

PAY STRUCTURES AS A KEY TOOL FOR ENSURING PAY EQUALITY

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Abstract: *This article examines the transformative potential of mandatory pay structures introduced by EU Directive 2023/970 on pay transparency, focusing on their role as enforcement mechanisms for equal pay principles. While equal pay obligations have long existed in Czech labour law under Section 110 of the Labour Code, their effective enforcement has been hampered by the absence of systematic approaches to pay determination. The directive's Article 4 requirement for employers to establish pay structures represents a paradigmatic shift from reactive, complaint-based enforcement to proactive, systematic prevention of pay discrimination. Through a combined doctrinal-empirical methodology analyzing CJEU jurisprudence, comparative national experiences, and enforcement data, this article demonstrates how properly implemented pay structures can bridge the longstanding enforcement gap by requiring transparent, documented approaches to pay determination based on objective, gender-neutral criteria. The article argues that pay structures create positive feedback effects for equal pay enforcement by making discriminatory practices more visible, shifting evidentiary burdens, and enabling more effective collective enforcement mechanisms. However, successful implementation requires sophisticated understanding of how traditional job evaluation approaches may perpetuate indirect discrimination. The article concludes with a call for urgent completion of Czech transposition legislation to realize the directive's potential for transforming equal pay from abstract principle to practical organizational reality.*

Keywords: *Pay transparency, Equal pay enforcement, Gender pay gap, Employment discrimination, EU labour law*

INTRODUCTION

The transposition deadline for 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 approaches on 7 June 2026. At the time of preparing this contribution – six months before the deadline – no draft transposition legislation is available in the Czech Republic.¹ While other Member States have already advanced with their transposition or have concrete proposals in progress, the Czech Republic continues to lag behind in implementing this crucial piece of European legislation.

This delay is particularly concerning given the complexity of the directive's requirements and the substantial preparation time needed by employers to adapt their practices. The directive introduces numerous new obligations for employers, ranging from mandatory pay structures to detailed reporting requirements, all of which require careful consideration during the legislative process. The current political calendar, with parliamentary elections scheduled for autumn 2025, further complicates the situation.

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The article was created within the framework of the PRIMUS project (No. 24/SSH/014) "Enforcement of the prohibition of discrimination in labor and social law".

¹ See also TOMŠEJ, J. Performativní novela zákoníku práce. *Právní rozhledy*. 2024, No. 22, p. 727.

The consequences of this legislative vacuum extend beyond mere procedural concerns. Employers, particularly larger organizations operating across multiple EU jurisdictions, require legal certainty to implement necessary changes to their remuneration practices. The directive's requirements are sufficiently clear to allow for practical preparation, yet without national legislation, enforcement remains uncertain and compliance strategies remain incomplete. This situation mirrors the difficulties experienced with the transposition of the Work-Life Balance Directive, where delayed implementation led to legal uncertainty and incomplete transposition.²

Among the various obligations introduced by the directive, Article 4's requirement for employers to establish pay structures represents perhaps the most fundamental shift in approach to equal pay enforcement. This article provides that "*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.*" The English term "pay structures" might appear somewhat ambiguous to some readers, potentially suggesting merely organizational frameworks rather than comprehensive systematic approaches. In this context, the Czech translation as "*systémy odměňování*" (remuneration systems) more accurately captures the directive's intent to establish truly systematic, rule-based approaches to pay determination.

This contribution examines how pay structures, properly understood as systematic frameworks for pay determination, can serve as a crucial enforcement mechanism for equal pay principles. While equal pay obligations have long existed in Czech law, their enforcement has been hampered by the absence of transparent, systematic approaches to pay setting. The directive's pay structure requirement offers an opportunity to bridge this enforcement gap and create meaningful progress toward pay equality.

I. EQUAL PAY PRINCIPLES IN CZECH LAW: THE FOUNDATION AND THE ENFORCEMENT GAP

The CJEU's foundational jurisprudence establishes both the scope and limitations of current equal pay enforcement approaches. In *Defrenne II* (C-43/75, 1976), the Court declared equal pay "forms part of the foundations of the Community," establishing both horizontal and vertical direct effect while combining economic and social objectives. This principle was extended in *Tesco Stores* (C-624/19, 2021), where the CJEU confirmed Article 157 TFEU's direct effect for both equal work and work of equal value claims, introducing the crucial single source test: workers can compare pay across different establishments provided pay conditions are attributable to a single identifiable body responsible for the inequality.

The principle of equal pay for equal work or work of equal value is not a novel concept in Czech employment law. The Czech legal framework addressing pay equality operates through two primary legislative instruments: the Labour Code (Act No. 262/2006 Coll.) and the Anti-Discrimination Act (Act No. 198/2009 Coll.), both containing equality provisions but with different scopes and approaches.³

² PŘENOSILOVÁ, L. *Transpozice nepřenosné části rodičovské dovolené*. Prague: C. H. Beck, 2024.

³ TOMŠEJ, J., POLÁK, P., KOLDINSKÁ, K., PRESSEROVÁ, P. *Antidiskriminační zákon a související předpisy. Praktický komentář*. Prague: Wolters Kluwer, 2023.

The Labour Code serves as the key resource for regulation of salary, establishing comprehensive rules for remuneration determination in employment relationships.⁴ Section 110 has long established the fundamental principle of equal pay, stating that “*equal wages, salary or remuneration under agreement shall be paid to all employees with the employer for equal work or work of equal value.*” The provision further defines equal work or work of equal value as “*work of the same or comparable complexity, responsibility and effort, performed under the same or comparable working conditions, with the same or comparable work performance and work results.*” The Labour Code’s approach is closely linked to work performance, providing detailed criteria for salary determination that reflect the inherent connection between remuneration and the actual work performed.⁵

This statutory framework provides detailed criteria for assessing work value, encompassing complexity, responsibility, and effort, which are evaluated according to education and practical knowledge and skills required, complexity of work subject and activities, organizational and management demands, degree of responsibility for damage, health and safety, and physical, sensory and mental burden. These criteria reflect the Court’s guidance in *Rummler v Dato-Druck* (C-237/85, 1986), which established that job classification must ensure objectively identical work receives identical pay regardless of sex, with criteria based on average performance of one sex constituting discrimination, and classification systems including criteria for which workers of each sex may show particular aptitude. Working conditions are assessed according to difficulty of work regimes, harmfulness or difficulty of negative workplace influences, and workplace risk levels. Work performance is evaluated according to intensity and quality of work performed, work abilities and competence, while work results are assessed according to quantity and quality.

The Anti-Discrimination Act adopts a wider concept of pay, encompassing not only salary but all forms of remuneration and benefits in accordance with Article 157 TFEU and the relevant jurisprudence of the CJEU.⁶ This broader approach recognizes that discrimination in compensation can manifest through various forms beyond basic wages, including benefits, and other forms of consideration.⁷ However, the Anti-Discrimination Act’s provisions are more general in nature and do not provide the detailed criteria for pay determination that characterize the Labour Code’s approach.

Despite this comprehensive legal framework, a significant enforcement gap has persisted in practice, with the lack of transparency of the remuneration systems being called out as one of the key reasons.⁸ This enforcement gap is exemplified by the Court’s burden of proof jurisprudence in *Danfoss* (C-109/88, 1989), which established that where a pay system lacks transparency and statistical comparison shows average female pay is lower than

⁴ PICHRT, J. et al. *Zákoník práce. Praktický komentář. 3. vydání.* Prague: Wolters Kluwer, 2025.

⁵ TOMŠEJ, J. *Diskriminace na pracovišti.* Prague: Grada Publishing, 2020.

⁶ POLÁK, P., Komentář k § 5. In: TOMŠEJ, J., POLÁK, P., KOLDINSKÁ, K., PRESSEROVÁ, P. *Antidiskriminační zákon a související předpisy. Praktický komentář.*

⁷ PŘENOSILOVÁ, L. Reportování o rovném odměňování, aneb dvakrát o tomtěž? *Obchodní právo.* 2015, No. 10, p. 20.

⁸ PŘENOSILOVÁ, L. Zástupce pro společné posouzení: nový zástupce zaměstnanců na obzoru? *Právní rozhledy.* 2025, No. 1-2, p. 38.

male pay, the burden shifts to the employer to prove non-discrimination, as female employees “would be deprived of any effective means of enforcing the principle of equal pay” otherwise. The abstract nature of these criteria, combined with the absence of systematic approaches to their application, has made it difficult for both employers and enforcement authorities to ensure consistent compliance. Many employers approach pay determination primarily as a market-driven negotiation process rather than as a systematic application of legal equality principles. While market forces undoubtedly play a legitimate role in pay setting, they cannot justify departures from equal treatment obligations.

The enforcement difficulties are compounded by the traditional opacity surrounding individual pay levels in Czech workplace culture. Unlike some jurisdictions where pay transparency is more established, Czech employment practices have historically treated individual remuneration as confidential information.⁹ This cultural context has made it particularly challenging for employees to identify potential pay inequalities and for enforcement authorities to conduct effective oversight.¹⁰ A change to this approach has happened only very recently with an amendment to the Czech Labour Code effective 1 June 2025.¹¹

Furthermore, the burden of proof in equal pay disputes has traditionally fallen heavily on complainants, who must demonstrate both the existence of pay differentials and the absence of objective justification for such differentials. The Court’s jurisprudence in *Enderby v Frenchay Health Authority* (C-127/92, 1993) addresses this challenge by establishing that significant statistics disclosing an “appreciable difference” in pay between female-dominated and male-dominated jobs of equal value require the employer to demonstrate objective justification unrelated to sex discrimination, with collective bargaining processes insufficient to shield employers from discrimination claims. Without systematic employer approaches to pay determination, gathering such evidence becomes extremely difficult, creating a practical barrier to enforcement that undermines the effectiveness of the legal prohibition on pay discrimination.

Court decisions have occasionally addressed regional pay differences, with both the Supreme Court and Constitutional Court ruling on cases involving different pay levels for similar work in different regions.¹² However, these decisions have not fundamentally altered employer practices. The absence of clear, documented pay systems has allowed many employers to maintain informal, potentially discriminatory practices while claiming compliance with equal pay obligations.

The enforcement gap is particularly pronounced in the private sector, where pay determination often occurs through individual negotiations without clear reference to systematic criteria. While public sector employment typically involves more structured pay scales, even here the application of equal pay principles across different organizational units has proven problematic, as well as when it comes to some variable discretionary

⁹ HOMFRAY, Š. Gender Pay Gap v Česku: Kde a jak vznikají rozdíly v odměňování mezi ženami a muži? *Práce a mzda*. 2025, No. 7, p. 26.

¹⁰ PŘENOSILOVÁ, L. Proměna role zaměstnavatelů při zajišťování rovného odměňování. *Právní rozhledy*. 2025, No. 23–24, pp. 757–763.

¹¹ PŘENOSILOVÁ, L. Zákaz doložek mlčenlivosti o mzdě: něco chybí, něco přebývá? *Právní rozhledy*. 2025, No. 13–14, p. 452.

¹² Czech Constitutional Court, file No. I. ÚS 2820/20, Czech Supreme Court, file No. 21 Cdo 3955/2018.

elements of pay. The directive’s pay structure requirement offers a potential solution to these systemic enforcement challenges.

II. PAY STRUCTURES AS AN ENFORCEMENT MECHANISM

Article 4 of the Pay Transparency Directive represents a paradigmatic shift from abstract equal pay obligations to concrete structural requirements. The provision mandates that employers establish pay structures ensuring equal pay for equal work or work of equal value, fundamentally altering the approach to equal pay enforcement from reactive complaint-based procedures to proactive systematic prevention. In contrast to previous proposals of the Directive, it applies to all employers, no matter their size.¹³

The urgency of this systematic approach is demonstrated by recent empirical evidence across 27 EU countries, which reveals adjusted gender pay gaps averaging 11.1%, with substantial variation suggesting that countries with systematic pay transparency measures perform better than those relying on traditional complaint-based enforcement.¹⁴

The directive’s concept of pay structures encompasses comprehensive frameworks that enable comparison of job values within organizational structures. As clarified in Recital 26, these structures should “*make it possible to compare the value of different jobs within the same organisational structure.*” This requirement transforms equal pay from a general principle applied case-by-case to a systematic organizational obligation requiring documented, transparent approaches to pay determination.

Pay structures must be based on objective, gender-neutral criteria that exclude any direct or indirect discrimination based on sex.¹⁵ These criteria must encompass skills, effort, responsibility and working conditions, and any other factors relevant to specific jobs or positions. Crucially, the directive specifies that criteria must be applied objectively in a gender-neutral manner, with particular attention to ensuring that relevant “soft skills” are not undervalued – addressing a common source of indirect discrimination where skills traditionally associated with women receive inadequate recognition.

The directive’s recognition of intersectional discrimination as involving ‘synergistic’ rather than merely additive effects underscores why systematic pay structures are essential—informal approaches cannot adequately detect discrimination patterns that emerge from the interaction of multiple characteristics.¹⁶

The systematic nature of required pay structures offers several enforcement advantages over traditional approaches. First, they require employers to articulate clearly the criteria used for pay determination, making it possible to evaluate whether these criteria are genuinely objective and non-discriminatory. Second, they necessitate transparent

¹³ LAHUERTA S. B. EU transparency legislation to address gender pay inequity: What is on the horizon and its likely impact in Ireland. *Irish Journal of European Law*. 2022, Vol. 24, pp. 161–188.

¹⁴ DE POLI, S., MAIER, S. Enforcing ‘Equal Pay for Equal Work’ in the EU: what would it take? *Journal of Economic Inequality*. 2024.

¹⁵ LAHUERTA S. B. EU transparency legislation to address gender pay inequity: What is on the horizon and its likely impact in Ireland, pp. 161–188.

¹⁶ DUBE, N. Taking Stock of the EU Pay Transparency Directive’s Intersectional Approach. *European Equality Law Review*. 2024, No. 1, pp. 43–58.

categorization of jobs according to equal work or work of equal value principles, creating clear frameworks for comparison. Third, they establish documented bases for pay decisions, enabling effective oversight by enforcement authorities and meaningful access to remedy for affected employees.

However, the effectiveness of pay structures as enforcement mechanisms hinges critically on how Member States define the granularity of job categorization. The directive's requirement for categories of „equal work or work of equal value“ creates a fundamental implementation choice that determines whether pay structures achieve meaningful enforcement or merely administrative compliance.

Sweden's approach, requiring categories to align with International Standard Classification of Occupations (ISCO) codes, demonstrates meaningful categorization—a software engineer cannot be arbitrarily separated from other software engineers performing similar work.¹⁷ This systematic approach ensures that pay structures serve their intended enforcement function by creating genuine comparability within job categories.

By contrast, Member States that fail to specify categorization requirements risk enabling employers to create artificially narrow categories that fragment comparable work and defeat the directive's purpose. When categories are overly broad, they fail to account for legitimate skill differences; when overly narrow, they enable discriminatory fragmentation that recreates the enforcement gap pay structures are designed to address.

The categorization challenge is particularly acute because it determines the evidentiary framework for equal pay claims. Appropriately granular categories shift analytical work from individual complainants to systematic organizational processes, while inadequate categorization perpetuates the traditional burden on workers to prove work similarity—precisely the enforcement weakness the directive aims to remedy. This implementation challenge is not merely theoretical—empirical analysis by Alcidi and Ounnas reveals that the lack of uniform legal concepts for 'work of equal value' across Member States creates the very uncertainty that precise categorization requirements, such as Sweden's ISCO-based approach, are designed to address.¹⁸

Effective pay structures must encompass several key components. They require clear definition of job evaluation criteria with specified weightings, reflecting the employer's legitimate business needs while ensuring gender neutrality. The criteria weightings allow for differentiation between employers and sectors while maintaining objectivity and transparency. For instance, a technology company might appropriately weight technical skills more heavily than a service organization, provided such weightings are applied consistently and without gender bias.

The structures must establish employee categories comprising positions involving equal work or work of equal value. This categorization process requires systematic analysis of job content, requirements, and conditions rather than reliance on traditional organizational hierarchies or job titles. The directive's emphasis on work value rather than formal position creates opportunities to identify previously unrecognized equality be-

¹⁷ Nordic Council (2024). EU Pay Transparency Directive 2023/970 and work of equal value - Towards pay equity: Regulations, reporting and practical application in the Nordic region. Norden Publications (Teman-Nord2024-548).

¹⁸ Ibidem.

tween different types of work. The Swedish ISCO-based model provides a tested framework for achieving this systematic categorization while maintaining sufficient granularity to capture meaningful work distinctions.¹⁹

Documentation requirements ensure that pay structures can be effectively communicated to employees and evaluated by enforcement authorities. The systematic approach facilitates not only initial compliance but also ongoing maintenance and adjustment as organizational structures evolve. Regular review mechanisms become integral components of effective pay structures, enabling identification and correction of emerging inequalities.

The implementation of pay structures creates positive feedback effects for equal pay enforcement. By requiring employers to articulate pay determination rationales systematically, the structures make discriminatory practices more visible and harder to maintain. They shift the evidentiary burden in equal pay disputes, as employers must demonstrate that their documented systems genuinely justify pay differentials rather than merely asserting market-based justifications.

Moreover, pay structures enable more effective collective enforcement mechanisms. Employee representatives gain clearer bases for identifying potential inequalities and engaging in meaningful dialogue with employers about pay practices. Enforcement authorities can evaluate systemic compliance rather than investigating individual complaints in isolation, creating opportunities for more comprehensive and effective intervention. Pay structures become particularly crucial for addressing intersectional discrimination, where traditional comparator-based approaches may fail to capture the unique disadvantage experienced by workers at the intersection of multiple protected characteristics.²⁰ As Pillinger demonstrates, the structural nature of pay inequality requires systematic rather than individual solutions, as ‘feminised jobs can be compared with jobs in other higher paid sectors’ only through comprehensive organizational frameworks rather than ad hoc comparisons.²¹

The directive’s approach recognizes that effective equal pay enforcement requires structural rather than merely procedural changes. By mandating systematic approaches to pay determination, it addresses the root causes of pay discrimination rather than merely providing remedial mechanisms after discrimination occurs. This proactive approach represents a significant advancement in equal pay enforcement methodology.

However, successful implementation of pay structures requires careful attention to their design and maintenance. Poorly designed structures that fail to reflect genuine work value or that incorporate biased criteria will not achieve the directive’s objectives. The requirement for gender-neutral evaluation methods demands sophisticated understanding of how traditional job evaluation approaches may perpetuate discrimination, particularly through undervaluation of skills and responsibilities traditionally associated with women’s work. Most critically, without precise legislative guidance on

¹⁹ Ibidem.

²⁰ DUBE, N. *Taking Stoc of the EU Pay Transparency Directive’s Intersectional Approach*, p. 43-58.

²¹ PILLINGER, J. The Pay Transparency Directive. The role of hypothetical comparators in determining equal pay for work of equal value. ETUI Policy Brief 2023.06. In: *European Trade Union Institute* [online]. [2026-01-06]. Available at: <etui.org>.

job categorization requirements, Member States risk enabling implementation approaches that undermine the directive's enforcement potential. These implementation challenges, while significant, do not diminish the directive's transformative potential—rather, they underscore the importance of careful legislative design that fully realizes the systematic approach's enforcement advantages.

CONCLUSION

Building on this transformative potential, the Pay Transparency Directive's requirement for employer pay structures represents a fundamental evolution in equal pay enforcement, shifting from reactive complaint-based approaches to proactive systematic prevention.²² For the Czech Republic, this requirement offers an opportunity to bridge the longstanding enforcement gap between equal pay principles established in Section 110 of the Labour Code and their effective implementation in practice.

The systematic approach mandated by the directive addresses core weaknesses in traditional equal pay enforcement: the opacity of pay determination processes, the difficulty of identifying comparable positions, and the evidentiary challenges facing discrimination complainants. Evidence from successful implementations demonstrates the critical importance of design features: active employer disclosure outperforms passive employee request systems, public dissemination creates external scrutiny that internal-only reporting cannot replicate, and mandatory enforcement with penalties proves essential. By requiring employers to establish transparent, documented frameworks for pay determination based on objective criteria, pay structures create the structural foundation necessary for meaningful equal pay enforcement. Recent empirical analysis demonstrating persistent adjusted gender pay gaps across the EU confirms both the magnitude of the enforcement challenge and the potential for systematic approaches to achieve meaningful progress where traditional methods have failed.

However, the potential benefits of this approach can only be realized through careful implementation that genuinely embraces the directive's systematic methodology. Pay structures that merely formalize existing discriminatory practices or that fail to address indirect discrimination will not achieve the directive's objectives. Success requires sophisticated understanding of how traditional approaches to job evaluation and pay determination may perpetuate gender-based inequalities, particularly through systematic undervaluation of skills and responsibilities traditionally associated with women's work. Crucially, effective implementation demands clear legislative specification of job categorization requirements—without such precision, pay structures risk becoming administrative exercises rather than meaningful enforcement tools.

The Czech Republic's continued delay in transposing the directive creates unnecessary uncertainty for employers and employees alike. While the directive's requirements

²² PERUZZI, M. The fight against gender pay gap in European Union (EU) law: the importance of regulatory interventions on transparency and adequacy of pay. In: Sue Williamson – Jane Parker – Noelle Donnelly – Mihajla Gavin – Sue Ressa (eds.). *Research Handbook on Gender, Work and Employment Relations*. Cheltenham: Edward Elgar, 2025, pp. 260-272.

are sufficiently clear to enable practical preparation, the absence of national implementing legislation leaves enforcement mechanisms uncertain and compliance strategies incomplete. This legislative vacuum is particularly problematic given the complexity of implementing systematic pay structures, which require substantial preparation time and organizational change. The delay is especially concerning given the critical implementation choices—such as job categorization frameworks—that determine whether pay structures achieve their enforcement potential.

Based on comparative evidence and the Czech Republic’s specific circumstances, several normative recommendations emerge for effective transposition legislation: First, pay structures should be firmly formalized as internal policies or collective agreements with trade unions, ensuring their binding nature and regular review mechanisms rather than remaining as informal management practices. Second, the structures must differentiate between wages reflecting the genuine value of work performed and other elements of remuneration such as benefits and allowances, which research demonstrates tend to be distributed more equally across gender lines and therefore require different analytical approaches. Third, pay structures must establish clear classification systems that categorize all workers into groups performing equal work or work of equal value, moving beyond traditional job titles or departmental divisions to focus on actual work content, skills, effort, responsibility, and working conditions as mandated by the directive. Fourth, comprehensive criteria for pay determination must be explicitly documented and made transparent to employees, specifying how factors such as experience, performance, qualifications, and market conditions influence remuneration decisions while ensuring these criteria are applied consistently and without gender bias. Fifth, regular auditing mechanisms must be embedded within the pay structures to identify emerging inequalities and enable prompt corrective action, with particular attention to detecting indirect discrimination that may arise from seemingly neutral criteria that disproportionately impact women or other protected groups.

The Czech legislator must prioritize completion of the transposition process without further delay. The approaching June 2026 deadline leaves limited time for the careful legislative process that such complex requirements deserve. More importantly, delayed transposition perpetuates the enforcement gap that has long undermined equal pay principles in Czech practice, prolonging discrimination and denying workers the protection that European law intends to provide.

The directive’s pay structure requirement offers the Czech Republic an opportunity to transform equal pay from an abstract legal principle to a practical organizational reality. This transformation requires legislative action that fully embraces the directive’s systematic approach while providing appropriate guidance and support for employers implementing these new requirements. Success depends not merely on transposing the directive’s general requirements but on making precise implementation choices that ensure pay structures function as effective enforcement mechanisms rather than mere compliance exercises. The time for such action is now – further delay serves neither legal certainty nor the fundamental goal of achieving genuine pay equality in Czech workplaces.