

## THE EU CONCEPT OF EQUAL EMPLOYMENT PAY

Andrzej Marian Świątkowski\*

**Abstract:** *In May 2023, the new UE conception of equal pay was issued on strengthening the application of the principle of equality between men and women in equal work or work of equal value through pay transparency and enforcement mechanisms. Its main task is to introduce transparency of employment systems by employers and EU Member States and to enable and facilitate the overcoming of procedural obstacles used by entrepreneurs who do not comply with anti-discrimination standards in force in the EU for less treated employees, mainly women. The directive inspired citizens of EU Member States covered by legal protection against discrimination and failure to comply with the conduct of entrepreneurs in matters related to the principle of equal pay to pursue claims for compensation through the above-mentioned bodies representing injured.*

**Keywords:** *accessibility, discrimination, equality, transparency, remuneration*

### INTRODUCTION

On May 20, 2023, Directive (EU) 2023/970 of the European Parliament and of the Council on strengthening the application of the principle of equal pay for men and women for the same work or work of equal value through pay transparency and law enforcement mechanisms was issued. Its aim and object is to ensure pay transparency through binding measures and strengthened enforcement mechanisms announced by the European Commission on 5 March 2020 in the Communication “A Union of Equality: A Strategy for Gender Equality 2020–2025”.<sup>1</sup>

One of the first results of the strategy is the binding measures on pay transparency, which the Commission presented on March 4, 2021. An important achievement is the Directive on gender balance on company boards. On March 8, 2023, the European Commission launched a campaign to break gender stereotypes. This campaign is a concrete result of the Gender Equality Strategy 2020–2025. In the case of employee employment, the average negative wage difference between wages obtained for identical or comparable work to the detriment of women was 13%. This was and still is largely due to direct and indirect discrimination against women in employment relations. The basic task of Directive 2023/970 is to introduce transparency of remuneration systems by employers and EU Member States and to enable and facilitate less well-treated employees, mainly

\* Professor Dr. hab. Andrzej Marian Świątkowski, Akademia Ignatianum w Krakowie, Krakow, Poland. ORCID: 0000-0003-1753-7819.

<sup>1</sup> Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures (Text with EEA relevance), OJ Device EU of 7/12/2022 L 315/4; Directive of the European Parliament and of the Council (2006/54 of 5 July 2006 on the conditions for implementing the principle of equal opportunities and equal treatment of women and men in matters of employment and occupation, OJ of 26/07/2006, L 204; 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 repealed; Directive 95/46/EC, OJ EU of 4/05/2016 L 110/1. General Data Protection Regulation. Text with EEA relevance An Equality Union: Gender Equality Strategy 2020–2025, Brussels, 5 March 2020. COM(2020) 152.

women, to overcome procedural obstacles used by entrepreneurs who do not comply with anti-discrimination standards applicable in the EU. Equal pay should be respected before the employment relationship is established and apply not only to the basic standard of remuneration, but also to all other benefits in cash and in kind, if they are applied by the employer and accepted by the employees. Directive 2023/970, composed of four substantive parts presented in the form of chapters, presents the following problems and issues. The first chapter “General provisions” presents legal concepts and their definitions: scope of application of the directive, pay levels, pay structures, pay gap, median, work value, categories of employees, legal terms used in directives on the prohibition of discrimination (direct, indirect, harassment, mobbing). Chapter two “Pay Transparency” concerns: pre-employment matters, determining wages, wage increase policy, availability of information, employed representatives, organizing information on wages in the workplace, cooperation of entrepreneurs with other entities employing employees, reporting of wage differences between employees of different sexes, common assessment of remuneration of all employees without exception, protection of employees’ personal data, assistance to employers employing less than 250 employees. Chapter three “Legal remedies and their enforcement” covers the protection of rights, proceedings initiated and applied in the name or on behalf of employees, the right to compensation, other legal remedies, changing the burden of proof, certificates and evidence of identical work or work of equal value, access to evidence and its use, limitation periods, fees and other costs of proceedings, fines, public procurement and concessions, victimization and protection against less favorable treatment. Moreover - it is worth adding - that Chapter Three of the discussed Directive 2023/970 applies to proceedings concerning all rights and obligations related to the principle of equal pay established in Art. 4 of Directive 2006/54 “Prohibition of discrimination”. The last, fourth chapter of Directive 2023/970 entitled “Horizontal provisions” presents the level of protection, equality bodies, statistical data, rules for disseminating information, competences of social partners, deadlines for implementing tasks and deadlines and effects of actions of the EU Member State in matters of strengthening this principle pay equality.

## I. GENERAL PROVISIONS

The subject of the legal regulation formulated in the first chapter of Directive 2023/970 are the minimum requirements that should be and are set by EU institutions, authorities of Member States and persons interested in strengthening the application of the principle of equal pay for men and women performing the same work or work of equal value. The legal basis for compliance with this “equal pay” are two norms of European Union law, primary and secondary, Art. 157 section 3 TFEU and Art. 4 of Directive 2006/54. The first one, the basic one, serves as an order addressed to actions taken and continued by EU Member States and their citizens in the areas of employment and work. The secondary standard, however, serves to eliminate all cases and situations leading directly to discrimination on the basis of gender in all aspects and conditions of remuneration for work of equal or equal value. Furthermore, pay transparency and improved mechanisms to enforce equal treatment for both workers and job applicants in the public and private sectors are widely applicable. Its scope includes not only full-time employees, but also

domestic helpers, ad hoc service workers, interns, employees working via electronic platforms, interns, and volunteers rewarded for participating in any undertakings requiring physical or mental work. The legal basis and procedure for performing individual professional activities for which bonuses are paid to employees are also irrelevant. This means that the only determinant of employment under an employment contract, non-contractual employment relationship or the provision of self-employment services is the actual performance of work. This approach to the scope of application of the provisions of Directive 2023/970 depends on all professional activities performed on the basis of legislation established by the provisions of EU Member States, provisions of collective labor agreements or concluded civil law contracts. It can therefore be noted that the provisions of this Directive 2023/970 do not specify a priori the legal basis of employment and the employment relationship. Article 2(1) 1 of Directive 2023/970 does not indicate the scope of its application. The EU legislator was aware of this inconvenience. For this reason, it ordered to refer to the case law of the Court of Justice of the European Union (CJEU). Everyone who performs work has the right to apply to the competent judicial, national and CJEU authorities, and even to the Court of Justice of Human Rights (CJEU). This is what the EU legislator did, indicating in the fifth recital, in the fifth footnote, a specific catalog of CJEU judgments issued in the years 1986–2022.

Article 3(1) 1 and 2 of the Directive defines concepts important in its practical application: “pay”, “level of pay”, “gender pay gap”, “cross-discrimination”, “average pay”, “wage quartile”, “work of the same value” and “employee category”. A new, less well-known concept is the “wage gap”. This is the difference in the average level of remuneration of men and women employed by the same employer. The above concept expresses the percentage of the average salary level of male employees. The median of this gap means the difference between the median salary of women and the median salary of men at a given employer, expressed as a percentage of the median salary of male employees. The term “median salary” itself means the salary level at which fifty percent of employed workers earn more and the rest earn less. Salary quartile refers to each of the four equal pay levels at which companies employ workers. On the other hand, the term “category of workers” means employed persons performing either identical work or work of equal value. It is used to designate a specific group of employees included by the employer on the basis of objective, gender-neutral criteria. Work structures should be organized in such a way that it can be assessed whether the situation of employees is comparable to the value of work. The basis for comparison should be objective and gender-neutral criteria for assessing the situation based on gender (woman, man). These criteria must be agreed in advance with employee representatives. They may not be based directly or indirectly on the gender of employees. Include skills, effort, responsibilities, working conditions and other factors relevant to the workplace or position. Evaluators cannot ignore soft skills.

## II. TRANSPARENCY OF LABOR SALARIES

The principle of equal pay applies to job applicants. For this reason, starting salary should also be based on objective and neutral criteria applied to all candidates applying for a given position, regardless of gender. It is the entrepreneur’s obligation to provide job candidates with the amounts and ranges of remuneration set out in the provisions of

collective labor agreements or set by the entrepreneur in the pay regulations. Information on these topics should be clearly communicated to persons interested in employment in order to enable them, before the interview, to conduct informed and transparent employment negotiations (Article 5(1-2)). During such an interview, the employer in spe cannot ask questions about the remuneration obtained in the current and previous employment relationship. It is the responsibility of employers intending to employ new employees to ensure that vacancy notices and names of vacant positions are neutral, so that it is impossible to predict who they intend to employ - a woman or a man. Recruitment processes for new employees should be organized and conducted in such a way that job applicants are not led to believe who has a greater chance of being employed in a given position - a woman or a man. This is because everyone has the right to equal pay for equal work or work of equal value (Article 5(2-3)).

Directive 2023/970 requires employers to provide employees with easy access to the criteria determining pay rates, levels and progression in the workplace. These criteria should also be objective and gender neutral (Article 6(1)). An exception to this mandatory rule may be granted by EU Member States to employers with fewer than 50 employees. However, the state government has been empowered to make such exceptions only in matters of salary promotion. Information on the rates and levels of remuneration in small workplaces is the same as that to be used in accordance with the provisions of Art. 6 section 1. In order to ensure a uniform presentation of the criteria for determining remuneration, entrepreneurs should use the terminology used in relation to the annual gross amount of remuneration with the simultaneous conversion of the annual amount into a gross hourly rate. It should be possible to calculate remuneration on the basis of the actual remuneration of a given employee, regardless of whether it is set on an annual, monthly, hourly or other basis. Workers should be guaranteed the right to request information from employers regarding their individual pay level, as well as the average pay level by gender. The above right may only apply to categories of employees performing the same work or work of equal value (Article 7(1)). It can be used directly by interested employees and their representatives representing their interests before employers. National law regulates the principles of employee representation in matters of representation in employment relations. Representation procedures must comply with the law or practice of each EU Member State. Workers should also be able to request information and answers from national authorities through equality bodies. In Member States where there is no workers' representation, workers should be represented by a representative of their choice. On the other hand, Member States should be able to take into account national circumstances and the role of workers' representation. If the information provided is incomplete and there is no employee representation, employees should be represented by a representative of their choice. On the other hand, Member States should be able to take into account national circumstances and roles related to employee representation. If the information provided is incomplete or inaccurate, the workers concerned or their representatives have the right to request additional and reasonable explanations and details of any incomplete data provided and must receive a substantive response (Article 7(2)). Employers are obliged to inform all their employees every year about their right to information and explanations and about the actions they should take to achieve the intended goal. The information requested by employees should be made available by

employers within a period not specified by the legislator, but within a reasonable period of time, but no later than within two months of the employer requesting it (Article 7(3-4)). An employer cannot refuse to disclose information about his or her remuneration to employees in order to enforce the principle of equal pay. It is the responsibility of Member States to introduce prohibitions in their labor law systems preventing employees from disclosing information on their remuneration. Employers were empowered to insist that employees who have been informed of all remuneration other than their own remuneration or level of remuneration should not use this information for purposes other than exercising the right to equal pay (Article 7(5)-(6)). Member States themselves should prepare and make available to these companies ready-made templates of promotion criteria, and even transfer the obligation to employees to check whether the salary progression is sufficient. All information should be made available to employees in an understandable and accessible form that disabled people can use freely. Information addressed to people with disabilities should take into account their type and, in particular, their needs (Article 8). Reporting allows employers to identify, evaluate and monitor pay structures and policies. Article 9 of the Directive provides information enabling them to take action to close the pay gap between women and men workers. Employers with 100 to more than 250 employees were required to report information on the median gender pay gap in the form of additional or variable components in each pay quartile; by category of workers at the usual basic hourly or monthly rate; and on additional or variable elements. From June 7, 2027, the above obligation will be fulfilled once a year by employers employing more than 250 employees. Every three years, information will be provided by employers employing 100 to 149 or 250 employees. Member States may require employers with fewer than 100 employees to provide information on wages. The reliability of the information provided is confirmed by the management of the workplace, after prior consultations with employee representatives. Employee representatives must have access to the employer's methodology (Article 9(6)). The information obtained is forwarded to the authorities responsible for compiling and publishing the data. The employer may also publish the information on its website or otherwise make it public. Member States may independently develop information based on administrative data provided to tax authorities or Social Insurance Institution (SII). Employers provide this information to the labor inspectorate and the equality body, as well as to all their employees and their representatives. The above-mentioned entities and persons have the right to ask the employer for additional explanations and details. This also applies to the gender pay gap. Employers are obliged to provide substantive responses to submitted inquiries within a reasonable, although unspecified, deadline. If it is established that a gender pay gap is not justified by objective, gender-neutral criteria, employers should, in close cooperation with employees' representatives, the labor inspectorate or the equality body, take remedial measures within a reasonable period of time (Article 9, points 7-10). It is the responsibility of EU Member States to take appropriate measures to ensure that employers subject to payroll reporting referred to in Art. 9 of Directive 2023/970, carried out a joint remuneration assessment in cooperation with employee representatives. Employers are obliged to participate in the joint determination of remuneration and provide their own employees with criteria for determining the level and progression of remuneration. Salary progression refers to the procedures for promoting

employees to higher levels of employment. Promotion criteria should be related to individual performance, development and improvement of professional skills and longer service experience. In implementing this obligation, Member States should avoid imposing excessive administrative burdens on medium-sized and small enterprises. To reduce the burden on employers, Member States could collect and combine the necessary data through national administrations, which could enable or facilitate the calculation of the pay gap between female and male workers in these companies. The following actors should be involved in carrying out joint equal pay assessments: Member State administrations, interested employers and workers' representatives. The condition for organizing the calculation of remuneration is to meet the conditions listed in Art. 10 section 1 letter a)–c). Common requirements include: (a) pay reporting demonstrating a difference in average pay levels between female and male employees of at least 5% in any employee category; b) the employer fails to justify the 5% difference based on objective, gender-neutral criteria; c) the employer's failure to remove this unjustified difference in the average level of remuneration within six months from the date of submission of the remuneration report. The joint pay assessment is carried out to identify gender pay gaps. These differences cannot be justified by objective and gender-neutral criteria. It also aims to prevent and counteract these differences. Objectives and elements for identifying unjustified differences in remuneration of female and male employees are listed. A necessary condition for organizing the calculation of remuneration is to meet the conditions listed in Art. 10 section 1. 1 letters a)–c). Common requirements include: (a) pay reporting demonstrating a difference in average pay levels between female and male employees of at least 5% in any employee category; b) the employer's failure to justify the five percent difference based on objective, gender-neutral criteria; c) the employer's failure to remove this unjustified difference in the average level of remuneration within six months from the date of submission of the remuneration report. The joint pay assessment is carried out to identify the pay gap between women and men. These differences cannot be justified by objective and gender-neutral criteria. This also aims to prevent and counteract these differences. The objectives and elements enabling the identification of unjustified differences in the remuneration of female and male employees are listed. The aim of the joint assessment is to prevent these differences. The pay assessment shall include the following elements: (a) an analysis of the percentage of female and male employees in each employment category; (b) information on the average level of remuneration of female and male workers and additional or variable components for each employment category; (c) any differences in average levels of remuneration, established on the basis of objective and gender-neutral criteria jointly by employees' representatives and the employer; d) the percentage of employees who benefited from an increase in remuneration after the end of maternity or paternity leave in a given category of employees taking leave; (f) measures to eliminate pay gaps that are not justified by objective and gender-neutral criteria; (g) an assessment of the effectiveness of the measures included in previous remuneration assessments. For workers with fewer than 250 employees, Member States shall provide support in the form of technical assistance and training. Employee representatives interested in jointly setting wages can also benefit from this assistance. For the latter, the above assistance is intended to enable them to fulfill the obligations set out in Directive 2023/970 (Article 11). Since the information



provided in connection with measures taken in accordance with the provisions of Article 7, 9 and 10 of Directive 2023/970 involve the processing of personal data, they are transferred in accordance with 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. However, they cannot be used for any purpose other than compliance with the principle of equal pay (Article 12(1)). Member States are obliged to take, without prejudice to the autonomy of the social partners and in accordance with national law, appropriate measures to effectively involve the social partners in the discussion on the rights and obligations governed by Directive 2023/970. Under identical conditions, these countries were obliged to promote the role of social partners and encourage them to use their powers to initiate and conduct collective negotiations on measures to counteract wage discrimination and its negative impact on the determination of the value of work performed exclusively by single-sex workers.

### III. LEGAL PROTECTION AND ENFORCEMENT

All workers affected by unequal treatment should have the necessary procedures to access justice. National laws in force in individual EU Member States first allow for the use of the conciliation procedure or require the intervention of equality bodies. These instruments are based on systems of incentives or penalties that enable amicable resolution of the dispute. Due to failure to respect the principle of equal pay, they should not prevent victims from having direct access to national justice authorities. Initiating disputes and conducting court proceedings should be easily accessible to employees and persons acting on their behalf. Access to justice should also be ensured after the termination of the employment relationship in which there was a valid and legally protected equal pay for the work performed by the employee (Article 14). Chapter four of Directive 2023/970 emphasizes the involvement of equality bodies, alongside interested parties. The competences of these bodies should be adequate to their duties listed in the analyzed directive, which protects employees not only against pay discrimination based on gender, but should also guarantee all employees and job candidates transparency of remuneration, pay raise policy, rights and access to information, common salary assessment with employee representatives. Civic institutions, associations, organizations and workers' representatives defending the above rights should be able to provide assistance to workers. The care of these institutions for victims who have experienced discrimination enables them to effectively pursue reported claims, allegations of discrimination and non-compliance with the principle of equal pay. It is the responsibility of Member States to ensure that the above-mentioned civic institutions and other legal entities having a legitimate interest, as defined in national law, in ensuring equality between women and men, can initiate administrative procedures or bring legal proceedings in relation to alleged violations of the rights and obligations related to the principle of equal pay of workers injured. Article 15 of Directive 2023/970 empowers these bodies and institutions to take action, in accordance with EU law, in the name or on behalf of workers considered by the EU legislator to be "alleged victims" of a breach of any rights or obligations relating to the principle of remuneration. The only *sine qua non* condition for initiating appropriate court

proceedings is the consent of the injured party. Recital 48 of the preamble to Directive 2023/970 inspires citizens of EU Member States covered by legal protection against discrimination and inconsistency of business conduct in matters related to the principle of equal pay to pursue compensation claims through the above-mentioned. And it would also inspire authorities, state institutions and employee representatives representing injured workers in order to pursue claims on behalf of more injured people. This type of procedure, as the EU legislator rightly assures, is a very important strategy to facilitate judicial and administrative proceedings. The procedures in force in some Member States would make it difficult or even impossible to initiate proceedings before the competent state authorities. Financial obstacles, in particular the costs of administrative and judicial fees, and in particular the procedural barriers established in national law governing judicial proceedings in individual Member States, become in many cases insurmountable obstacles for people without legal experience. Not without significance is the phenomenon of fear of victimization on the part of employers, with whom employees are still associated with claims for compensation for discrimination and/or failure to comply with the basic principle of equal pay, reinforced by Directive 2023/970. Only collective actions can, as rightly stated in the presented recital 47 of the analyzed directive, significantly contribute to the detection of systemic discrimination and make the EU principle of the right to equal pay and gender equality among employees noticed and accepted by civil society, public authorities, entrepreneurs and all other persons and entities enabling the performance of work. The possibility for employees to pursue collective claims would inspire action by employers obliged to use legal measures to maintain pay transparency at the same level. The pressure of workers and the authorities of the Member States on entrepreneurs is aimed at stimulating the awareness of the parties to labor relations and contributes to the development of readiness to take preventive actions not only by the Member States and their public authorities, but also by those directly interested in avoiding allegations of unequal treatment of male workers and female. It is the responsibility of EU Member States to ensure that every employee injured by an employer, when pursuing his or her claim before the national judicial authorities, receives compensation for the harm suffered as a result of a breach of his or her rights or obligations related to the principle of equal pay for work, receives full compensation or compensation for the harm caused (Article 16(1)). Specific financial penalties for unlawful conduct by the employer should be proportionate to the harm caused, but also dissuasive (Article 16(2)). It is the responsibility of Member States to ensure that all persons discriminated against recover not only full outstanding wages, but also bonuses and benefits in kind related to wages paid to employees preferred by employers (Article 16(2-3)). Compensation for lost opportunities, compensation for non-pecuniary damage and compensation for any damage caused by relevant factors, together with default interest, awarded to the injured parties cannot be estimated *a priori*. They depend on the degree to which employers violate employee rights guaranteed by the principle of equal pay for work performed by male and female employees. Compensation or compensation for damage caused is not subject to “prior fixing” maximum amounts in accordance with applicable national law (Article 16(4)). In addition to compensation, Member States should provide other legal safeguards against discrimination. Recital 51 of Directive 2023/970 states that the competent national authorities or courts should be able to introduce structural or organizational



measures enabling a Member State to comply with its obligations relating to equal pay. Such measures may include, for example, the obligation to review the pay setting mechanism based on gender-neutral criteria, job grading, the development of an action plan to eliminate the discrepancies detected and reduce unjustified pay differences, the provision of information and awareness-raising among workers on their rights to equal pay and organizing mandatory training on equal pay and gender-neutral assessments and job classifications of HR employees in workplaces. The provisions of Directive 2023/970 impose an obligation on Member States that in the event of a violation of rights and/or obligations related to the principle of equal pay, the competent authorities and public institutions have the right to issue, at the request of the injured person, their pecuniary claims, they have the right to submit - at the request of the complainant complaint and at the request of the injured party. costs of defendants and entities - orders to put an end to committed violations and the possibility of taking legal measures to ensure future compliance with the rights and obligations related to the principle of equal pay (Article 17(2)). In the event of persistent failure to apply legal remedies despite applicable legal sanctions, the competent authorities and institutions supervising compliance with Union and national law should have the power to issue orders imposing repeated financial penalties. They enable the use of financial coercive measures against employers who do not comply with applicable EU and national legal standards (Article 17(2)).

#### IV. DISTRIBUTION OF THE BURDEN OF PROOF

Member States were obliged to radically change the distribution of the burden of proof in private law provisions in proceedings for violation of the principles of equal treatment of persons discriminated directly and indirectly on the basis of gender. If employers used an opaque, traditional employee remuneration system in employment relations, based on the applicable civil law norm, the burden of proving this fact rested with the person who drew legal consequences from this fact. The above rule was broken by the CJEU, which in its judgment in the case of *Handels- og Kontorfunktionærernes Forbund I Danmark v. Dansk Arbejdsgiverforening acting on behalf of Danfoss* ruled that in such cases the burden of proof should be transferred to the defendant.<sup>2</sup> Since then, it is up to the defendant employer to prove that there was no discrimination of any kind, including in the field of remuneration, in a situation where the employees, considering themselves injured, presented circumstances allowing for the occurrence of direct or indirect discrimination. Failure by the employer to comply with the principle of pay transparency automatically shifts the burden of proof in private law proceedings to the employer acting as a defendant. Such cases occur, for example, when an employer refuses to provide information requested by an employee or fails to report a gender pay gap. Departure from the above and the resulting consequences may only occur if, despite a prima facie assessment of

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<sup>2</sup> Judgment of the Court of 17 October 1989. – *Handels- og Kontorfunktionærernes Forbund I Danmark v Dansk Arbejdsgiverforening, acting on behalf of Danfoss*. – Reference for a preliminary ruling: *Faglige Voldgiftsret – Denmark*. – Social policy – Equal pay for men and women. – Case 109/88. European Court reports 1989 Page 03199. CJEU 13.5.1986, C-170/84, ECLI:EU:1986:204.

the employer's situation, it turns out that the breach of the above obligation was unintentional and, moreover, of a marginal nature. It is *de lege lata* the duty of Member States to ensure that, in administrative and judicial proceedings concerning pay discrimination, it is up to accused employers to prove that no such discrimination has occurred (Article 18(1) to (2)). Directive 2023/970 is not binding on EU Member States, because Art. 18 section 1 of this Directive applies to procedures and proceedings in which it is the competent administrative authority or the competent national court to determine the facts. However, this article does not apply to criminal proceedings unless the law provides otherwise (Article 18(5)). The analyzed directive does not prevent Member States from introducing more favorable rules of evidence for employees initiating administrative or judicial proceedings concerning a breach of rights or obligations related to the principle of equal pay (Article 18(3)).

## V. REFERENCE POINT FOR PERFORMING THE SAME WORK OR WORK OF THE SAME VALUE

When assessing whether male and female employees perform the same work or work of the same value, an objective and neutral point of reference should be established – a comparator. The assessment is not limited to cases where female and male employees work for the same employer. Applies to one source determining working conditions. Employees may find themselves in a comparable situation when they are not employed by the same employer, but the conditions of their employment with different employers are identical. The fact that remuneration conditions can be attributed to different sources setting the same remuneration conditions may be considered as an appropriate point of reference for comparison. A single source exists when it determines the remuneration components relevant for the purposes of comparing employees (Article 19(1)). The assessment of the comparable situation of employees is also not limited to the same period of employment (Article 19(2)). Where it is not possible to establish an objective and neutral single source of remuneration that could act as a real point of comparison, it is necessary to use information from other available evidence that could be used to establish how a worker in a comparable situation would be treated (Article 19(3)). Searching for evidence of the existence of an identical work or a work having the same value as the work of women and men, referred to in Art. 19, cannot be considered accurate or even sufficient. For this reason, in Article 20 of the analyzed directive, the EU legislator imposed an obligation on Member States to ensure that in proceedings concerning claims regarding equal pay between women and men, national courts order the defendant - the employer - to disclose all relevant circumstances. the responsibility of Member States to ensure that the competent public authorities or national courts have the power to order parties to disclose evidence containing confidential information. The above information may be important in assessing the validity of your equal pay claim. Entities requiring the disclosure of such information should have effective legal means to protect such data, which can be analyzed and assessed in accordance with national procedural rules. The Directive prohibits Member States from applying or introducing more favorable rules for the conduct of proceedings by complainants (Article 20(1-3)). The lack of information on the amount of remuneration in job positions causes information asymmetry, limiting the

bargaining power of people applying for remuneration for work. Ensuring pay transparency should enable job candidates to make informed decisions about their expected pay without having to limit the bargaining power of both parties to the potential employment relationship to negotiate pay even outside the agreed pay rate range. Pay transparency would ensure a clear basis for pay regardless of gender. It would also prevent the practice of underestimating wages in relation to the skills and professional experience of job applicants. This would also cover cross-discrimination in situations where non-transparent pay-setting systems allow discriminatory practices for various, even legitimate, reasons. Directive 2023/970 clearly requires employers to inform job applicants about starting pay rates or ranges. Negotiating entrepreneurs should fulfill their obligations in a way that provides both parties to the employment relationship with transparent information regarding remuneration. The above recital mentions information about job vacancies published before the interview or employment contract as an example of fair negotiations. These messages should be sent directly by the employer or transmitted in another way, translated by the social partners. However, the above methods are not clear enough. It is difficult to wonder what is more appropriate from the point of view of maintaining the principle of pay transparency during negotiations, notification through the employer's representative or the employee's representative? Activities in the field of pay transparency should, on the one hand, protect conflicting interests and the right of employees to equal pay, and, on the other hand, limit the employer's activities.

## VI. LIABILITY DATES, LEGAL COSTS AND PENALTIES

National laws of individual EU Member States must not make it excessively difficult to pursue claims set out in the provisions of Directive 2023/970. A serious obstacle to the phenomenon of gender-based pay discrimination are limitation periods. The EU legislator therefore came to the conclusion that it is necessary to establish common minimum legal standards for the operation of these deadlines, which are at least three years old. They should specify the beginning of the limitation period, its length and the circumstances in which the limitation period is suspended or interrupted. The limitation period may only begin when the injured party, i.e. the employee, learned about the violation of the applicable provisions of Directive 2023/970. Member States may decide that the limitation period does not start to run from the date of the breach or before the termination of the employment contract or employment relationship (Article 21). Member States shall ensure that the time limit is suspended or interrupted where the complainant takes action by presenting a complaint to the employer or by bringing proceedings before a court. The right to lodge a complaint is available to the injured party, the employee representative, the labor inspector and the equality body. The above regulation of limitation periods does not apply to time-barred claims (Article 21(1-3)). Decisions on the legal costs of proceedings are made by national courts. If the respondent employer wins the dispute regarding pay discrimination, the adjudicating court is obliged to examine whether the complaining employee had reasonable grounds to pursue the claim and whether it is justified to exempt him from the obligation to reimburse the employer's costs (Article 22). It is likely that special protection against an employee's potential liability to bear the costs of the proceedings will arise where a successful defendant employer has failed to

comply with the pay transparency obligations set out in this Directive. Member States are obliged to establish effective, proportionate and dissuasive penalties applicable to breaches of the rights and obligations relating to the principle of equal pay. They are also obliged to take all necessary measures to ensure their implementation. They should immediately notify the European Commission of the provisions and measures introduced, as well as of subsequent changes to penalties. The applicable penalties only include fines which should ensure a ‘real deterrent effect’. They should take into account any relevant aggravating or mitigating factors applicable to the breach of the principle of equal pay. In the event of repeated violations of rights and obligations related to the principle of equal pay, specific penalties are imposed. All necessary measures to ensure the effective implementation in practice of the above. penalties are decided and implemented by Member States (Article 23(1-5)).

Equal pay also applies to public procurement and concessions. However, legal regulations are not strict. Member States still need to consider introducing penalties and conditions for terminating contracts (Article 24(1-2)). The situation of employees and their representatives is different. They cannot be treated less favorably in the exercise of their rights and obligations. Member States were obliged to introduce in their national legal orders the necessary measures to protect employees and the lawyers representing them in employment matters, such as dismissal from work and unfavorable treatment by the employer caused by responding to complaints addressed to employers’ organizations. The same applies to administrative and judicial proceedings undertaken to enforce rights and obligations related to the principle of equal pay (Article 25(1-2)).

## CONCLUSION

### HORIZONTAL REGULATIONS

Chapter four of Directive 2023/970 consists of ten provisions regulating the level of protection, equality bodies, monitoring and awareness-raising, negotiations and collective action, statistics, dissemination of information, implementation of the objectives and tasks of the directive, transposition, reporting and reviews, entry into force and recipients. In line with EU standards, Member States may maintain or introduce national legal standards set out in Directive 2023/970 that are more favorable to workers than those introduced by the directive. The application of this Directive may in no case result in a reduction in the level of protection of matters regulated by this Directive (Article 28(1) to (2)). Equality bodies are competent in matters listed in the directive, although the above principle does not call into question the competence of labor inspectors or other bodies dealing with the protection of workers’ rights. It is the responsibility of Member States to take measures to ensure close cooperation and coordination between labor inspectors, equality bodies and, where appropriate, the social partners. Equality bodies shall use state resources necessary to perform their functions effectively (Article 28(1-3)). Member States shall ensure consistent and coordinated monitoring and support of the application of the principle of equal pay and the enforcement of all available legal remedies. They designate bodies to monitor and support the implementation of national measures and take the necessary actions to ensure their proper functioning. The tasks

of the monitoring body shall be: (a) raising awareness of entrepreneurs, public and private organisations, social partners and the general public in order to promote equality and transparency of pay, with particular attention to cases of cross-discrimination with regard to equal pay for the same work or work of equal value ; b) analyzing the causes of the gender pay gap, designing tools to assess pay inequalities; (c) collecting and promptly making public information about legal loopholes; d) collecting reports on joint salary assessments; e) collecting data on the number and types of complaints about pay discrimination submitted to the competent authorities. The above-mentioned data will be presented by Member States to the European Commission by June 7, 2028, and every two years thereafter. Its addressees are the Member States of the European Union. When notifying the Commission, EU Member States shall also provide summaries of the results of the assessment of the impact of the transposing legislation they have adopted on workers and employers with fewer than 250 employees and indicate where that assessment has been published. By 7 June 2031, Member States will notify the EU Commission on the implementation of Directive 2023/970. By 7 June 2033, the Commission shall submit a report to the European Parliament and the Council on the implementation of this Directive. The report takes into account the employer thresholds provided for in Art. 9 and 10 and the 5% threshold for the joint assessment of remuneration referred to in Art. 10 section 1. On this basis, it will propose any legislative changes it considers appropriate. Directive 2023/970 was published on 10 May 2023 in the Official Journal of the European Union. It entered into force twenty days later. It is addressed to the Member States of the European Union.