

Pay Transparency and Equal Pay: The European Landscape



Overview

Lack of pay transparency has been identified as a major hurdle in closing the EU's gender pay gap. With women reported to earn on average 13% less than men per hour in 2020, the EU took a bold step forward by introducing the EU Pay Transparency Directive (the “**Directive**”).

The Directive came into force in June 2023 and Member States will have three years to transpose it into national law. In an effort to tackle pay discrimination and increase pay transparency, the Directive creates new and far-reaching information and reporting obligations for employers.



Key provisions

Pre-employment

Salary transparency at the point of recruitment (Article 5(1))

Job candidates must be informed about the pay rate or range for the role prior to the job interview. The information must be provided freely (for example in the job advert), without the candidate having to request the data.

Ban on asking about salary history (Article 5(2))

Employers will be prohibited from asking applicants about their pay history. This is intended to ensure that existing pay discrimination and bias is not perpetuated when workers change jobs.

During employment

Pay transparency (Article 6(1))

Employers must make available to workers a statement of the criteria used to determine pay levels and pay progression.

Right to request individual information (Article 7(1))

Workers will have the right to request information on their individual pay level and the average pay levels (broken down by gender) for categories of workers doing the same work or work of equal value to them. Following a request, the employer must provide the information within two months of the request. Employers will be required to issue an annual reminder to workers that they are entitled to this information.

Gender pay gap reporting (Article 9)

Employers must report and publish a detailed set of statistics breaking down their gender pay gap.

Right to ask questions about gender pay gap reports (Article 9(10))

Workers, worker representatives, labour inspectorates and equality bodies have the right to ask employers for clarification and additional information about gender pay reports, including explanations concerning gender

pay differences. Employers must respond to information requests, within a reasonable period. Where gender pay differences are not justified by objective and gender-neutral factors, the employer must remedy them within a reasonable period of time, co-operating with worker representatives, labour inspectorates and equality bodies in order to achieve this.

Compulsory pay audits (Article 10)

The gender pay gap report submitted by an employer is capable of triggering a compulsory pay audit. An audit will be required where:

- > the report shows an average pay gap of at least 5% in any category of workers doing the same work or work of equal value,
- > the employer has not justified the differential by objective and gender-neutral criteria, and
- > the employer has not remedied the differential within six months of the date of submission of the gender pay gap report.

The audit must encompass the workforce as a whole (not just the category with the 5% discrepancy) and must include measures to address gender pay gaps. If the audit reveals unjustified discrepancies, the employer must take steps to remedy them. Failure to do so could result in a court ordering an injunction or imposing recurring penalty payments.

Scope

The Directive applies to all employers (whether EU or non-EU) operating in EU member states regardless of their size (although employers with less than 100 employees will fall out of scope of the Directive's reporting requirements).

The rules will apply in both the public and private sector and to listed and non-listed companies.

UK

The UK is **not** subject to the Directive. Nonetheless, its impact is likely to be felt by UK employers as its far-reaching provisions serve as a new global benchmark.

For those companies which form part of a multi-national group, staff and prospective candidates are likely to have raised expectations on pay transparency and information. To remain competitive, some UK employers may elect to follow the EU's standards on pay transparency to attract and retain talent.

The Directive will also give UK employees ready access to the pay data of those working in the EU, allowing them to compare their salaries with those of their EU counterparts. This could lead to an uptick in equal pay claims based on comparators working outside of the UK.

Next steps

The first gender pay gap reports are due in 2027 for employers with 250 or more workers who must report annually. Employers with 150-249 workers must report every three years from 2027 and employers with 100-149 employees must report every three years from 2031.

Employers subject to the Directive will need to begin tackling the compliance challenge early to avoid the risk of a compulsory pay audit, and to ensure hiring occurs in a compliant way that doesn't drive greater pay imbalance.

Whilst some Member States already have similar obligations under national law, for many the Directive goes significantly beyond existing requirements and will require changes to well established pay practices and processes.

In this publication, we look at some of the key European jurisdictions and the degree of change that will be required to comply with the Directive's obligations. The countries with the most red circles should expect the biggest shift in law and practice from the introduction of the Directive.

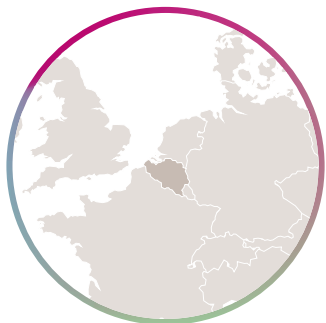


WHAT IS THE CURRENT POSITION?

Click on the flags for further information



Belgium



Job candidates have a **right to be informed about the pay rate** or range prior to the job interview. (Article 5(1))



Employers may not ask applicants about their **pay history**. (Article 5(2))



Employers must make available a **statement of the criteria to determine pay levels** and pay progression. (Article 6(1))



Workers have a **right to request information on their individual pay and average pay** for categories of workers doing the same work or work of equal value to them. (Article 7(1))



+ Denotes more information.

Please hover over to find out more.

Employers must produce annual **gender pay gap reports** setting out average pay and bonus gaps. (Article 9)



Legislation is in force covering the same or similar obligations

Compulsory pay audits where there is an average pay gap of at least 5% which has not been justified by objective criteria nor remedied within six months of the pay report. (Article 10)

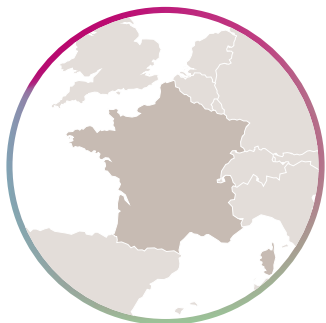


Workers have some limited protections in relation to these rights

No existing legislation

Workers have the right to bring an **equal pay claim** to recover uncapped damages to compensate for back pay, bonuses and lost opportunities. (Article 16)





+ Denotes more information.

Please hover over to find out more.

Legislation is in force covering the same or similar obligations

Workers have some limited protections in relation to these rights

No existing legislation

Job candidates have a **right to be informed about the pay rate** or range prior to the job interview. (Article 5(1))



Employers may not ask applicants about their **pay history**. (Article 5(2))



Employers must make available a **statement of the criteria to determine pay levels** and pay progression. (Article 6(1))



Workers have a **right to request information on their individual pay and average pay** for categories of workers doing the same work or work of equal value to them. (Article 7(1))



Employers must produce annual **gender pay gap reports** setting out average pay and bonus gaps. (Article 9)



Compulsory pay audits where there is an average pay gap of at least 5% which has not been justified by objective criteria nor remedied within six months of the pay report. (Article 10)

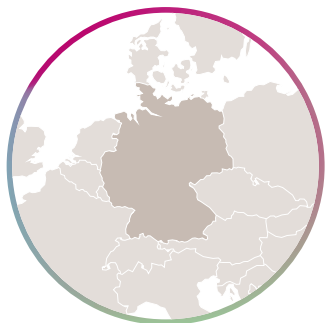


Workers have the right to bring an **equal pay claim** to recover uncapped damages to compensate for back pay, bonuses and lost opportunities. (Article 16)





Germany



Job candidates have a **right to be informed about the pay rate** or range prior to the job interview. (Article 5(1))



Employers may not ask applicants about their **pay history**. (Article 5(2))



Employers must make available a **statement of the criteria to determine pay levels** and pay progression. (Article 6(1))



Workers have a **right to request information on their individual pay and average pay** for categories of workers doing the same work or work of equal value to them. (Article 7(1))



+ Denotes more information.

Please hover over to find out more.

Employers must produce annual **gender pay gap reports** setting out average pay and bonus gaps. (Article 9)



Legislation is in force covering the same or similar obligations

Compulsory pay audits where there is an average pay gap of at least 5% which has not been justified by objective criteria nor remedied within six months of the pay report. (Article 10)



Workers have some limited protections in relation to these rights

No existing legislation

Workers have the right to bring an **equal pay claim** to recover uncapped damages to compensate for back pay, bonuses and lost opportunities. (Article 16)





Italy



Job candidates have a **right to be informed about the pay rate** or range prior to the job interview. (Article 5(1))



Employers may not ask applicants about their **pay history**. (Article 5(2))



Employers must make available a **statement of the criteria to determine pay levels** and pay progression. (Article 6(1))



Workers have a **right to request information on their individual pay and average pay** for categories of workers doing the same work or work of equal value to them. (Article 7(1))



+ Denotes more information.

Please hover over to find out more.

Employers must produce annual **gender pay gap reports** setting out average pay and bonus gaps. (Article 9)



Legislation is in force covering the same or similar obligations

Compulsory pay audits where there is an average pay gap of at least 5% which has not been justified by objective criteria nor remedied within six months of the pay report. (Article 10)



Workers have some limited protections in relation to these rights

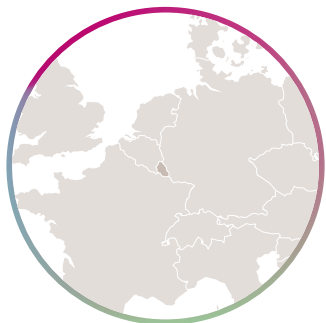
Workers have the right to bring an **equal pay claim** to recover uncapped damages to compensate for back pay, bonuses and lost opportunities. (Article 16)



No existing legislation



Luxembourg



Job candidates have a **right to be informed about the pay rate** or range prior to the job interview. (Article 5(1))



Employers may not ask applicants about their **pay history**. (Article 5(2))



Employers must make available a **statement of the criteria to determine pay levels** and pay progression. (Article 6(1))



Workers have a **right to request information on their individual pay and average pay** for categories of workers doing the same work or work of equal value to them. (Article 7(1))



+ Denotes more information.

Please hover over to find out more.

Employers must produce annual **gender pay gap reports** setting out average pay and bonus gaps. (Article 9)



Legislation is in force covering the same or similar obligations

Compulsory pay audits where there is an average pay gap of at least 5% which has not been justified by objective criteria nor remedied within six months of the pay report. (Article 10)



Workers have some limited protections in relation to these rights

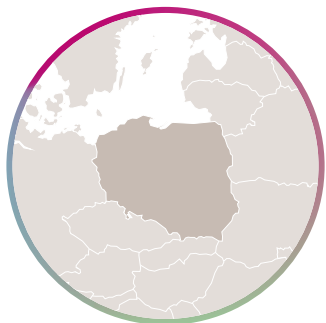
No existing legislation

Workers have the right to bring an **equal pay claim** to recover uncapped damages to compensate for back pay, bonuses and lost opportunities. (Article 16)





Poland



Job candidates have a **right to be informed about the pay rate** or range prior to the job interview. (Article 5(1))



Employers may not ask applicants about their **pay history**. (Article 5(2))



Employers must make available a **statement of the criteria to determine pay levels** and pay progression. (Article 6(1))



Workers have a **right to request information on their individual pay and average pay** for categories of workers doing the same work or work of equal value to them. (Article 7(1))



 **Denotes more information.**
Please hover over to find out more.

Employers must produce annual **gender pay gap reports** setting out average pay and bonus gaps. (Article 9)



Legislation is in force covering the same or similar obligations

Compulsory pay audits where there is an average pay gap of at least 5% which has not been justified by objective criteria nor remedied within six months of the pay report. (Article 10)



Workers have some limited protections in relation to these rights

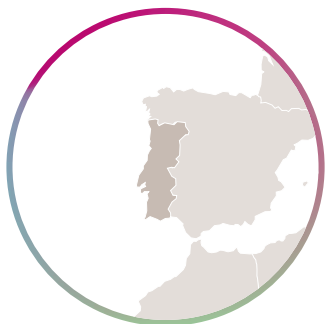
Workers have the right to bring an **equal pay claim** to recover uncapped damages to compensate for back pay, bonuses and lost opportunities. (Article 16)



No existing legislation



Portugal



Job candidates have a **right to be informed about the pay rate** or range prior to the job interview. (Article 5(1))



Employers may not ask applicants about their **pay history**. (Article 5(2))



Employers must make available a **statement of the criteria to determine pay levels** and pay progression. (Article 6(1))



Workers have a **right to request information on their individual pay and average pay** for categories of workers doing the same work or work of equal value to them. (Article 7(1))



Denotes more information.

Please hover over to find out more.

Employers must produce annual **gender pay gap reports** setting out average pay and bonus gaps. (Article 9)



Legislation is in force covering the same or similar obligations

Compulsory pay audits where there is an average pay gap of at least 5% which has not been justified by objective criteria nor remedied within six months of the pay report. (Article 10)



Workers have some limited protections in relation to these rights

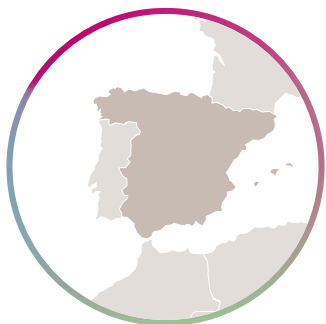
Workers have the right to bring an **equal pay claim** to recover uncapped damages to compensate for back pay, bonuses and lost opportunities. (Article 16)



No existing legislation



Spain



Job candidates have a **right to be informed about the pay rate** or range prior to the job interview. (Article 5(1))



Employers may not ask applicants about their **pay history**. (Article 5(2))



Employers must make available a **statement of the criteria to determine pay levels** and pay progression. (Article 6(1))



Workers have a **right to request information on their individual pay and average pay** for categories of workers doing the same work or work of equal value to them. (Article 7(1))



Denotes more information.

Please hover over to find out more.

Employers must produce annual **gender pay gap reports** setting out average pay and bonus gaps. (Article 9)



Legislation is in force covering the same or similar obligations

Compulsory pay audits where there is an average pay gap of at least 5% which has not been justified by objective criteria nor remedied within six months of the pay report. (Article 10)



Workers have some limited protections in relation to these rights

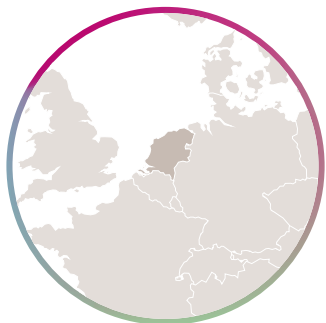
Workers have the right to bring an **equal pay claim** to recover uncapped damages to compensate for back pay, bonuses and lost opportunities. (Article 16)



No existing legislation



The Netherlands



Job candidates have a **right to be informed about the pay rate** or range prior to the job interview. (Article 5(1))



Employers may not ask applicants about their **pay history**. (Article 5(2))



Employers must make available a **statement of the criteria to determine pay levels** and pay progression. (Article 6(1))



Workers have a **right to request information on their individual pay and average pay** for categories of workers doing the same work or work of equal value to them. (Article 7(1))



Denotes more information.

Please hover over to find out more.

Employers must produce annual **gender pay gap reports** setting out average pay and bonus gaps. (Article 9)



Legislation is in force covering the same or similar obligations

Compulsory pay audits where there is an average pay gap of at least 5% which has not been justified by objective criteria nor remedied within six months of the pay report. (Article 10)



Workers have some limited protections in relation to these rights

No existing legislation

Workers have the right to bring an **equal pay claim** to recover uncapped damages to compensate for back pay, bonuses and lost opportunities. (Article 16)



Contacts



Cara Hegarty
Partner, London
Tel: +44 20 7456 5580
cara.hegarty@linklaters.com



Marie Sinniger
Counsel, Luxembourg
Tel: +352 2608 8451
marie.sinniger@linklaters.com



Jennifer Granado Aranzana
Managing Associate, Brussels
Tel: +32 2 501 93 99
jennifer.granado_aranzana@linklaters.com



Matthew Devey
Partner, Frankfurt
Tel: +49 69 71003 209
matthew.devey@linklaters.com



Moira Guitart
Counsel, Madrid
Tel: +34 91 399 6136
moira.guitart@linklaters.com



Lionel Vuidard
Partner, Paris
Tel: +33 1 56 43 58 30
lionel.vuidard@linklaters.com



Federica Barbero
Counsel, Milan
Tel: +39 02 88 393 5237
federica.barbero@linklaters.com



Vincent Gerlach
Counsel, Amsterdam
Tel: +31 20 799 6311
vincent.gerlach@linklaters.com



Monika Krzyszkowska-Dabrowska
Counsel, Warsaw
Tel: +48 22 526 5080
monika.krzyszkowska-dabrowska@linklaters.com



Marta Afonso Pereira
Counsel, Lisbon
Tel: +351 21 864 00 43
marta.pereira@linklaters.com



Nele Van Kerrebroeck
Counsel, Brussels
Tel: +32 2 501 90 66
nele.van_kerrebroeck@linklaters.com

linklaters.com

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

© Linklaters. All Rights reserved 2023.

Linklaters LLP is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLP is used to refer to a member of the LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP and of the non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ, England or on www.linklaters.com and such persons are either solicitors, registered foreign lawyers or European lawyers.

Please refer to www.linklaters.com/regulation for important information on our regulatory position. LIN.GBR.320.23