-called comparable employee against which any unequal treatment can be measured.

[28] Rozsudek Nejvyššího soudu České republiky ze dne 20. července 2020, sp. zn. 21 Cdo 3955/2018.
[29] Rozsudek Nejvyššího soudu ČR ze dne 18. ledna 2022, sp. zn. 21 Cdo 627/2021-400

3.2 Control and sanctions

The Directive introduces control mechanisms into the national legal systems of the Member States. It requires the Member States to create the conditions for the operation of controls, systems for regular reporting and, finally, for the activities of, for example, employee representatives who are to play an active part in ensuring that the objectives of the Directive are achieved.

The directive aims to complement the existing scope of control. Currently, the agenda of unequal pay between men and women enjoys a relatively high profile, including in the monitoring activities of labour inspectorates.

The activities of labour inspectorates are based on planned activities as well as on own actions based on suggestions. Suggestions may be made by the employees concerned as well as by employee representatives.

The process of inspection is subsequently regulated by several legal regulations, with the Labour Inspection Act being the decisive one in terms of establishing the competence to inspect and the legal authority to carry out the inspection.[30] Labour inspectorates check compliance with obligations arising from legislation which gives rise to rights or obligations in employment relations for employees, the relevant trade union body or works council or the representative for occupational safety and health, including legislation on remuneration of employees, wage or salary compensation and reimbursement of employees' expenses.[31]

In 2024, the regional labour inspectorates were ordered to continue their inspection activities to an undiminished extent, focusing both on equal treatment and compliance with the prohibition of discrimination in general and on equal pay for men and women. The inspections were to use both the suggestions for inspection received from citizens and information from the monitoring activities themselves. In the area of equal pay for men and women, at least

[30] Zákon č. 251/2005 Sb., o inspekci práce
[31] Ust. § 3 odst. 1 písm. a) zákona o inspekci práce

100 inspections were to be carried out across the Czech Republic in 2024, and inspectors were to focus on compliance with the employer's obligation to ensure equal treatment of all employees with regard to their working conditions, remuneration for work and the provision of other monetary benefits and benefits of monetary value, training and the opportunity to achieve a function or other promotion in employment, in accordance with the provisions of Section 16(1) of the Labour Code. 1 of the Labour Code, as well as compliance with the prohibition of discrimination under the provisions of Section 16(2) of the Labour Code and **compliance with the provision of equal pay, salary or remuneration under an agreement for equal work or work of equal value under the provisions of Section 110 of the Labour Code**, with an emphasis on both sexes. A total of 110 audits specifically focused on equal pay for men and women were carried out. Employers who reward both wages and salaries, rather larger employers (with a greater expectation that both sexes will perform work of equal value), were selected for audits from all regions of the Czech Republic.

During the audits, 29 deficiencies were found in the area of equal treatment and non-discrimination (60 deficiencies were found in total, with others mainly in the area of remuneration). In 13 cases, there was unequal treatment of employees. Discrimination on the grounds of health was found in 6 cases. In 5 cases, so-called confidentiality clauses were negotiated (even with large-size employers). Three cases concerned unequal remuneration (negotiating and providing different levels of pay for comparable jobs). And in two cases, the employer was accused of not creating favourable working conditions. Within the framework of this inspection task, the regional labour inspectorates were also ordered to carry out 1-2 inspections in cooperation with experts from the Equal Remuneration Project of the Ministry of Labour and Social Affairs using the LOGIB analytical tool. After the pilot inspections in 2021 and 2022, the State Labour Inspection Office and its inspectors continued to carry out such inspections in 2023 and 2024. While 4 inspections were carried out in 2022 using the analytical tool, a total of 14 inspections were already carried out in 2023, with all regional labour inspectorates participating. In 2024, 13 such inspections were carried out (2 of which have not yet been completed), with 1 inspection also carried out by the State Labour Inspection Office

in cooperation with the Regional Labour Inspectorate for the Moravian-Silesian Region and the Olomouc Region. All inspections were carried out with the participation of members of the KA2 working group of the Equal Remuneration project (the experts from the MLSA acted as invited persons during the inspections - specialists for work with the analytical tool, the inspectors did not work with the analytical tool, but led the whole inspection).

From the point of view of the complexity of the activity, it is necessary to admit the relatively high time intensity of the inspections (they often lasted more than 4 months). Once the audit has been initiated, data is collected from the employer for the analytical tool (and this covers all employees, not just the audit sample), which then provides information on whether there are suspicious pay anomalies in the workplace for certain positions. The inspector then establishes a control sample of employees (including the deviations) and performs a standard check. The limitations of the analytical tool can be seen in the fact that if the auditee does not provide detailed data in the structure required by LOGIB (and it should be noted that according to the law the auditee is not obliged to do so), the resulting analysis cannot be fully informative.

During these audits, two employers were reproached for negotiating confidentiality clauses in employment contracts, and one employer was reproached for a so-called attendance bonus as discrimination on the grounds of health status. Another finding concerned age and gender discrimination (maternity) in the provision of benefits. The audit carried out by the State Labour Inspection Office was trans-regional and concerned the remuneration of employees (men and women) across regions. No unequal treatment was found. Even though there were no complaints about the gender pay gap in 2024 and there are no findings in this area, the State Labour Inspection Office will continue to address the issue. In 2025, gender pay equality audits will again be carried out, including with the help of invited female experts familiar with the LOGIB analytical tool. We believe that consistent controls, advisory activities and

awareness-raising of the problem can reduce the *gender pay gap* in the Czech Republic in the future and contribute to fair remuneration for both sexes.[32]

An inspection carried out by the labour inspectorate may result in the imposition of a sanction if a breach of the legislation is detected. Financial penalties can run into millions of euros.

The Directive imposes increased obligations on employers to keep remuneration statistics. However, from the point of view of administrative management, this is not a completely new agenda. In terms of control and possible sanctions, and in the context of the scope of the Directive, the potential financial penalty that may be imposed on the employer for non-compliance can still be seen as crucial. An employer who does not cooperate with the labour inspector (e.g., fails to provide sufficient documentation and documents necessary for the inspection) runs the risk of being fined up to CZK 1,000,000.[33]

Currently, there are also known penalties for breach of the obligation to cooperate, or failure to fulfil the rights of employee representatives arising from participatory rights. The employer commits an offence in the area of cooperation between the employer and the body acting on behalf of the employees by breaching the obligations towards the relevant trade union bodies, works councils or representatives for occupational safety and health arising from Sections 62, 277, 279, 280, 287 and 339(1) of the Labour Code. The cited provisions include, for example, obligations to discuss the setting of remuneration conditions and changes to them.

The penalty resulting from a possible breach of the employer's cooperation with the employee representative may amount to CZK 200,000.

Incorrect setting of remuneration parameters can lead to unequal treatment and discrimination, including on the basis of gender. An employer commits an offence in the field of equal treatment when they

[32] SUIP. Roční souhrnná zpráva o výsledcích kontrolních akcí SÚIP za rok 2024, op. cit. s. 43
[33] Ust. § 9a zákona o inspekci práce

(a) fail to ensure equal treatment of all employees with respect to their working conditions, **remuneration** for work and the provision of other benefits and benefits of pecuniary value, and training and the opportunity to achieve tenure or other promotion,

b) discriminate employees (Section 16 of the Labour Code),

(c) penalize or disadvantages an employee because he or she has asserted his or her rights and claims arising out of the employment relationship in a lawful manner,

(d) fail to discuss with the employee or, at the employee's request, with the employee's representatives his or her complaint about the exercise of rights and obligations arising from the employment relationship.

Now, as a result of the flexible amendment to the Labour Code, it is an offence of equal treatment if an employer restricts an employee's access to information about the amount and structure of his or her wage, salary or remuneration under the agreement.

Sanctions related to unequal treatment vary according to the Labour Inspection Act, and if the employer violates the obligation to ensure equal treatment of all employees (see letter a), or if the employer acts in a discriminatory manner (see letter b), or if the employer penalizes employees for asserting their rights (e.g., by inquiring about the average earnings of a given position), the employer may be fined up to CZK 1,000,000. In other cases, i.e. e.g., in the situation of unauthorized negotiation of a confidentiality clause (or if the wage confidentiality clause is included in the employer's internal regulations at all), a fine of up to CZK 400,000 may be imposed.

The essence of the solution to the employer's misconduct may also be the accumulation of multiple violations or breaches of multiple obligations. Another conceivable variant is the emergence of negative consequences derived from a single act of the employer. For example, the incorrect setting of the amount of an employee's remuneration may lead not only to the assessment of the situation as a breach of the employer's obligations to ensure equal remuneration, but also as a breach of the employer's obligations in the context of the

protection of the employee's wages (i.e., not paying the employee what the employee is legally entitled to), or even a breach of obligations when negotiating the employment relationship by not providing the employee with timely and correct information about the working conditions and the method of determining their wages. In some cases, the employer is unnecessarily exposed to a risk of up to CZK 2 million (e.g., in the event of failure to comply with obligations at the commencement of the employment relationship).

The Labour Inspection Act contains specific provisions specifically affecting the remuneration of employees (i.e., not only ensuring equal treatment and non-discrimination, but also the actual remuneration for the work performed).

An employer commits an offence in the field of employee remuneration when they

(a) fail to provide an employee with the same wages, salary or remuneration under the agreement as another employee for the same work or work of equal value,

(b) fail to provide the employee with a salary of at least the minimum wage, or a salary of a specified amount at least equal to the guaranteed salary,

(c) fail to provide the staff member with his wages or salary or any component thereof within the prescribed time limit,

(d) fail to provide the employee with wages or salary or compensatory time off for overtime work,

(e) fail to provide the employee with compensatory time off for work on public holidays or overtime pay or a salary supplement for such work,

(f) fail to provide the employee with additional pay for work in a difficult and harmful working environment and for night work,

(g) fail to provide a salary supplement to a staff member, although he is obliged to do so under a special legal provision,

(h) provide the employee with a component of pay not provided for by law, or provide him with a component of pay or salary to which he is not entitled, or provide it in a manner not permitted by law,

(i) make deductions from the employee's wages or salary other than those specified in the agreement on deductions from wages or salary,

(j) fail to provide on-call pay to an employee or to provide it in the amount specified,

(k) fail to ensure the conditions laid down for the standardisation of work, although it is obliged to do so under a special legal regulation,

(l) reward an employee in violation of Section 103(1)(k) of the Labour Code,

(m) fail to provide the employee with remuneration for work performed on the basis of an agreement on work performed outside the employment relationship or any of its components in the amount and under the conditions laid down by other legislation and agreed in the agreement on work performed outside the employment relationship,

n) as guarantors, fail to satisfy the wage claims of employees pursuant to Section 324a(4) of the Labour Code,

(o) breach a duty in the negotiation, fixing or determination of wages or salary,

(p) violate the obligation to pay wages or salary in foreign currency under section 143(2) or (3) of the Labour Code.

The legislator sanctions incorrect remuneration settings for individual employees with a possible fine of up to CZK 2,000,000. However, if the employee is in breach of duty by failing to provide the same wage, salary or remuneration for the same work or work of equal value as another employee, then the fine is set at a maximum of CZK 500,000.

The rules supplemented by the Directive are supported in their compliance not only by the existing set of sanctions resulting mainly from the Labour Inspection Act, but also by the possibility of claiming subjective rights, elimination of discrimination and possible

compensation in accordance with the Anti-Discrimination Act[34] through the courts. The scope and level of sanctions that will be added to the existing legal regime is not yet known precisely. However, the important thing is that some additions will probably be made. The Government of the Czech Republic has the task imposed by the Directive to create a system of sanctions that are sufficiently effective, proportionate and dissuasive, i.e., effective sanctions for violations of rights and obligations related to the principle of equal pay. Member States shall take all measures necessary to ensure that the penalties thus provided for are implemented and shall notify the Commission without delay of those penalties and measures and of any subsequent amendment affecting them. Member States shall ensure that specific sanctions apply in the event of repeated infringements of rights and obligations relating to the principle of equal pay.

A specific form of sanction in specific situations can certainly include the employee's subjective right arising from the employer's tort capacity, namely the right to compensation for damages. If an employer, without objective reasons, sets or agrees with an employee remuneration for work which, in comparison with other employees performing the same work or work of equal value, is contrary to the principle of equal treatment, this constitutes a breach of a legal obligation; an employee who has been affected by unequal treatment has the right to claim compensation for the damage thus caused in accordance with the provisions of Section 265(2) of the Labor Code.[35]

4 The Directive and its *de lege ferenda* implications in national law and practice

The Directive, which strengthens the application of the principle of equal pay for men and women for equal work or work of equal value through pay transparency and enforcement mechanisms, does not aim to introduce a new perception - a parameter - of equal pay. In view of the understanding of the principle of equal treatment and fair remuneration as defined

[34] Zákon č. 198/2009 Sb., zákon o rovném zacházení a o právních prostředcích ochrany před diskriminací a o změně některých zákonů (antidiskriminační zákon)
[35] Rozsudek Nejvyššího soudu České republiky ze dne 6. srpna 2015, sp. zn. 21 Cdo 3976/2013

above, it is rather a question of emphasizing this principle and taking possible measures to promote it in practice.

From the perspective of setting up practices in the field of remuneration, the implementation of the Directive may be associated with the need to conduct internal audits of employers to verify compliance with the rules on equal pay and non-discrimination. The adoption of the guidelines does not automatically imply improper practice or the imposition of fines on employers.

The principle of equal remuneration is explicitly derived from the Czech legal system, as already mentioned above. The concrete impact of the Directive will thus be mainly in the updating of approaches, internal regulations, employment contracts, collective agreements and other arrangements, and the overall approach to remuneration transparency.

From the point of view of practical impacts, the real impact of the Directive can be mentioned at the outset, even before its full entry into force, or before the implementation deadline of 7 June 2026. The recent changes to the Labour Code under the flexible amendment to the Labour Code[36], which, beyond the conceptual omnibus amendment to the legislation, brought with it a change that specifically relates to employee confidentiality of wages.

4.1 Revocation of confidentiality clauses

Article 7 of the Directive explicitly states the inadmissibility of pay confidentiality clauses. Although the Directive refers explicitly to contractual terms, the prohibition also applies to other internal company documentation (internal regulations, work rules, internal directives), as well as to the collective agreement and other agreements, or unilateral actions of the employer. It is the obligation of Member States, in particular, to adopt measures prohibiting

[36] Zákon č. 125/2025 Sb., kterým se mění zákon č. 262/2006 Sb., zákoník práce, ve znění pozdějších předpisů, a některé další zákony. [online]. *Zakonyprolidi.cz* [cit. 2025-28-05]. Dostupné z: https://www.zakonyprolidi.cz/cs/2025-120

contractual conditions that prevent workers from disclosing information about their remuneration.

This prohibition was reflected in the aforementioned flexible amendment to the Labour Code. Arrangements in current employment contracts, wage agreements, salary and wage assessments, or other employment documents do not benefit from legal protection in the future, quite the contrary. Employers cannot refer to arrangements concluded even before the amendment of the Labour Code, even with the argumentation of the autonomy of the will of the parties and the application of the private law principle of contract. The provisions of Section 346a of the Labour Code, following the flexible amendment to the Labour Code effective from 1 June 2025, clearly imply a prohibition, even if contractually, to prohibit employees from handling information about their remuneration.

From a practical point of view, it is advisable to remove these arrangements from the comprehensive employment documentation. In fact, the flexible amendment to the Labour Code, in the context of the objectives of the Directive, introduces a possible sanction against the employer for situations where prohibitions would occur. Violation of the employer's obligation may be sanctioned by the control authorities - the competent labour inspectorate - up to CZK 400,000. It is quite sufficient that the ban is agreed. It does not have to be required by the employer.

However, this is not a blanket ban in the sense that employees can bring out all information relating to remuneration. In the event that the employer has special specific rules for determining the final wage, the employee has the right to be informed of the comprehensive remuneration conditions. However, it may not comprehensively disclose and transfer them to third parties, especially if it is a sophisticated method of determining wages, which the employer also identifies as its trade secrets. While the employee can dispose of the resulting salary at any time, the actual setting of the appraisal system may be protected for the benefit of the employer. Employers may require workers who have obtained information under this

Article not to use that information, except for information relating to their own remuneration or level of remuneration, for any purpose other than the exercise of their right to equal pay.

4.2 Attendance bonus

The significance of the Directive cannot be interpreted only in terms of the direct impact of its effects. In practice, it is important to note that discriminatory conduct may in reality occur not on the basis of a directly stated discriminatory reason, but in reality indirectly. A typical example would be the setting of remuneration rules where one of the criteria would be the measurement of attendance rates. The Directive aims to set fair conditions for indirect action as well. If the attendance bonus is set in such a way that it does not reflect any legally excusable impediments to work, it could lead to discriminatory behaviour as a result of, for example, maternity and parenthood. In a situation in which in the Czech Republic it is mostly women who take care of children, it is possible to deduce a negative economic consequence of taking care of children or taking care of a third person, which will manifest itself in the fact that the person concerned will not be entitled to the attendance bonus. Without appropriate reflection of specific conditions, this may be contrary to both the rules of fair pay and the prohibition of discrimination (whether direct or indirect).

The inappropriateness of the introduction of the attendance bonus is confirmed by long-term investigations of the Labour Inspectorate. Also in 2024, some employers continue to get the benefit rules wrong. The so-called attendance bonus was reproached in 35 employers, mainly in the manufacturing sector*. If an employer gives its employees a financial bonus for "completing" attendance in a given calendar month, it is in effect discriminating against those employees who have been on sick leave, caring for a child or other family member, or attending a doctor (and this is because of health or gender, which includes parenthood). Such a benefit is thus contrary to the Labour Code. During the audits, it was found that employers also make mistakes when setting the rules for providing benefits, for example by excluding employees on*

parental leave, employees receiving a retirement pension or employees on probation or notice.[37]

Under the influence of the adoption of the Directive, employers should reconsider this practice, as they are unnecessarily exposing themselves to sanctions from the labour inspectorate as well as claims from individual employees.

4.3 Review of remuneration rules

The impact of the Directive on HR practice will be particularly evident in situations where employers do not have transparent remuneration rules. In accordance with Article 6 of the Directive, employers are obliged to ensure easy access to the criteria used to determine workers' remuneration, levels of remuneration and pay progression. The criteria must be objective and gender-neutral. Preventing possible violations of the law requires an audit of the employer's employment documentation. This rule does not only apply to individual employees who have a right to information on the determination of their remuneration, but also to the supervisory authorities. If the employer is unable to produce transparent remuneration rules, it will again expose itself to a possible (unnecessary) penalty for breaching the legislation.

4.4 Transparency of remuneration and disclosure of employee pay

The Directive introduces a transparency rule. At the same time, it establishes the right of employees to be informed of comparable pay. However, it cannot be inferred from the Directive that employees should have a right to information about the wages of specific other employees (i.e., that it would be possible to inquire about the wages of any employee) and thus the employer is not obliged to provide the requested information. Transparency of remuneration refers primarily to knowing the parameters of remuneration determination, not the amount of remuneration of a particular other employee. Workers shall have the right, in accordance with paragraphs 2 and 4, to request and receive written information on their

[37] SUIP. Roční souhrnná zpráva o výsledcích kontrolních akcí SÚIP za rok 2024, op. cit. s. 42.

individual level of remuneration and on the average levels of remuneration broken down by sex for categories of workers who perform the same work or work of equal value as themselves. Employees also have the right to request information through their employee representatives. They should also be able to request and receive information through the Equality Bodies.

If the information received is inaccurate or incomplete, the staff shall have the right to request, in person or through their staff representatives, additional reasonable explanations and details concerning any information provided and to receive a reasoned response. This is where the link with the work of employee representatives and social dialogue comes into play.

4.5 Information on the amount of the remuneration in the selection procedure

The personal scope of the Directive applies primarily to employees, i.e., persons who perform dependent work in an employment relationship, a service relationship, or in one of the basic employment relationships outside the employment relationship. However, the scope of the Directive extends somewhat further, to job applicants (similar to the GDPR).

At present, there is no clear legal framework (implementation) available, but the activities of the Ministry of Labour and Social Affairs suggest that the mentioned obligation would enrich the existing wording of the Labour Code in the part regulating pre-contractual relations. In practical terms, wherever the obligation is regulated, it means for the employer that it will no longer be possible to keep secret from the job seeker until the last moment how much he will be paid to do the work.

Article 5 of the Directive explicitly implies the right of jobseekers to be informed about their starting wage/salary. Jobseekers have the right to receive information from a potential employer:

- the starting salary for the given position or a range of starting salaries based on objective, gender-neutral criteria; and

- where applicable, the relevant provisions of the collective agreement applied by the employer in relation to the position.

This information shall be provided in such a way as to ensure informed and transparent remuneration negotiations, for example in a published vacancy notice, prior to a job interview or otherwise.

The employer must not ask applicants about their remuneration history in relation to their current or previous employment relationships. Employers shall ensure that vacancy notices and job titles are gender-neutral and that recruitment procedures are conducted in a non-discriminatory manner so as not to undermine the right to equal pay for equal work or work of equal value ('the right to equal pay').

4.6 Statistics and reports on the pay gap

In practical and administrative terms, the implementation of the Directive brings new tasks for employers as well as new powers for employee representatives. From the employers' point of view, it is primarily about establishing an obligation to inform the supervisory authorities about equal pay rules. According to the Directive, the obligation applies to employers with at least 100 employees. However, the specific implementation and establishment of the obligation may also be directed towards employers with fewer employees - it will depend on the specific implementation in national law. [38] The explicit obligation, without any concessions, is then directed, in accordance with Article 9, at employers who employ at least 250 employees.

Employers must prepare for the obligation to provide statistical data and information, in particular on

- the gender pay gap;
- the gender pay gap in supplementary or variable components;

[38] V době finalizování analýzy není právní předpis, ani jeho věcný obsahový záměr, k dispozici.

- the median gender pay gap;
- the median gender pay gap in supplementary or variable components;
- the proportion of women and men who receive supplementary or variable components;
- the proportion of women and men in each pay quartile band;
- the gender pay gap between workers by category of worker, broken down by regular basic wage or salary and supplementary or variable components.

Employers should try to comply with the scope of the information obligation as soon as possible. This can be based on the remuneration rules already set and applied. When processing the control data, it is also necessary to reflect the relatively broad definition of the concept of wages (remuneration for work), which differs in some points from wages in terms of, for example, the determination of the minimum remuneration for work (minimum wage) and the individual components that make up the total income of the employee. In the case of the Directive, this is likely to be a broader definition. With reference to Article 3 of the Directive and recital 21 (of the introductory provisions of the Directive), total remuneration is taken to be the normal basic or minimum wage or salary and any other remuneration paid by the employer directly or indirectly, in cash or in kind (additional or variable components) to the worker in connection with the employment. In accordance with the case law of the Court of Justice of the European Union, the term “remuneration” should include not only wages or salaries, but also additional or variable components of remuneration. The additional or variable components should take into account any benefits over and above the normal basic or minimum wage or salary which the worker receives directly or indirectly, in cash or in kind. These additional or variable components could include, but are not limited to, bonuses, overtime pay, travel, housing and meal allowances, training reimbursements, payments in the event of dismissal, statutory sick pay, statutory compensation and occupational pension schemes.

The reporting of information must also take the form of public scrutiny, e.g., by posting it on the employer's website (it can also be part of the final/annual report) in an annual tact.

The submission of information to the employer takes place annually. The obligation itself should generally start to apply in line with the implementation date of 7 June 2026. As the information is reported for the previous year, the obligation will realistically only need to be met from June 2027.

The obligation to provide information also differs in terms of the size of the employer, both in terms of the creation of the obligation itself and the scope and frequency of reporting:

- Employers with 250 or more employees will provide information by June 7, 2027, and annually thereafter for the previous calendar year.
- Employers with 150 to 249 employees shall provide information relating to the previous calendar year by 7 June 2027 and every three years thereafter.
- Employers with 100 to 149 workers shall provide information relating to the previous calendar year by 7 June 2031 and every three years thereafter.

The accuracy of the information is confirmed by the employer. It is then liable in the event that it is found to have provided misleading, incomplete or incorrect information, either by inspection or in litigation. In accordance with Article 9 of the Directive, the employee representative is also actively involved in the confirmation - an extension of participatory rights. Employee representatives have access to the methodologies used by the employer.

Employers will need to take care to comply with these obligations. And specifically to emphasize the provision of information on the gender pay gap between employees by category of employee, broken down by normal basic pay or salary and additional or variable components.

Employers provide information to all their workers and their workers' representatives. Employers will provide information on request to the Labour Inspectorate and the Equality

Authority. Information from the previous four years, if available, will also be made available on request to[39].

Employees, workers' representatives, labour inspectorates and equal treatment bodies have the right to ask the employer for additional explanations and details of any data provided, including an explanation of any gender pay gap. Employers shall respond to such requests within a reasonable period of time with a reasoned reply. If the gender pay gap is not justified by objective, gender-neutral criteria, employers shall remedy the situation within a reasonable period of time, in close cooperation with employee representatives, the labour inspectorate or an equal treatment body.

In a situation where an assessment of the actual conditions of remuneration would lead to an inequality in remuneration of more than 5, the employer is obliged to consult with the employee representatives and conduct a so-called *joint remuneration assessment*.

4.7 Joint assessment of the *gender pay gap*

Achieving the objectives set out by the Directive and the European legislator is not possible without setting up control processes and addressing situations where a *gender pay gap* and pay inequality are found. The criteria that the Directive introduces into the Czech legal order are for the most part nothing new, nor are the processes of control, sanctions and their enforcement. Finally, the review of the existing legislation on unequal employment, prohibition of discrimination and discriminatory conduct on the grounds of sex already shows both the case law and the decision-making practice of the supervisory authorities (in particular the Labour Inspectorate).

A prerequisite for the initiation of the joint assessment process is the occurrence of irregularities of at least 5% in the categories assessed, which the employer is unable to adequately substantiate or which it has not corrected within six months of their discovery.

[39] Článek 9 Směrnice.

The joint assessment process is therefore not initiated for every irregularity, but only when it cannot be explained or has not been corrected. As employee representatives are involved throughout the process of setting remuneration terms and conditions, their involvement can be used by the employer to identify potential complications or to eliminate risk points before the joint assessment process is even initiated

The process of joint assessment really comes into play when there are persistent inconsistencies. The Joint Remuneration Assessment is carried out to identify, correct and prevent gender pay gaps *that cannot be justified by objective and gender-neutral criteria* and includes:

- analysis of the proportion of women and men in each category of workers;
- information on average levels of gender pay and additional or variable components for each category of workers;
- any differences in average gender pay levels in each category of worker;
- the reasons for these differences in average pay levels and objective gender-neutral criteria, if any, to be jointly determined by the workers' representatives and the employer;
- the proportion of women and men who have received any increase in pay after returning from maternity, paternity, parental or care leave, if such an increase occurred in the category of workers during the period in which the leave was taken;
- measures to address pay gaps where they are not justified on the basis of objective and gender-neutral criteria;
- evaluation of the effectiveness of measures resulting from previous joint remuneration assessments.

The results of the joint remuneration assessment must be made available to employees, despite the fact that, for example, a trade union (i.e., an employee representative) has actively participated in the assessment. The Employee Information Obligations Directive establishes the maximum possible level of control. It will always be up to the employer to comply with

the obligation in an appropriate and customary manner (e.g., by informing about a change in the working time schedule, etc.).

Employers must remedy any unjustified disparity found without delay or within a reasonable time. From the point of view of national regulation by the Czech legal system, this should be an immediate remedy. If the employer continued to remunerate employees while maintaining the incorrectly set remuneration system, this would be a deliberate violation of the prohibition of discrimination and unequal treatment. This would give rise not only to the imposition of fines as we know them now[40], but also to a claim for damages and possibly non-pecuniary damage by the employees affected by the conduct. The implementation of the measures shall include an analysis of existing gender-neutral job evaluation and classification systems or the introduction of such systems to ensure that any direct or indirect discrimination in remuneration on the basis of gender is eliminated.

4.8 Extending participatory rights and the importance of social dialogue

Social dialogue (as defined in the previous chapters) is an essential tool and a way to achieve social reconciliation, decent working conditions and fair wages. Logically, this also affects the implementation of the Directive's objectives.

The Directive itself explicitly provides for the involvement of employee representatives. Although it does not explicitly mention the trade union as the employees' representative, it can be assumed in Czech conditions that it will be the central representative of the employees.

Article 13 of the Directive directly states that, without prejudice to the autonomy of the social partners, Member States shall take appropriate measures, in accordance with national law and practice, to ensure the effective involvement of the social partners, where appropriate at their request, by negotiating rights and obligations under the Directive. At the same time, appropriate measures should be taken to promote the role of the social partners and to

[40] Viz kapitola Kontrola a sankce

support the exercise of the right to collective bargaining on measures to combat pay discrimination and its adverse impact on the valuation of jobs predominantly performed by workers of one sex.

The Directive does not restrict the social partners in any way in the conduct of social dialogue (on the contrary, see previous paragraph) or in collective bargaining. The Directive shall in no way affect the right to negotiate, conclude and enforce collective agreements or to take collective action in accordance with national law or practice. The content of negotiated collective agreements may also include, beyond the usual parts concerning, for example, the employer's commitment to equal treatment of employees, avoidance of discriminatory behaviour, etc., more detailed conditions for the exercise of participatory rights - in particular the right to information and consultation on the introduction of remuneration criteria. Similarly, in a collective agreement, the parties may agree on the details of the joint assessment process, etc.

The prominent position of the social partners - employee representatives - is not only reflected in Article 13 of the Directive, which explicitly provides for the conduct of social dialogue, but also in the individual content sections of the Directive. Employee representatives take a central role, for example, in addressing and evaluating information on equal pay. For example, the Directive explicitly introduces cooperation with employee representatives in confirming the veracity of information. The accuracy of the information will be confirmed by the employer's management in consultation with employee representatives. Employee representatives have access to the methodologies used by the employer. [41] Employee representatives also have the right to clarify and explain the information provided.

Employee representatives are essential in the joint assessment process. The employer is obliged to provide the workers' representatives with information on the gender pay gap between workers by category of worker, broken down according to the normal basic wage or

[41] Čl. 9 odst. 6 Směrnice.

salary and additional or variable components. If the conditions for a joint assessment are met, the whole process must then be carried out in cooperation with the employee representatives.

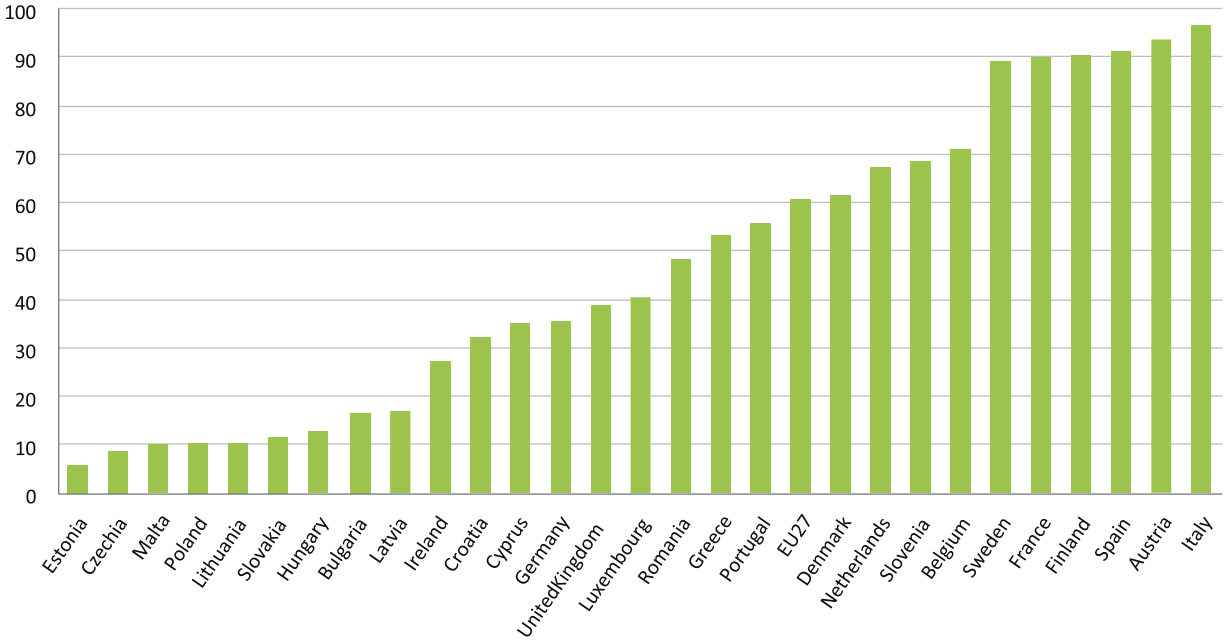
On a practical level, the question arises as to how to proceed if the employer does not have an employee representative. The wording of the Directive does not imply an exclusive position for the trade union. A teleological interpretation may lead to the conclusion that employees may choose a specific employee representative for this purpose (in accordance with national legislation), or the competence of higher trade union bodies could be considered, for example, in the context of sectoral social dialogue.

5 Collective bargaining and its impact on achieving the objectives of the Directive

The objectives of the Directive are to be achieved in active cooperation with employee representatives - in the Czech legal environment, in particular on the basis of the exercise of the participatory powers of the trade union. Substantial and substantive issues can be discussed in the context of normal social dialogue. However, specific rules - including remuneration rules - can be contained in collective agreements A collective agreement can only be reached through collective bargaining.

The binding nature of the collective agreement with direct effect on the employer makes collective agreements a very attractive and important means of achieving a fair level of working conditions, so they can also be an ideal means of actually achieving the objectives of the Directive and ensuring equal pay conditions. Wage agreements are quite often included in collective agreements. This is not just a typically Czech approach, quite the contrary. The establishment of fair pay, or at least some arrangements aimed at wage policy, can be found quite often in the Czech Republic in international comparison, but not as often as in Austria

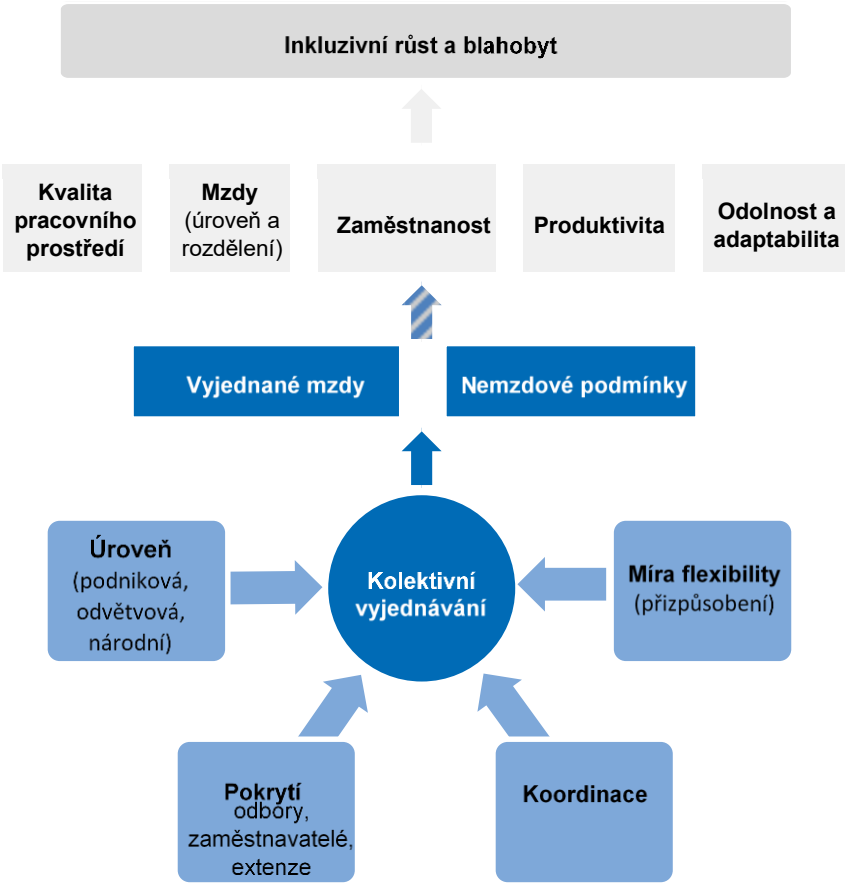
or Finland. The following table shows the extent to which wage agreements are included in collective agreements.[42]



Collective bargaining and its outcomes have a direct impact on the working and social conditions of employees. The level of fair working conditions and the quality of life of workers are influenced by the complex conditions of social dialogue. Particularly at the national and sectoral level, the remuneration and non-wage benefit rules enshrined in collective agreements are reflected in the overall level and quality of life.

[42] EUROFOUND AND CEDEFOP (2020), European Company Survey 2019: Workplace practices unlocking employee potential, European Company Survey 2019 series, Publications Office of the European Union: Luxembourg. 116.

Figure: Collective bargaining, labour market performance and inclusive growth[43]



Inclusive growth and well-being

Working environment quality, Wages (level and distribution), Employment, Productivity, Resilience and adaptability

Bargained wages,
Level (enterprise, sectoral, national),
TU coverage, employers, extension,

Non-wage conditions
Collective bargaining, Flexibility rate (adaptation)
Coordination

[43] OECD (2019), Negotiating Our Way Up: Collective Bargaining in a Changing World of Work, OECD Publishing, Paris, 2019. s. 122

The practical issue related to the levels of social dialogue and collective bargaining (collective agreements) can be understood as the effectiveness of the individual stages or levels at which wage issues are negotiated and incorporated.

The collective agreement represents the basic instrument of binding regulation of labour relations and working conditions at the employer, or the result of formalized social dialogue - collective bargaining.

6 Summary

The present study addressed issues related to the impact of Directive (EU) 2023/970, which strengthens the application of the principle of equal pay for men and women for equal work or work of equal value through pay transparency and enforcement mechanisms. The research focused not only on the actual values, objectives and main points of the Directive, but also on the consideration of the legislator's intention, the substantive scope of the Directive and the comparison with the existing legislation - or the extent of the changes needed.

In the context of achieving the objectives of the Directive, the study also looked at the aspect of social dialogue, the position of workers' representatives and their monitoring powers in ensuring that the Directive's purpose is effectively translated into practice, all in the context of ensuring fair working conditions.

When comparing the objectives and the existing legislation, the study showed that the Czech legal environment, despite the proclaimed scope of the *gender pay gap* of approximately 18%, is not alien to the protection of the affected groups of persons, or that the rule of equal treatment and non-discrimination is already contained in the existing form - even before the implementation of the Directive. In particular, Article 28 of the Charter of Fundamental Rights and Freedoms, which guarantees employees fair remuneration for the performance of dependent work, as well as other legislation, such as the Anti-Discrimination Act, the Employment Act, and the Labour Code, completely prohibit unequal treatment and discrimination on the basis of gender and offer affected persons tools to defend themselves against unfair practices.

The study also highlighted the importance of social dialogue and the exercise of participatory rights of workers' representatives in ensuring fair working conditions and decent pay in practice. Trade unions play an essential role, supported by the new rules arising from the Directive, in monitoring and addressing employer-reported pay inequalities, as well as in discussing employer-proposed solutions.

Social dialogue and collective bargaining influence fairness in workplaces and the promotion of fair pay, better working conditions and an inclusive labour market overall.[44]

Trade unions can influence the quality of working conditions in collective bargaining. Fair pay, decent work and reconciliation of family and working life are not only among the main objectives of collective bargaining in the modern world of work (with the emphasis on new technologies and the digitalization and robotization of work), but also among the main results. The impact of collective bargaining on fair working conditions is clear.

The use of social dialogue and collective bargaining as a basic tool for adjusting working conditions, respectively. In general, the promotion of social dialogue, including the position of social partners, in supranational legislation emphasizes the importance of collective bargaining and at the same time allows national social partners (in the conditions of the Czech Republic, especially in the case of the plurality of trade unions and paralyzing collective bargaining) to require the legislator to be active in the direction of the obligations arising from the Directive, which strengthens the application of the principle of equal pay for men and women for equal work or work of equal value through pay transparency, as well as the enforcement of the Directive on minimum adequate wages and the promotion of collective bargaining, and from other legal norms.

The regulation of the Czech collective bargaining system has certain gaps - first of all in the case of the mentioned plurality of trade unions, while the social partners can stabilize their position by referring to the use of models from foreign legislation. With appropriate argumentation, it would be possible to overcome the already rather outdated ruling of the Constitutional Court of the Czech Republic and to rely on the German, Slovenian or Slovak legislation, as well as the interpretation of the Committee on the Application of ILO Conventions, and to appropriately incorporate the solution of the plurality of trade unions

[44] Employment and Social Developments in Europe: 2020 report addresses social fairness and solidarity [online]. *Ec.europa.eu* [cit. 2025-28-04]. Dostupné z: https://www.age-platform.eu/publications/employment-and-social-developments-europe-2020-report-addresses-social-fairness-and

into the legislation by means of an admissible qualifying decision-making criterion - majority, i.e., by introducing the majority principle.

The study presented showed the effectiveness of collective bargaining for workers and their working conditions with regard to fair and decent wages. Where there is a trade union and where employees are covered by collective agreements, employees earn on average 20% higher wages than where the social partners do not discuss and negotiate remuneration in social dialogue, with an annual difference of approximately CZK 81,528.[45], as well as detecting and addressing equal treatment rules. In virtually 100% of cases, the content of collective agreements includes a commitment by the employer to avoid all forms of unequal treatment and discrimination, as well as to close any *gender pay gap*.

[45] Zpráva Rady ČMKOS o činnosti v období 2018 – 2022 pro VIII. Sjezd ČMKOS. s. 14

9 Literature

Dekret presidenta republiky č. 104/1945 Sb., o závodních a podnikových radách. Dostupné z: https://www.zakonyprolidi.cz/cs/1945-104

Druhy právních předpisů EU. Dostupné z: https://commission.europa.eu/law/law-making-process/types-eu-law_cs

Employment and Social Developments in Europe: 2020 report addresses social fairness and solidarity [online]. Ec.europa.eu [cit. 2025-28-04]. Dostupné z: https://www.age-platform.eu/publications/employment-and-social-developments-europe-2020-report-addresses-social-fairness-and

EUROFOND. Sociální dialog. [online]. eurofoun.europa.eu [cit. 2025-13-05]. Dostupné z: https://www.eurofound.europa.eu/cs/topic/social-dialogue

EUROFOUND AND CEDEFOP (2020), European Company Survey 2019: Workplace practices unlocking employee potential, European Company Survey 2019 series, Publications Office of the European Union: Luxembourg. 180 s. ISBN 978-92-897-2106-6.

Evropský pilíř sociálních práv [online]. *ec.europa.eu* [cit. 2025-28-04]. s. 2. Dostupné z: https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-social-rights-20-principles_cs#kapitola-ii-spravedliv-pracovn-podmnky

HORECKÝ, Jan. Role kolektivního vyjednávání při zajištění pracovních podmínek včetně spravedlivé odměny za práci. Studie. Právní Institut. 2021. 110 s.

HORECKÝ, Jan. STRÁNSKÝ, Jaroslav. Sociální dialog a jeho účastníci. In JUDr. Dana Hrabcová, Ph.D. Sborník příspěvků z mezinárodní vědecké konference Pracovní právo 2011 na téma

Sociální dialog. 1. vydání. Brno: Masarykova univerzita, 2011. s. 27 - 41. ISBN 978-80-210-5748-7.

HORECKÝ. Jan. Nové trendy podporující roli a význam kolektivního vyjednávání - Role kolektivního vyjednávání v době rostoucí digitalizace práce. Odborná studie. Právní institut. Asociace samostatných odborů. 2020. 104 s. Dostupné z: https://ipodpora.odbory.info/soubory/uploads/Nov%C3%A9_trendy_podporuj%C3%ADc%C3%AD_roli_a_v.pdf

ILO. Decent work and the 2030 Agenda for sustainable development. [online]. ilo. org [cit. 2020-28-08]. Dostupné z: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-lisbon/documents/event/wcms_667247.pdf

ILO. Decent work and the 2030 Agenda for sustainable development. [online]. *ilo. org* [cit. 2025-28-05]. Dostupné z: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-lisbon/documents/event/wcms_667247.pdf

Informace o pracovních podmínkách sjednaných v kolektivních smlouvách. MPSV. Trexima. 2021. 136. s. Dostupné z: https://www.kolektivnismlouvy.cz/download/2021/IPP_2021.pdf

Listina základních práv Evropské unie. [online]. *fra.europa.eu* [cit. 2025-28-04]. s. 2. Dostupné z: https://fra.europa.eu/cs/eu-charter/article/31-slusne-spravedlive-pracovni-podminky

Nařízení Evropského parlamentu a Rady (EU) 2016/679 ze dne 27. dubna 2016 o ochraně fyzických osob v souvislosti se zpracováním osobních údajů a o volném pohybu těchto údajů a o zrušení směrnice 95/46/ES (obecné nařízení o ochraně osobních údajů). [online]. *Eur-lex.europa.eu* [cit. 2025-28-05]. Dostupné z: https://eur-lex.europa.eu/eli/reg/2016/679/oj?locale=cs

OECD (2019), Negotiating Our Way Up: Collective Bargaining in a Changing World of Work, OECD Publishing, Paris, 2019. 270 s. ISBN 978-92-64-63974-4.

OECD. Gender Wage Gap. Dostupné z: Gender wage gap | OECD.

RHINEHART, Lynn. McNICHOLAS, Celine. Collective bargaining beyond the worksite. Economic Policy Institute. [online]. *epi.org* [cit. 2025-28-04]. Dostupné z: https://www.epi.org/publication/collective-bargaining-beyond-the-worksite-how-workers-and-their-unions-build-power-and-set-standards-for-their-industries/

Rozsudek Nejvyššího soudu České republiky ze dne 20. července 2020, sp. zn. 21 Cdo 3955/2018

Rozsudek Nejvyššího soudu České republiky ze dne 6. srpna 2015, sp. zn. 21 Cdo 3976/2013

Rozsudek Nejvyššího soudu ČR ze dne 18. ledna 2022, sp. zn. 21 Cdo 627/2021-400

Rozsudek Soudního Dvora EU C-152/84 ze dne 26. února 19886 „Marshall". Dostupné z: https://eur-lex.europa.eu/legal-content/CS/TXT/?uri=celex:61984CJ0152

Rozsudek Soudního Dvora EU C-41/74 ze dne 4. prosince 1974 *„Yvonne van Duyn"*. Dostupné z: https://eur-lex.europa.eu/legal-content/CS/ALL/?uri=CELEX:61974CJ0041

Rozsudek Soudního Dvora EU ve věci C-6/90 a C-9/90 ze dne 19. listopadu 1991 „Francovich". Dostupné z: https://curia.europa.eu/arrets/TRA-DOC-CS-ARRET-C-0006-1990-200407021-05_00.html

RYDER, Guy. Decent work and the 2030 Agenda for sustainable development. [online]. International Labour Organization [cit. 2025-27-05]. Dostupné z: http://cite.gov.pt/pt/destaques/complementosDestqs2/Decent_work.pdf

Směrnice Evropského Parlamentu a Rady 2019/1158/EU o rovnováze mezi pracovním a soukromým životem rodičů a pečujících osob. [online]. Eur-lex.europa.eu [cit. 2025-28-05]. Dostupné z: https://eur-lex.europa.eu/legal-content/CS/TXT/PDF/?uri=CELEX:32019L1158

SOMAVIA, Juan. Report of the Director-General: Decent Work. International Labour Office Geneva. Dostupné z: https://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm

SÚIP. Roční souhrnná zpráva o výsledcích kontrolních akcí SÚIP za rok 2024. s. 40. Dostupné z: https://www.suip.cz/documents/20142/43684/SUIP_souhrnna_zprava_o_vysledcich_kontrolnich_akci_za_rok_2024.pdf/fb9eda2f-67a1-67eb-54f3-0c3e88e9f9d4?t=1749454931506

Svoboda sdružování – sbírka rozhodnutí Výboru pro svobodu sdružování. Praha: ČMKOS. 2020. 486 s. ISBN 9788086809328.

Zpráva Rady ČMKOS o činnosti v období 2018 – 2022 pro VIII. Sjezd ČMKOS.

10 Annex 1: Directive on strengthening the application of the principle of equal pay

DIRECTIVE (EU) 2023/970 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 10 May 2023

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 and enforcement mechanisms

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 157(3) th

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Acting in accordance with the ordinary legislative procedure ([2]),

Whereas:

(1) Article 11 of the United Nations Convention of 18 December 1979 on the Elimination of All Forms of Discrimination against Women, which all Member States have ratified, provides that

States Parties are to take all appropriate measures to ensure, *inter alia*, the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.

(2) Article 2 and Article 3(3) of the Treaty on European Union enshrine the right to equality between women and men as one of the essential values of the Union.

(3) Articles 8 and 10 of the Treaty on the Functioning of the European Union (TFEU) require the Union to aim to eliminate inequalities, to promote equality between men and women and to combat discrimination based on sex in all its policies and activities.

(4) Article 157(1) TFEU obliges each Member State to ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. Article 157(3) TFEU provides for the adoption by the Union of measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the

principle of equal pay for equal work or work of equal value (the ‘principle of equal pay’).

(5) The Court of Justice of the European Union (the ‘Court of Justice’) has held that the scope of the principle of equal treatment of men and women cannot be confined to discrimination based on the fact that a person is of one or other sex ([3]). In view of its purpose and the nature of the rights which it seeks to safeguard, that principle also applies to discrimination arising from gender reassignment.

(6) In some Member States, it is currently possible for persons to legally register as having a third, often a neutral, gender. This Directive does not affect relevant national rules giving effect to such recognition as regards matters of employment and pay.

(7) Article 21 of the Charter of Fundamental Rights of the European Union (the ‘Charter’) prohibits any discrimination, *inter alia*, on the grounds of sex. Article 23 of the Charter provides that equality between women and men must be ensured in all areas, including employment, work and pay.

(8) Article 23 of the Universal Declaration of Human Rights states, *inter alia*, that everyone, without any discrimination, has the right to equal pay for

equal work, to free choice of employment, to just and favourable conditions of work and to just remuneration ensuring an existence worthy of human dignity.

(9) The European Pillar of Social Rights, jointly proclaimed by the European Parliament, the Council, and the Commission, incorporates among its principles equality of treatment and opportunities between women and men, and the right to equal pay for work of equal value.

(10) Directive 2006/54/EC of the European Parliament and of the Council [(4)] provides that for the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration is to be eliminated. In particular, where a job classification system is used for determining pay, it is to be based on the same gender-neutral criteria and should be drawn up so as to exclude any discrimination on grounds of sex.

(11) The 2020 evaluation of the relevant provisions of Directive 2006/54/EC found that the application of the principle of equal pay is hindered by a lack of transparency in pay systems, a lack of legal certainty on the concept of work of equal value, and by procedural

obstacles faced by victims of discrimination. Workers lack the necessary information to make a successful equal pay claim and, in particular, information about the pay levels for categories of workers who perform the same work or work of equal value. The report found that increased transparency would allow revealing gender bias and discrimination in the pay structures of an undertaking or organisation. It would also enable workers, employers and the social partners to take appropriate action to ensure the application of the right to equal pay for equal work and work of equal value (the 'right to equal pay').

(12) Following a thorough evaluation of the existing framework on equal pay for equal work or work of equal value and a wide-ranging and inclusive consultation process, the Communication of the Commission of 5 March 2020 on 'A Union of Equality: Gender Equality Strategy 2020-2025' announced that the Commission would propose binding measures on pay transparency.

(13) The economic and social consequences of the COVID-19 pandemic have had a disproportionately negative impact on women and gender equality, and job losses have often been concentrated in low-paid, female-

dominated sectors. The COVID-19 pandemic has highlighted the continued, structural undervaluation of work predominantly carried out by women and has demonstrated the high socio-economic value of women's work in front-line services, such as health care, cleaning, childcare, social care and residential care for older people and other adult dependents, which stands in strong contrast to its low visibility and recognition.

(14) The effects of the COVID-19 pandemic will therefore further widen gender inequalities and the gender pay gap unless the recovery response is gender sensitive. Those consequences have made it even more pressing to tackle the issue of equal pay for equal work or work of equal value. Strengthening the implementation of the principle of equal pay through further measures is particularly important to ensure that the progress which has been made in addressing disparities in pay is not compromised.

(15) The Union gender pay gap persists: it stood at 13 % in 2020, with significant variations across Member States, and has decreased only minimally over the last ten years. The gender pay gap is caused by various factors, such as

gender stereotypes, the perpetuation of the ‘glass ceiling’ and the ‘sticky floor’, horizontal segregation, including the overrepresentation of women in low-paid service jobs, and unequal sharing of care responsibilities. In addition, the gender pay gap is partly caused by direct and indirect gender-based pay discrimination. All those elements constitute structural obstacles that form complex challenges to achieving good quality jobs and equal pay for equal work or work of equal value and have long-term consequences such as a pension gap and the feminisation of poverty.

(16) A general lack of transparency about pay levels within organisations maintains a situation where gender-based pay discrimination and bias can go undetected or, where suspected, are difficult to prove. Binding measures are therefore needed to improve pay transparency, encourage organisations to review their pay structures to ensure equal pay for women and men performing the same work or work of equal value, and to enable victims of discrimination to exercise their right to equal pay. Such binding measures need to be complemented by provisions clarifying existing legal concepts, such as the concepts of pay and work of equal

value, and measures improving enforcement mechanisms and access to justice.

(17) The application of the principle of equal pay should be enhanced by eliminating direct and indirect pay discrimination. This does not preclude employers from paying workers performing the same work or work of equal value differently on the basis of objective, gender-neutral and bias-free criteria, such as performance and competence.

(18) This Directive should apply to all workers, including part-time workers, workers on a fixed-term contract and persons with a contract of employment or employment relationship with a temporary agency, as well as workers in management positions, who have an employment contract or employment relationship as defined by law, collective agreements and/or practice in force in each Member State, taking into account the case-law of the Court of Justice ([5]). Provided that they fulfil relevant criteria, domestic workers, on-demand workers, intermittent workers, voucher based-workers, platform workers, workers in sheltered employment, trainees and apprentices fall within the scope of this Directive. The determination of the existence of

an employment relationship should be guided by the facts relating to the actual performance of the work and not by the parties' description of the relationship.

(19) An important element of eliminating pay discrimination is pay transparency prior to employment. This Directive should therefore also apply to applicants for employment.

(20) In order to remove obstacles for victims of gender-based pay discrimination to exercise their right to equal pay, and to guide employers in ensuring respect of that right, the core concepts related to equal pay for equal work or work of equal value, such as pay and work of equal value, should be clarified in accordance with the case-law of the Court of Justice. This should facilitate the application of those concepts, especially for micro, small and medium-sized enterprises.

(21) The principle of equal pay should be observed with regard to wages, salaries or any other consideration, whether in cash or in kind, which workers receive directly or indirectly, in respect of their employment from their employer. In accordance with the case-law of the Court of Justice ([6]), the concept of pay should comprise not only salary, but also complementary or

variable components of the pay. Under complementary or variable components, any benefits in addition to the ordinary basic or minimum wage or salary, which the worker receives directly or indirectly, whether in cash or in kind, should be taken into account. Such complementary or variable components may include, but are not limited to, bonuses, overtime compensation, travel facilities, housing and food allowances, compensation for attending training, payments in the case of dismissal, statutory sick pay, statutory required compensation and occupational pensions. The concept of pay should include all elements of remuneration due under law, collective agreements and/or practice in each Member State.

(22) In order to ensure a uniform presentation of the information required by this Directive, pay levels should be expressed as gross annual pay and the corresponding gross hourly pay. It should be possible to base the calculation of pay levels on the actual pay specified in regard to the worker, regardless of whether it is set annually, monthly, hourly or otherwise.

(23) Member States should not be obliged to set up new bodies for the purpose of this Directive. It

should be possible for them to confer tasks deriving from it upon established bodies, including the social partners, in accordance with national law and/or practice, provided that the Member States comply with the obligations set out in this Directive.

(24) In order to protect workers and to address their fear of victimisation in the application of the principle of equal pay, they should be able to be represented by a representative. This could be trade unions or other workers' representatives. If there are no workers' representatives, workers should be able to be represented by a representative of their choice. Member States should have a possibility to take into account their national circumstances and different roles concerning workers' representation.

(25) Article 10 TFEU provides that, in defining and implementing its policies and activities, the Union is to aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Article 4 of Directive 2006/54/EC provides that there is to be no direct or indirect discrimination on grounds of sex in relation to pay. Gender-based pay discrimination where a victim's sex plays a crucial role can take many different forms in practice. It

may involve an intersection of various axes of discrimination or inequality where the worker is a member of one or several groups protected against discrimination on the basis of sex, on the one hand, and racial or ethnic origin, religion or belief, disability, age or sexual orientation, as protected under Council Directive 2000/43/EC ([7]) or 2000/78/EC ([8]), on the other. Women with disabilities, women of diverse racial and ethnic origin including Roma women, and young or elderly women are among groups which may face intersectional discrimination. This Directive should therefore clarify that, in the context of gender-based pay discrimination, it should be possible to take such a combination into account, thus removing any doubt that may exist in this regard under the existing legal framework and enabling national courts, equality bodies and other competent authorities to take due account of any situation of disadvantage arising from intersectional discrimination, in particular for substantive and procedural purposes, including to recognise the existence of discrimination, to decide on the appropriate comparator, to assess the proportionality, and to determine, where

relevant, the level of compensation awarded or penalties imposed.

An intersectional approach is important for understanding and addressing the gender pay gap. This clarification should not change the scope of employers' obligations in regard to the pay transparency measures under this Directive. In particular, employers should not be required to gather data related to protected grounds other than sex.

(26) In order to respect the right to equal pay, employers must have pay structures in place ensuring that there are no gender-based pay differences between workers performing the same work or work of equal value that are not justified on the basis of objective, gender-neutral criteria. Such pay structures should allow for the comparison of the value of different jobs within the same organisational structure. It should be possible to base such pay structures on existing Union guidelines related to gender-neutral job evaluation and classification systems, or on indicators or gender-neutral models. In accordance with the case law of the Court of Justice, the value of work should be assessed and compared on the basis of objective criteria, including educational, professional and training

requirements, skills, effort, responsibility and working conditions, irrespective of differences in working patterns. To facilitate the application of the concept of work of equal value, especially for micro, small and medium-sized enterprises, the objective criteria to be used should include four factors: skills, effort, responsibility and working conditions. Those factors have been identified by the existing Union guidelines as being essential and sufficient for evaluating the tasks performed in an organisation regardless of to which economic sector the organisation belongs.

As not all factors are equally relevant for a specific position, each of the four factors should be weighed by the employer depending on the relevance of those criteria for the specific job or position concerned. Additional criteria may also be taken into account, where they are relevant and justified. Where appropriate, the Commission should be able to update existing Union guidelines, in consultation with the European Institute for Gender Equality (EIGE).

(27) National systems for wage-setting vary and can be based on collective agreements and/or elements decided by the employer. This Directive does not affect the various national systems for wage setting.

(28) The identification of a valid comparator is an important parameter in determining whether work may be considered of equal value. It enables workers to show that they were treated less favourably than a comparator of a different sex performing equal work or work of equal value. Building on the developments brought by the definition of direct and indirect discrimination in Directive 2006/54/EC, in situations where no real-life comparator exists, the use of a hypothetical comparator should be allowed, to enable workers to show that they have not been treated in the same way as a hypothetical comparator of another sex would have been treated. This would lift an important obstacle for potential victims of gender-based pay discrimination, especially in highly gender-segregated employment markets where a requirement of finding a comparator of the opposite sex makes it almost impossible to bring an equal pay claim.

In addition, workers should not be prevented from using other facts from which an alleged discrimination can be presumed, such as statistics or other available information. This would allow gender-based pay inequalities to be more effectively addressed in gender-

segregated sectors and professions, especially in female-dominated ones such as the care sector.

(29) The Court of Justice has clarified that in order to assess whether workers are in a comparable situation, the comparison is not necessarily limited to situations in which men and women work for the same employer ([9]). Workers may be in a comparable situation even when they do not work for the same employer whenever the pay conditions can be attributed to a single source establishing those conditions and where those conditions are equal and comparable. This may be the case when the relevant pay conditions are regulated by statutory provisions or agreements relating to pay applicable to several employers, or when such conditions are laid down centrally for more than one organisation or business within a holding company or conglomerate. Furthermore, the Court of Justice has clarified that the comparison is not limited to workers employed at the same time as the claimant ([10]). Additionally, when performing the actual assessment, it should be recognised that a difference in pay may be explained by factors unrelated to sex.

(30) Member States should ensure that training and specific tools and methodologies are made available to support and guide employers in the assessment of what constitutes work of equal value. This should facilitate the application of that concept, especially for micro, small and medium-sized enterprises. Taking into account national law, collective agreements and/or practice, Member States should be able to entrust the development of specific tools and methodologies to the social partners or develop them in cooperation with, or after consulting, the social partners.

(31) Job classification and evaluation systems can, if not used in a gender-neutral manner, in particular when they assume traditional gender stereotypes, result in gender-based pay discrimination. In such cases, they contribute to and perpetuate the pay gap by evaluating male and female dominated jobs differently in situations where the work performed is of equal value. Where gender-neutral job evaluation and classification systems are used, however, they are effective in establishing a transparent pay system and are instrumental in ensuring that direct or indirect discrimination on grounds of sex is excluded. They detect indirect pay

discrimination related to the undervaluation of jobs typically done by women. They do so by measuring and comparing jobs the content of which is different but of equal value and so support the principle of equal pay.

(32) The lack of information on the envisaged pay range of a position creates an information asymmetry which limits the bargaining power of applicants for employment. Ensuring transparency should enable prospective workers to make an informed decision about the expected salary without limiting in any way the employer's or worker's bargaining power to negotiate a salary even outside the indicated range. Transparency would also ensure an explicit, non-gender-biased basis for pay setting and would disrupt the undervaluation of pay compared to skills and experience. Transparency would also address intersectional discrimination where non-transparent pay settings allow for discriminatory practices on several discrimination grounds. Applicants for employment should receive information about the initial pay or its range in a manner such as to ensure an informed and transparent negotiation on pay, such as in a published job vacancy notice, prior to the job interview, or otherwise

prior to the conclusion of any employment contract. The information should be provided by the employer or in a different manner, for instance by the social partners.

(33) In order to disrupt the perpetuation of the gender pay gap affecting individual workers over time, employers should ensure that job vacancy notices and job titles are gender neutral and that recruitment processes are led in a non-discriminatory manner, so as not to undermine the right to equal pay. Employers should not be allowed to enquire or proactively try to obtain information about the current pay or prior pay history of an applicant for employment.

(34) Pay transparency measures should protect workers' right to equal pay while limiting, to the extent possible, costs and administrative burden for employers, paying specific attention to micro, small and medium-sized enterprises. Where appropriate, measures should be tailored to the size of employers, taking into account employers' headcount. The number of workers employed by employers to be applied as a criterion whether an employer is subject to pay reporting as referred to in this Directive is set taking into account Commission

Recommendation 2003/361/EC on micro, small and medium-sized enterprises ([11]).

(35) Employers should make accessible to workers the criteria that are used to determine pay levels and pay progression. Pay progression refers to the process of how a worker moves to a higher pay level. Criteria related to pay progression can include, *inter alia*, individual performance, skills development and seniority. When implementing this obligation, Member States should pay particular attention to avoiding excessive administrative burden for micro and small enterprises. Member States should also be able to provide, as a mitigating measure, ready-made templates to support micro and small enterprises in complying with the obligation. Member States should be able to exempt employers which are micro or small enterprises from the obligation related to pay progression, for instance by allowing them to make the pay progression criteria available upon request by workers.

(36) All workers should have the right to obtain information, upon their request, on their individual pay level and on the average pay levels, broken down by sex, for the category of workers performing the same work as them or

work of equal value to theirs. They should also have the possibility to receive the information through workers' representatives or through an equality body. Employers should inform workers of that right on an annual basis, as well as of the steps to be undertaken in order to exercise the right. Employers may also, on their own initiative, opt to provide such information without workers needing to request it.

(37) This Directive should ensure that persons with disabilities have adequate access to the information provided pursuant to it to applicants for employment and workers. Such information should be provided to those persons taking into account their particular disabilities, in a format and appropriate form of assistance and support to ensure their access to and comprehension of the information. This could include the provision of information in an understandable way which they can perceive, in fonts of adequate size, using sufficient contrast or other format appropriate to the type of their disability. Where relevant, Directive (EU) 2016/2102 of the European Parliament and of the Council [(12)] applies.

(38) Employers with at least 100 workers should regularly report on pay, as provided for by this

Directive. That information should be published by the Member States' monitoring bodies in a suitable and transparent manner. Employers may publish those reports on their website or make them publicly available in another manner, for instance by including the information in their management report, where applicable in the management report drawn up under Directive 2013/34/EU of the European Parliament and of the Council ([13]). Employers that are subject to the requirements of that Directive may choose to report on pay alongside other worker-related matters in their management report. To maximise the coverage of pay transparency of workers, Member States may increase the frequency of reporting or make regular reporting on pay mandatory for employers with fewer than 100 workers.

(39) Pay reporting should allow employers to evaluate and monitor their pay structures and policies, allowing them to proactively comply with the principle of equal pay. Reporting and joint pay assessments contribute to an increased awareness of gender bias in pay structures and of pay discrimination and contribute to addressing such bias and discrimination in an effective and systemic way,

thereby benefitting all workers employed by the same employer. At the same time, the sex-disaggregated data should assist competent public authorities, workers' representatives and other stakeholders in monitoring the gender pay gap across sectors (horizontal segregation) and functions (vertical segregation). Employers may wish to accompany the published data by an explanation of any gender pay differences or gaps. Where differences in average pay for the same work or work of equal value between female and male workers are not justified on the basis of objective, gender-neutral criteria, the employer should take measures to remove the inequalities.

(40) To reduce the burden on employers, Member States could gather and interlink the necessary data through their national administrations allowing for a computation of the pay gap between female and male workers per employer. Such data gathering may require interlinking data from several public administrations, such as tax inspectorates and social security offices, and would be possible if administrative data matching employers' data, at company or organisational level, to workers' data, at individual level, including benefits in

cash and in kind, are available. Member States could gather that information not only for employers that are covered by the pay reporting obligation under this Directive, but also for employers that are not covered by the obligation and that report voluntarily. The publication of the required information by Member States should replace the obligation of pay reporting on those employers covered by the administrative data provided that the result intended by the reporting obligation is achieved.

(41) In order to make the information on the gender pay gap at organisational level widely available, Member States should entrust the monitoring body designated pursuant to this Directive to compile the data on the pay gap received from employers without putting an additional burden on the latter. The monitoring body should make those data public, including by publishing them on an easily accessible website, allowing comparison of the data of individual employers, sectors and regions of the Member State concerned.

(42) Member States may acknowledge employers that are not subject to the reporting obligations set out in this Directive, which voluntarily report on their pay, for instance by means of a pay

transparency label, with a view to promoting good practices in relation to the rights and obligations laid down in this Directive.

(43) Joint pay assessments should trigger the review and revision of pay structures in organisations with at least 100 workers that show pay inequalities. The joint pay assessment should be carried out if employers and the workers' representatives concerned do not agree that the difference in average pay level between female and male workers of at least 5 % in a given category of workers can be justified on the basis of objective, gender-neutral criteria, if such a justification is not provided by the employer, or if the employer has not remedied such a difference in pay level within six months of the date of submission of the pay reporting. The joint pay assessment should be carried out by employers in cooperation with workers' representatives. If there are no workers' representatives, they should be designated by workers for the purpose of the joint pay assessment. Joint pay assessments should lead, within a reasonable period of time, to the elimination of gender-based pay discrimination through the adoption of remedial measures.

(44) Any processing or publication of information under this Directive should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council ([14]). Specific safeguards should be added to prevent the direct or indirect disclosure of information of an identifiable worker. Workers should not be prevented from voluntarily disclosing their pay for the purpose of the enforcement of the principle of equal pay.

(45) It is important that the social partners discuss and pay particular attention to matters of equal pay in collective bargaining. The various features of national social dialogue and collective bargaining systems across the Union and the autonomy and contractual freedom of the social partners, as well as their capacity as representatives of workers and employers should be respected. Therefore, Member States, in accordance with their national system and practices, should take appropriate measures to encourage the social partners to pay due attention to equal pay matters, which may include discussions at the appropriate level of collective bargaining, measures to stimulate and remove undue restrictions on the exercise of the right to collective bargaining related to

the matters concerned and the development of gender-neutral job evaluation and classification systems.

(46) All workers should have the necessary procedures at their disposal to facilitate the exercise of their right of access to justice. National legislation providing for the use of conciliation, or making the intervention of an equality body compulsory or subject to incentives or penalties should not prevent parties from exercising their right of access to the courts.

(47) Involving equality bodies, in addition to other stakeholders, is instrumental in effectively applying the principle of equal pay. The powers and mandates of the national equality bodies should therefore be adequate to fully cover gender-based pay discrimination, including any pay transparency or any other rights and obligations laid down in this Directive. In order to overcome the procedural and cost-related obstacles faced by workers who seek to exercise their right to equal pay, equality bodies, as well as associations, organisations and workers' representatives or other legal entities with an interest in ensuring equality between men and women should be able to represent individuals.

They should be able to assist workers by acting on their behalf or in support of them, which would allow workers who have suffered discrimination to effectively institute a claim regarding the alleged infringement of their rights and the principle of equal pay.

(48) Bringing claims on behalf or in support of several workers is a way to facilitate proceedings that would not otherwise have been brought because of procedural and financial barriers or a fear of victimisation. It is also facilitative when workers are facing discrimination on multiple grounds which can be difficult to disentangle. Collective claims have the potential to uncover systemic discrimination and create visibility of the right to equal pay and of gender equality in society as a whole. The possibility of collective redress could motivate pro-active compliance with pay transparency measures, creating peer pressure, increasing employers' awareness and willingness to act preventively, and addressing the systemic nature of pay discrimination. Member States may decide to set qualification criteria for representatives of workers in court proceedings relating to equal pay claims, in order to ensure that such representatives are adequately qualified.

(49) Member States should ensure the allocation of sufficient resources to equality bodies for the effective and adequate performance of their tasks related to pay discrimination based on sex. Where the tasks are allocated to more than one body, Member States should ensure that they are adequately coordinated. This includes, for instance, allocating amounts recovered as fines to the equality bodies for the purpose of effectively carrying out their functions in regard to the enforcement of the right to equal pay, including bringing pay discrimination claims or assisting and supporting victims in bringing such claims.

(50) Compensation should cover in full the loss and damage sustained as a result of gender-based pay discrimination in accordance with the case-law of the Court of Justice ([15]). It should include full recovery of back pay and related bonuses or payments in kind, as well as compensation for lost opportunities, such as access to certain benefits depending on pay level, and for non-material damage, such as distress because of the undervaluation of work performed. Where appropriate, the compensation can take into account damage caused by pay discrimination based on sex that intersects with other

protected grounds of discrimination. Member States should not fix a prior upper limit for such compensation.

(51) In addition to compensation, other remedies should be provided for. Competent authorities or national courts should, for instance, be able to require an employer to take structural or organisational measures to comply with its obligations regarding equal pay. Such measures may include, for instance, an obligation to review the pay setting mechanism based on a gender-neutral evaluation and classification; to set up an action plan to eliminate the discrepancies discovered and to reduce any unjustified gaps in pay; to provide information and raise workers' awareness of their right to equal pay; and to establish a mandatory training for human resources staff on equal pay and gender-neutral job evaluation and classification.

(52) In accordance with the case- law of the Court of Justice ([16]), Directive 2006/54/EC establishes provisions to ensure that the burden of proof shifts to the respondent when there is a *prima facie* case of discrimination. Nevertheless, it is not always easy for victims and courts to know how to establish even that presumption. In case C-109/88, the Court of Justice held that when a

system of pay is totally lacking in transparency, the burden of proof should be shifted to the respondent, irrespective of the worker showing a *prima facie* case of pay discrimination. Accordingly, the burden of proof should be shifted to the respondent where an employer does not comply with the pay transparency obligations set out in this Directive, for instance by refusing to provide information requested by the workers or not reporting on the gender pay gap, where relevant, save where the employer proves that such an infringement was manifestly unintentional and of a minor character.

(53) In accordance with the case-law of the Court of Justice, national rules on limitation periods relating to the bringing of claims regarding alleged infringements of the rights provided for in this Directive should be such that they do not render virtually impossible or excessively difficult the exercise of those rights. Limitation periods create specific obstacles for victims of gender-based pay discrimination. For that purpose, common minimum standards should be established. Those standards should determine when the limitation period begins to run, the duration thereof and the circumstances

under which it is suspended or interrupted, and should provide that the limitation period for bringing claims is at least three years. Limitation periods should not begin to run before the claimant is aware, or can reasonably be expected to be aware, of the infringement. Member States should be able to decide that the limitation period does not begin to run while the infringement is ongoing or before the end of the employment contract or employment relationship.

(54) Litigation costs create a serious disincentive for victims of gender-based pay discrimination to bring claims regarding alleged infringements of their right to equal pay, leading to the insufficient protection of workers and the insufficient enforcement of the right to equal pay. In order to remove that significant procedural obstacle to justice, Member States should ensure that national courts can assess whether an unsuccessful claimant had reasonable grounds for bringing the claim and, if so, whether that claimant should not be required to pay the costs of the proceedings. This should in particular apply where a successful respondent has not complied with

the pay transparency obligations set out in this Directive.

(55) Member States should provide for effective, proportionate and dissuasive penalties in the event of infringements of national provisions adopted pursuant to this Directive or national provisions that are already in force on the date of entry into force of this Directive and that relate to the right to equal pay. Such penalties should include fines which could be based on the employer's gross annual turnover or on the employer's total payroll. Any other aggravating or mitigating factors that may apply in the circumstances of the case, for instance, where pay discrimination based on sex is combined with other protected grounds of discrimination should be taken into account. It is for the Member States to determine the infringements of the rights and obligations relating to equal pay for equal work or work of equal value for which fines are the most appropriate penalty.

(56) Member States should establish specific penalties for repeated infringements of any right or obligation relating to equal pay between men and women for the same work or work of equal value, to reflect the severity of the infringement and to further deter such

infringements. Such penalties could include different types of financial disincentives such as the revocation of public benefits or the exclusion, for a certain period of time, from any further award of financial inducements or from any public tender procedure.

(57) Obligations on employers stemming from this Directive are part of the applicable obligations in the fields of environmental, social and labour law compliance with which Member States have to ensure under Directives 2014/23/EU ([17]), 2014/24/EU ([18]) and 2014/25/EU ([19]) of the European Parliament and of the Council in regard to participation in public procurement procedures. In order to comply with those obligations on employers as far as the right to equal pay is concerned, Member States should in particular ensure that economic operators, in the performance of a public contract or concession, have pay setting mechanisms that do not lead to a gender pay gap between workers in any category of workers performing equal work or work of equal value that cannot be justified on the basis of gender-neutral criteria. In addition, Member States should consider requiring contracting authorities to introduce, as appropriate, penalties and

termination conditions ensuring compliance with the principle of equal pay in the performance of public contracts and concessions. Contracting authorities should also be able to take into account non-compliance with the principle of equal pay by the bidder or one of the bidder's subcontractors when considering the application of exclusion grounds or when taking a decision not to award a contract to the tenderer submitting the most economically advantageous tender.

(58) The effective implementation of the right to equal pay requires adequate administrative and court protection against any adverse treatment as a reaction to an attempt by workers to exercise that right, to any complaint to the employer or to any administrative procedure or court proceedings aiming to enforce compliance with that right. According to the case-law of the Court of Justice ([20]) the category of employees who are entitled to the protection should be interpreted broadly and include all employees who may be subject to retaliatory measures taken by an employer in response to a complaint of discrimination on grounds of sex. The protection is not limited solely to employees who have lodged complaints or their

representatives, or to those who comply with certain formal requirements governing the recognition of a certain status, such as that of a witness.

(59) In order to improve the enforcement of the principle of equal pay, this Directive should strengthen the existing enforcement tools and procedures in regard to the rights and obligations laid down in this Directive and the equal pay provisions set out in Directive 2006/54/EC.

(60) This Directive lays down minimum requirements, thus respecting the Member States' prerogative to introduce and maintain provisions that are more favourable to workers. Rights acquired under the existing legal framework should continue to apply, unless provisions that are more favourable to workers are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights set out in existing Union or national law in this field, nor can it constitute valid grounds for reducing the rights of workers in regard to the principle of equal pay.

(61) In order to ensure proper monitoring of the implementation of the right to equal pay,

Member States should set up or designate a dedicated monitoring body. That body, which should be able to be part of an existing body pursuing similar objectives, should have specific tasks in relation to the implementation of the pay transparency measures provided for in this Directive and gather certain data to monitor pay inequalities and the impact of the pay transparency measures. Member States should be able to designate more than one body, provided that the monitoring and analysis functions set out in this Directive are ensured by a central body.

(62) Compiling wage statistics broken down by sex and providing the Commission (Eurostat) with accurate and complete statistics is essential for analysing and monitoring changes in the gender pay gap at Union level. Council Regulation (EC) No 530/1999 ([21]) requires Member States to compile four-yearly structural earnings statistics at micro level, which provide harmonised data for the calculation of the gender pay gap. Annual high-quality statistics could increase transparency and enhance monitoring and awareness of gender pay inequality. The availability and comparability of such data is instrumental for assessing developments both

at national level and throughout the Union. Relevant statistics transmitted to the Commission (Eurostat) should be collected for statistical purposes within the meaning of Regulation (EC) No 223/2009 of the European Parliament and of the Council ([22]).

(63) Since the objectives of this Directive, namely a better and more effective application of the principle of equal pay through the establishment of common minimum requirements which should apply to all undertakings and organisations across the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive, which limits itself to setting minimum standards, does not go beyond what is necessary in order to achieve those objectives.

(64) The role of the social partners is of key importance in designing the way pay transparency measures are implemented in Member States, especially in those with high

collective bargaining coverage. Member States should therefore have the possibility to entrust the social partners with the implementation of all or part of this Directive, provided that Member States take all the necessary steps to ensure that the results sought by this Directive are guaranteed at all times.

(65) In implementing this Directive, Member States should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of micro, small or medium-sized enterprises. Member States should therefore assess the impact of their transposition measures on micro, small and medium-sized enterprises in order to ensure that those enterprises are not disproportionately affected, giving specific attention to microenterprises, to alleviate the administrative burden, and to publish the results of such assessments.

(66) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 of the European Parliament and of the Council [(23)] and delivered an opinion on 27 April 2021,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Directive lays down minimum requirements to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women (the 'principle of equal pay') enshrined in Article 157 TFEU and the prohibition of discrimination laid down in Article 4 of Directive 2006/54/EC, in particular through pay transparency and reinforced enforcement mechanisms.

Article 2

Scope

1. This Directive applies to employers in public and private sectors.

2. This Directive applies 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.

3. For the purposes of Article 5, this Directive applies to applicants for employment.

Article 3

Definitions

1. For the purposes of this Directive, the following definitions apply:

(a) ‘pay’ means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which a worker receives directly or indirectly (complementary or variable components) in respect of his or her employment from his or her employer;

(b) ‘pay level’ means gross annual pay and the corresponding gross hourly pay;

(c) ‘gender pay gap’ means the difference in average pay levels between female and male workers of an employer expressed as a percentage of the average pay level of male workers;

(d) ‘median pay level’ means the pay level at which half of the workers of an employer earn more and half of them earn less;

(e) ‘median gender pay gap’ means the difference between the median pay level of female and median pay level of male workers of an employer expressed as a percentage of the median pay level of male workers;

(f) ‘quartile pay band’ means each of four equal groups of workers into which they are divided according to their pay levels, from the lowest to the highest;

(g) ‘work of equal value’ means work that is determined to be of equal value in accordance

with the non-discriminatory and objective gender-neutral criteria referred to in Article 4(4);

(h) ‘category of workers’ means workers performing the same work or work of equal value grouped in a non-arbitrary manner based on the non-discriminatory and objective gender-neutral criteria referred to in Article 4(4), by the workers’ employer and, where applicable, in cooperation with the workers’ representatives in accordance with national law and/or practice.

(i) ‘direct discrimination’ means the situation in which one person is treated less favourably on grounds of sex than another person is, has been or would be treated in a comparable situation;

(j) ‘indirect discrimination’ means the situation in which an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified on the basis of a legitimate aim, and the means of achieving that aim are appropriate and necessary;

(k) ‘labour inspectorate’ means the body or bodies responsible, in accordance with national law and/or practice, for control and inspection functions in the labour market, save that, where

provided for in national law, the social partners may carry out those functions;

(l) ‘equality body’ means the body or bodies designated pursuant to Article 20 of Directive 2006/54/EC;

(m) ‘workers’ representatives’ means the workers’ representatives in accordance with national law and/or practice.

2. For the purposes of this Directive, discrimination includes:

(a) harassment and sexual harassment, within the meaning of Article 2(2), point (a), of Directive 2006/54/EC, as well as any less favourable treatment based on a person’s rejection of, or submission to, such conduct, when such harassment or treatment relates to or results from the exercise of the rights provided for in this Directive;

(b) any instruction to discriminate against persons on grounds of sex;

(c) any less favourable treatment related to pregnancy or maternity leave within the meaning of Council Directive 92/85/EEC ([24]);

(d) any less favourable treatment, within the meaning of Directive (EU) 2019/1158 of the European Parliament and of the Council ([25]),

based on sex, including with regard to paternity leave, parental leave or carers' leave;

(e) intersectional discrimination, which is discrimination based on a combination of sex and any other ground or grounds of discrimination protected under Directive 2000/43/EC or 2000/78/EC.

3. Paragraph 2, point (e), shall not entail additional obligations on employers to gather data as referred to in this Directive with regard to protected grounds of discrimination other than sex.

Article 4

Equal work and work of equal value

1. Member States shall take the necessary measures to ensure that employers have pay structures ensuring equal pay for equal work or work of equal value.

2. Member States shall, in consultation with equality bodies, take the necessary measures to ensure that analytical tools or methodologies are made available and are easily accessible to support and guide the assessment and comparison of the value of work in accordance with the criteria set out in this Article. Those tools or methodologies shall allow employers and/or the social partners to easily establish and use gender-neutral job evaluation and classification systems that exclude any pay discrimination on grounds of sex.

3. Where appropriate, the Commission may update Union-wide guidelines related to gender-neutral job evaluation and classification

systems, in consultation with the European Institute for Gender Equality (EIGE).

4. Pay structures shall be such as to enable the assessment of whether workers are in a comparable situation in regard to the value of work on the basis of objective, gender-neutral criteria agreed with workers' representatives where such representatives exist. Those criteria shall not be based directly or indirectly on workers' sex. They shall include skills, effort, responsibility and working conditions, and, if appropriate, any other factors which are relevant to the specific job or position. They shall be applied in an objective gender-neutral manner, excluding any direct or indirect discrimination based on sex. In particular, relevant soft skills shall not be undervalued.

CHAPTER II

PAY TRANSPARENCY

Article 5

Pay transparency prior to employment

1. Applicants for employment shall have the right to receive, from the prospective employer, information about:

(a) the initial pay or its range, based on objective, gender-neutral criteria, to be attributed for the position concerned; and

(b) where applicable, the relevant provisions of the collective agreement applied by the employer in relation to the position.

Such information shall be provided in a manner such as to ensure an informed and transparent negotiation on pay, such as in a published job vacancy notice, prior to the job interview or otherwise.

2. An employer shall not ask applicants about their pay history during their current or previous employment relationships.

3. Employers shall ensure that job vacancy notices and job titles are gender-neutral and that recruitment processes are led in a non-discriminatory manner, in order not to undermine the right to equal pay for equal work or work of equal value (the 'right to equal pay').

Article 6

Transparency of pay setting and pay progression policy

1. Employers shall make easily accessible to their workers the criteria that are used to determine workers' pay, pay levels and pay progression. Those criteria shall be objective and gender neutral.

2. Member States may exempt employers with fewer than 50 workers from the obligation related to the pay progression set out in paragraph 1.

Article 7

Right to information

1. Workers shall have the right to request and receive in writing, in accordance with paragraphs 2 and 4, information on their individual pay level and the average pay levels, broken down by sex, for categories of workers performing the same work as them or work of equal value to theirs.

2. Workers shall have the possibility to request and receive the information referred to in paragraph 1 through their workers' representatives, in accordance with national law and/or practice. They shall also have the possibility to request and receive the information through an equality body.

If the information received is inaccurate or incomplete, workers shall have the right to request, personally or through their workers' representatives, additional and reasonable clarifications and details regarding any of the data provided and receive a substantiated reply.

3. Employers shall inform all workers, on an annual basis, of their right to receive the information referred to in paragraph 1 and of the steps that the worker is to undertake to exercise that right.

4. Employers shall provide the information referred to in paragraph 1 within a reasonable period of time but in any event within two months from the date on which the request is made.

5. Workers shall not be prevented from disclosing their pay for the purpose of the enforcement of the principle of equal pay. In particular, Member States shall put in place measures to prohibit contractual terms that restrict workers from disclosing information about their pay.

6. Employers may require workers who have obtained information pursuant to this Article, other than information concerning their own pay or pay level, not to use that information for any purpose other than to exercise their right to equal pay.

Article 8

Accessibility of information

Employers shall provide any information shared with workers or applicants for employment pursuant to Articles 5, 6 and 7 in a format which is accessible to persons with disabilities and which takes into account their particular needs.

Article 9

Reporting on pay gap between female and male workers

1. Member States shall ensure that employers provide the following information concerning their organisation, in accordance with this Article:

(a) the gender pay gap;

(b) the gender pay gap in complementary or variable components;

(c) the median gender pay gap;

(d) the median gender pay gap in complementary or variable components;

(e) the proportion of female and male workers receiving complementary or variable components;

(f) the proportion of female and male workers in each quartile pay band;

(g) the gender pay gap between workers by categories of workers broken down by ordinary basic wage or salary and complementary or variable components.

2. Employers with 250 workers or more shall, by 7 June 2027 and every year thereafter, provide the information set out in paragraph 1 relating to the previous calendar year.

3. Employers with 150 to 249 workers shall, by 7 June 2027 and every three years thereafter, provide the information set out in paragraph 1 relating to the previous calendar year.

4. Employers with 100 to 149 workers shall, by 7 June 2031 and every three years thereafter, provide the information set out in paragraph 1 relating to the previous calendar year.

5. Member States shall not prevent employers with fewer than 100 workers from providing the information set out in paragraph 1 on a voluntary basis. Member States may, as a matter of national law, require employers with fewer than 100 workers to provide information on pay.

6. The accuracy of the information shall be confirmed by the employer's management, after consulting workers' representatives. Workers' representatives shall have access to the methodologies applied by the employer.

7. The information referred to in paragraph 1, points (a) to (g), of this Article shall be communicated to the authority in charge of compiling and publishing such data pursuant to Article 29(3), point (c). The employer may publish the information referred to in paragraph 1, points (a) to (f), of this Article on its website or make it publicly available in another manner.

8. Member States may compile the information set out in paragraph 1, points (a) to (f), of this Article themselves, on the basis of administrative data such as data provided by employers to the tax or social security

authorities. The information shall be made public pursuant to Article 29(3), point (c).

9. Employers shall provide the information referred to in paragraph 1, point (g), to all their workers and to the workers' representatives of their workers. Employers shall provide the information to the labour inspectorate and the equality body upon request. The information from the previous four years, if available, shall also be provided upon request.

10. Workers, workers' representatives, labour inspectorates and equality bodies shall have the right to ask employers for additional clarifications and details regarding any of the data provided, including explanations concerning any gender pay differences. Employers shall respond to such requests within a reasonable time by providing a substantiated reply. Where gender pay differences are not justified on the basis of objective, gender-neutral criteria, employers shall remedy the situation within a reasonable period of time in close cooperation with workers' representatives, the labour inspectorate and/or the equality body.

Article 10

Joint pay assessment

1. Member States shall take appropriate measures to ensure that employers who are subject to pay reporting pursuant to Article 9 conduct, in cooperation with their workers' representatives, a joint pay assessment where all the following conditions are met:

(a) the pay reporting demonstrates a difference in the average pay level between female and male

workers of at least 5 % in any category of workers;

(b) the employer has not justified such a difference in the average pay level on the basis of objective, gender-neutral criteria;

(c) the employer has not remedied such an unjustified difference in the average pay level within six months of the date of submission of the pay reporting.

2. The joint pay assessment shall be carried out in order to identify, remedy and prevent differences in pay between female and male workers which are not justified on the basis of objective, gender-neutral criteria, and shall include the following:

(a) an analysis of the proportion of female and male workers in each category of workers;

(b) information on average female and male workers' pay levels and complementary or variable components for each category of workers;

(c) any differences in average pay levels between female and male workers in each category of workers;

(d) the reasons for such differences in average pay levels, on the basis of objective, gender-neutral

criteria, if any, as established jointly by the workers' representatives and the employer;

(e) the proportion of female and male workers who benefited from any improvement in pay following their return from maternity or paternity leave, parental leave or carers' leave, if such improvement occurred in the relevant category of workers during the period in which the leave was taken;

(f) measures to address differences in pay if they are not justified on the basis of objective, gender-neutral criteria;

(g) an evaluation of the effectiveness of measures from previous joint pay assessments.

3. Employers shall make the joint pay assessment available to workers and workers' representatives and shall communicate it to the monitoring body pursuant to Article 29(3), point (d). They shall make it available to the labour inspectorate and the equality body upon request.

4. When implementing the measures arising from the joint pay assessment, the employer shall remedy the unjustified differences in pay within a reasonable period of time, in close cooperation, in accordance with national law and/or practice, with the workers' representatives. The labour inspectorate and/or the equality body may be asked to participate in the process. The implementation of the measures shall include an analysis of the existing gender-neutral job evaluation and classification

systems or the establishment of such systems, to ensure that any direct or indirect pay discrimination on the grounds of sex is excluded.

Article 11

Support for employers with fewer than 250 workers

Member States shall provide support, in the form of technical assistance and training, to employers with fewer than 250 workers and to the workers' representatives concerned, to facilitate their compliance with the obligations laid down in this Directive.

Article 12

Data protection

1. To the extent that any information provided pursuant to measures taken under Articles 7, 9, and 10 involves the processing of personal data, it shall be provided in accordance with Regulation (EU) 2016/679.

2. Any personal data processed pursuant to Articles 7, 9 or 10 of this Directive shall not be used for any purpose other than for the application of the principle of equal pay.

3. Member States may decide that, where the disclosure of information pursuant to Articles 7, 9 and 10 would lead to the disclosure, either directly or indirectly, of the pay of an identifiable worker, only the workers' representatives, the labour inspectorate or the equality body shall have access to that information. The workers' representatives or the equality body shall advise workers regarding a possible claim under this Directive without disclosing actual pay levels of individual workers performing the same work or work of equal value. For the purposes of

monitoring pursuant to Article 29, the information shall be made available without restriction.

Article 13

Social dialogue

Without prejudice to the autonomy of the social partners and in accordance with national law and practice, Member States shall take adequate measures to ensure the effective involvement of the social partners, by means of discussing the rights and obligations laid down in this Directive, where applicable upon their request.

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.

CHAPTER III

REMEDIES AND ENFORCEMENT

Article 14

Defence of rights

Member States shall ensure that, after possible recourse to conciliation, court proceedings for the enforcement of rights and obligations relating to the principle of equal pay are available to all workers who consider themselves wronged by a failure to apply the principle of equal pay. Such proceedings shall be easily accessible to workers and to persons

who act on their behalf, even after the end of the employment relationship in which the discrimination is alleged to have occurred.

Article 15

Procedures on behalf or in support of workers

Member States shall ensure that associations, organisations, equality bodies and workers' representatives or other legal entities which have, in accordance with criteria laid down in national law, a legitimate interest in ensuring equality between men and women, may engage in any administrative procedure or court proceedings regarding an alleged infringement of the rights or obligations relating to the principle of equal pay. They may act on behalf of, or in support of, a worker who is an alleged victim of an infringement of any right or obligation relating to the principle of equal pay, with that person's approval.

Article 16

Right to compensation

1. Member States shall ensure that any worker who has sustained damage as a result of an infringement of any right or obligation relating to the principle of equal pay has the right to claim and to obtain full compensation or reparation, as determined by the Member State, for that damage.

2. The compensation or reparation referred to in paragraph 1 shall constitute real and effective compensation or reparation, as determined by the Member State, for the loss and damage sustained, in a dissuasive and proportionate manner.

3. The compensation or reparation shall place the worker who has sustained damage in the position in which that person would have been if he or she had not been discriminated against based on sex or if there had been no infringement of any of the rights or obligations relating to the principle of equal pay. Member States shall ensure that the compensation or reparation includes full recovery of back pay and related bonuses or payments in kind, compensation for lost opportunities, non-material damage, any damage caused by other relevant factors which may include intersectional discrimination, as well as interest on arrears.

4. The compensation or reparation shall not be restricted by the fixing of a prior upper limit.

Article 17

Other remedies

1. Member States shall ensure that, in the case of an infringement of rights or obligations related to the principle of equal pay, competent authorities or national courts may, in accordance with national law, at the request of the claimant and at the expense of the respondent, issue:

(a) an order to stop the infringement;

(b) an order to take measures to ensure that the rights or obligations related to the principle of equal pay are applied.

2. Where a respondent does not comply with any order issued pursuant to paragraph 1, Member States shall ensure that their competent authorities or national courts are able, where appropriate, to issue a recurring penalty payment order, with a view to ensuring compliance.

Article 18

Shift of burden of proof

1. Member States shall take the appropriate measures, in accordance with their national judicial systems, to ensure that, when workers who consider themselves wronged because the principle of equal pay has not been applied to them establish before a competent authority or national court facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no direct or indirect discrimination in relation to pay.

2. Member States shall ensure that, in administrative procedures or court proceedings regarding alleged direct or indirect discrimination in relation to pay, where an employer has not implemented the pay transparency obligations set out in Articles 5, 6, 7, 9 and 10, it is for the employer to prove that there has been no such discrimination.

The first subparagraph of this paragraph shall not apply where the employer proves that the infringement of the obligations set out in Articles 5, 6, 7, 9 and 10 was manifestly unintentional and of a minor character.

3. This Directive shall not prevent Member States from introducing evidential rules which are more favourable to a worker who institutes an administrative procedure or court proceedings regarding an alleged infringement of any of the rights or obligations relating to the principle of equal pay.

4. Member States need not apply paragraph 1 to procedures and proceedings in which it is for the competent authority or the national court to investigate the facts of the case.

5. This Article shall not apply to criminal proceedings, unless national law provides otherwise.

Article 19

Proof of equal work or work of equal value

1. When assessing whether female and male workers are carrying out the same work or work of equal value, the assessment of whether workers are in a comparable situation shall not be limited to situations in which female and male workers work for the same employer, but shall be extended to a single source establishing the pay conditions. A single source shall exist where it stipulates the elements of pay relevant for the comparison of workers.

2. The assessment of whether workers are in a comparable situation shall not be limited to workers who are employed at the same time as the worker concerned.

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 20

Access to evidence

1. Member States shall ensure that in proceedings concerning an equal pay claim, competent authorities or national courts are able to order the

respondent to disclose any relevant evidence which lies in the respondent's control, in accordance with national law and practice.

2. Member States shall ensure that competent authorities or national courts have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the equal pay claim. Member States shall ensure that, when ordering the disclosure of such information, competent authorities or national courts have at their disposal effective measures to protect such information, in accordance with national procedural rules.

3. This Article shall not prevent Member States from maintaining or introducing rules which are more favourable to claimants.

Article 21

Limitation periods

1. Member States shall ensure that national rules applicable to limitation periods for bringing equal pay claims determine when such periods begin to run, the duration thereof and the circumstances under which they may be suspended or interrupted. The limitation periods shall not begin to run before the claimant is aware, or can reasonably be expected to be aware, of an infringement. Member States may decide that limitation periods do not begin to run while the infringement is ongoing or before the end of the employment contract or employment relationship. Such limitation periods shall be no shorter than three years.

2. Member States shall ensure that a limitation period is suspended or, depending on national law, interrupted, as soon as a claimant undertakes action by bringing a complaint to the attention of the employer or by

instituting proceedings before a court, directly or through the workers' representatives, the labour inspectorate or the equality body.

3. This Article does not apply to rules on the expiry of claims.

Article 22

Legal costs

Member States shall ensure that, where a respondent is successful in proceedings relating to a pay discrimination claim, national courts can assess, in accordance with national law, whether the unsuccessful claimant had reasonable grounds for bringing the claim and, if so, whether it is appropriate not to require that claimant to pay the costs of the proceedings.

Article 23

Penalties

1. Member States shall lay down the rules on effective, proportionate and dissuasive penalties applicable to infringements of the rights and obligations relating to the principle of equal pay. Member States shall take all measures necessary to ensure that those rules are implemented and shall, without delay, notify the Commission of those rules and of those measures and of any subsequent amendment affecting them.

2. Member States shall ensure that the penalties referred to in paragraph 1 guarantee a real deterrent effect with regard to infringements of the rights and obligations relating to the principle of equal pay. Those penalties shall include fines, the setting of which shall be based on national law.

3. The penalties referred to in paragraph 1 shall take into account any relevant aggravating or mitigating factor applicable to the circumstances of the infringement, which may include intersectional discrimination.

4. Member States shall ensure that specific penalties apply in the case of repeated infringements of the rights and obligations relating to the principle of equal pay.

5. Member States shall take all measures necessary to ensure that the penalties provided for pursuant to this Article are effectively applied in practice.

Article 24

Equal pay in public contracts and concessions

1. The appropriate measures that Member States take in accordance with Article 30(3) of Directive 2014/23/EU, Article 18(2) of Directive 2014/24/EU and Article 36(2) of Directive 2014/25/EU shall include measures to ensure that, in the performance of public contracts or concessions, economic operators comply with their obligations relating to the principle of equal pay.

2. Member States shall consider requiring contracting authorities to introduce, as appropriate, penalties and termination conditions ensuring compliance with the principle of equal pay in the performance of public contracts and concessions. Where Member States' authorities act in accordance with Article 38(7), point (a), of Directive 2014/23/EU, Article 57(4), point (a), of Directive 2014/24/EU, or Article 80(1) of Directive 2014/25/EU in conjunction with Article 57(4), point (a), of Directive 2014/24/EU, contracting authorities may exclude or may be required by Member States to exclude any economic operator from

participation in a public procurement procedure where they can demonstrate by any appropriate means an infringement of the obligations referred to in paragraph 1 of this Article, related either to a failure to comply with pay transparency obligations or a pay gap of more than 5 % in any category of workers which is not justified by the employer on the basis of objective, gender-neutral criteria. This shall be without prejudice to any other rights or obligations set out in Directive 2014/23/EU, 2014/24/EU or 2014/25/EU.

Article 25

Victimisation and protection against less favourable treatment

1. Workers and their workers' representatives shall not be treated less favourably on the ground that they have exercised their rights relating to equal pay or have supported another person in the protection of that person's rights.

2. Member States shall introduce in their national legal systems such measures as are necessary to protect workers, including workers who are workers' representatives, against dismissal or other adverse treatment by an employer as a reaction to a complaint within the employer's organisation or to any administrative procedure or court proceedings for the purpose of the enforcement of any rights or obligations relating to the principle of equal pay.

Article 26

Relationship with Directive 2006/54/EC

Chapter III of this Directive shall apply to proceedings concerning any right or obligation relating to the principle of equal pay set out in Article 4 of Directive 2006/54/EC.

CHAPTER IV

HORIZONTAL PROVISIONS

Article 27

Level of protection

1. Member States may introduce or maintain provisions that are more favourable to workers than those laid down in this Directive.

2. The implementation of this Directive shall under no circumstances constitute grounds for reducing the level of protection in the fields covered by this Directive.

Article 28

Equality bodies

1. Without prejudice to the competence of labour inspectorates or other bodies that enforce the rights of workers, including the social partners, the equality bodies shall be competent with regard to matters falling within the scope of this Directive.

2. Member States shall, in accordance with national law and practice, take active measures to ensure close cooperation and coordination among the labour inspectorates, the equality bodies and, where applicable, the social partners with regard to the principle of equal pay.

3. Member States shall provide their equality bodies with the adequate resources necessary for effectively carrying out their functions with regard to the respect for the right to equal pay.

Article 29

Monitoring and awareness raising

1. Member States shall ensure the consistent and coordinated monitoring of and support for the application of the principle of equal pay and the enforcement of all available remedies.

2. Each Member State shall designate a body for the monitoring and support of the implementation of national measures implementing this Directive (monitoring body) and shall make the necessary arrangements for the proper functioning thereof. The monitoring body may be part of an existing body or structure at national level. Member States may designate more than one body for the purpose of awareness-raising and data collection, provided that the monitoring and analysis functions provided for in paragraph 3, points (b), (c) and (e), are ensured by a central body.

3. Member States shall ensure that the tasks of the monitoring body include the following:

(a) raising awareness among public and private undertakings and organisations, the social partners and the public to promote the principle of equal pay and the right to pay transparency, including by addressing intersectional

discrimination in relation to equal pay for equal work or work of equal value;

(b) analysing the causes of the gender pay gap and devising tools to help assess pay inequalities, making use, in particular, of the analytical work and tools of the EIGE;

(c) collecting data received from employers pursuant to Article 9(7), and promptly publishing the data referred to in Article 9(1), points (a) to (f), in an easily accessible and user-friendly manner that allows comparison between employers, sectors and regions of the Member State concerned, and ensuring that the data from the previous four years is accessible if available;

(d) collecting the joint pay assessment reports pursuant to Article 10(3);

(e) aggregating data on the number and types of pay discrimination complaints brought before the competent authorities, including equality bodies, and claims brought before the national courts.

4. By 7 June 2028 and every two years thereafter, Member States shall, in a single submission, provide the Commission with the data referred to in paragraph 3, points (c), (d), and (e).

Article 30

Collective bargaining and action

This Directive shall not affect in any way the right to negotiate, conclude and enforce collective agreements or to take collective action in accordance with national law or practice.

Article 31

Statistics

Member States shall, on an annual basis, provide the Commission (Eurostat) with up-to-date national data for the calculation of the gender pay gap in unadjusted form. Those statistics shall be broken down by sex, economic sector, working time (full-time/part-time), economic control (public/private ownership) and age and shall be calculated on an annual basis.

The data referred to in the first paragraph shall be transmitted from 31 January 2028 for reference year 2026.

Article 32

Dissemination of information

Member States shall take active measures to ensure that the provisions which they adopt pursuant to this Directive, together with the relevant provisions already in force, are brought by all appropriate means to the attention of the persons concerned throughout their territory.

Article 33

Implementation

Member States may entrust the social partners with the implementation of this Directive in accordance with national law and/or practice with regard to the role of the social partners, provided that Member States

take all the necessary steps to ensure that the results sought by this Directive are guaranteed at all times. The implementation tasks entrusted to the social partners may include:

(a) the development of analytical tools or methodologies as referred to in Article 4(2);

(b) financial penalties equivalent to fines, provided that they are effective, proportionate and dissuasive.

Article 34

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 7 June 2026. They shall immediately inform the Commission thereof.

When informing the Commission, Member States shall also provide it with a summary of the results of an assessment regarding the impact of their transposition measures on workers and employers with fewer than 250 workers and a reference to where such assessment is published.

2. When Member States adopt the measures referred to in paragraph 1 they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 35

Reporting and review

1. By 7 June 2031, Member States shall inform the Commission about the implementation of this Directive and its impact in practice.

2. By 7 June 2033, the Commission shall submit a report to the European Parliament and to the Council on the implementation of this Directive. The report shall examine, *inter alia*, the employer thresholds provided for in Articles 9 and 10, as well as the 5 % trigger for the joint pay assessment provided for in Article 10(1). The Commission shall, if appropriate, propose any legislative amendments that it considers to be necessary on the basis of that report.

Article 36

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 37

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 10 May 2023.