

TRANSPARENCY OF REMUNERATION

NEW RULES ACCORDING TO THE EU
DIRECTIVE ON EQUAL PAY



MAY

BDO

On June 6, 2023, the directive came into force, through which the EU adopted new rules regarding pay transparency.

As a part of the so-called directive on equal pay, rules were approved that will bring employers in the EU **new obligations and, at the same time, provide new rights for employees.**

In practice, this may bring to employers not only new reporting obligations regarding gender pay gap within their organization, but also the obligation to bear the burden of proof when it comes to employees claiming wage entitlements!



WHAT IS THE PURPOSE OF THE DIRECTIVE?

The main goal of the directive is to reduce gender pay gaps by strengthening:

- ▶ the principle of **equal pay for men and women** for the same work or work of equal value
- ▶ the prohibition of any direct or indirect discrimination in pay based on gender

WHOM DOES THE DIRECTIVE CONCERN?

The directive applies to all employers in both the public and private sectors.

WHICH RIGHTS AND OBLIGATIONS WILL THE DIRECTIVE BRING?

▶ Employee's right to compensation

Pursuant the directive, every employee who suffers harm due to the violation of any rights or obligations related to the principle of equal pay will have the right to seek full compensation or remedy determined by the member state.

Employees, who have been the victims of gender pay discrimination will be entitled to compensation, including full recovery of unpaid wages/remuneration, related benefits, compensation for lost opportunities, non-pecuniary damage, any damage caused by other relevant factors that may include cross-sectional discrimination, as well as interest from the delay.

Shifting the burden proof

If an employee feels harmed by a violation of the principle of equal pay, it will be the employer's task to prove that there was no direct or indirect discrimination in connection with remuneration!

The employer will therefore have to prove that he has not violated EU rules on equal pay and pay transparency.

In addition to the burden of proof, employers may also face an order to disclose all relevant evidence they have available.

The relevant authorities or national courts will have the power to order the disclosure of evidence containing confidential information if they deem it relevant.



► Reporting obligation

Employers will be required to regularly submit reports on the gender pay gap within their organization. If this gap exceeds 5% and cannot be justified by objective, gender-neutral criteria, employers will have to eliminate such a situation within 6 months or take action in the form of a joint compensation assessment carried out in collaboration with employee representatives.

This obligation will depend on the number of employees as follows:

- **250 or more** employees the obligation to submit a report **every year** (first report by 07.06.2027)
- **150 to 249** employees the obligation to submit a report **every three years** (first report by 07.06.2027)
- **100 to 149** employees the obligation to submit a report **every three years** (first report by 07.06.2031)
- **Less than 100** employees In this case, the directive leaves it up to the will of the member states, although reports are not primarily required from such employers (however, it depends on the transposition of the directive)

► Extension of the information obligation of the employer

Under the new regulations, employers' information obligation towards both employees and job applicants will be expanded.

- Obligations towards job applicants to inform them about the salary/remuneration offered for the position - this obligation already exists in the current Slovak legislation.



Obligations Towards Employees

- The obligation to provide information on salaries/remuneration and pay progression policies. An employee will be entitled to request from the employer information on average levels of salaries/remuneration by gender for categories of employees performing equal work or work of equal value.

Employers will also be obliged, even without prior request from employees, to make available the criteria used to determine salaries/remuneration, salaries/remuneration levels, and pay progression of employees (these must be objective and gender-neutral).

- Employers will be required to **annually inform all employees of their right to request pay-related information** (i.e. information on average levels of salaries/remuneration) and the steps to be taken to exercise this right.

SANCTIONS

According to the directive, member states will have to establish rules regarding sanctions applicable for violations of rights and obligations related to the principle of equal pay.

Sanctions for such violations include fines, which are determined based on national law, and which must be effective, proportionate, and dissuasive.



OUR OPINION

Member states are required to transpose the directive by **June 7, 2026**.

Although it is necessary to wait for the final implementation of the directive into Slovak legislation, we have already identified significant impacts and risks for employers from the wording of the directive itself.

Employers might already be accustomed to increased administrative tasks. However, bearing the burden of proof in potential disputes with employees could pose significant risks and complications for them.

In such a subjectively perceived matter as wage evaluation, claims can be made by employees who feel unfairly evaluated, literally on a daily basis. So, at the end of the day, this can only bring a burden for employers and authorities competent in the matter, without achieving the effect sought by the directive.

In conjunction with the authorization of competent authorities to order employers to disclose all relevant evidence, including confidential information, inconsistent transposition of the directive may lead to disproportionate infringements on employers' rights.



The effectiveness of the directive is also negatively impacted by the fact that it primarily regulates obligations for enterprises with over 100 employees.

In our opinion, gender pay gaps are most significant in small and medium-sized enterprises. Since the directive leaves it to the EU member states to introduce the regulation for employers with less than 100 employees, it may ultimately result in a significant part of relevant employers not being affected by the directive.

Therefore, it will be up to the individual EU member states to ease the disproportionate burden and disproportionate interference with employers' rights after transposition, and at the same time increase the effect of the directive in the area under consideration.

Within BDO, we will certainly monitor this agenda and keep you informed about further legislative developments. However, since this concerns European legislation, we highly recommend preparing for these changes in advance.

If you are interested in learning more about the topic, do not hesitate to contact us.



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