

Equal Pay for Work of Equal Value

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ERA Seminar on EU Gender Equality Law
for members of the judiciary

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Overview

- The gender pay gap (GPG) in the EU
- Relevant EU legislation re. equal pay for men and women for work of equal value
 - Primary EU law
 - Secondary EU law
 - Directive 2006/54 (recast): enforcement + CJEU case law
 - Pay transparency directive 2023/970 + spillover effects



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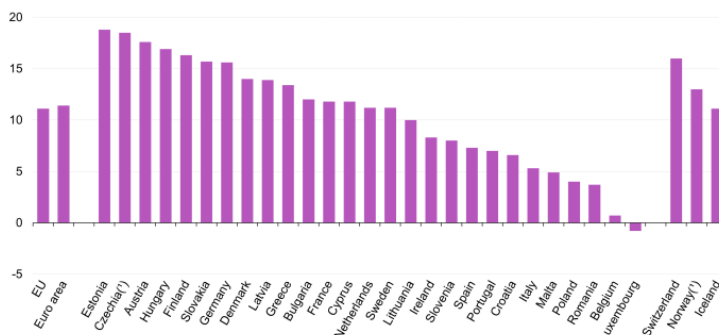
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GPG in the EU (2024)

The unadjusted gender pay gap, 2024

(difference between average gross hourly earnings of male and female employees as % of male gross earnings)



Note: For all the countries except Czechia and Iceland: data for enterprises employing 10 or more employees, NACE Rev. 2 B to S (-O); Czechia: data for enterprises employing 1 or more employees, NACE Rev. 2 B to S; Iceland: NACE Rev. 2 sections C, D, E, F, H, I, J, K, O, P.
Gender pay gap data for 2024 are provisional until benchmark figures, taken from the Structure of Earnings survey, become available in December 2026.
(*) Definition differs (see metadata)
Source: Eurostat (online data code: sdg_05_20)

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GPG: the facts

- In the EU (Eurostat 2024 data)
 - Persisting GPG of 11,1% on average for 27 EU Member States
 - Large differences among countries: from -0,8 % in Luxembourg to 18,8% in Estonia
 - Decrease in GPG slows down
 - In some countries: stagnation (e.g. Denmark, Slovakia, Sweden) or even an increase (e.g. Italy)
- Albania: 6,9% (ILO 2018)

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How to define the GPG?

- Confusion re. precise meaning
- In the EU:
 - Relative difference in the average gross hourly earnings of women and men within the economy as a whole (unadjusted/ absolute/ raw GPG)
- GPG = macro-level statistical indicator for pay inequality
- Relative difference is caused by:
 - Pay discrimination in its strict (legal) sense
 - Factors that have – at first sight - nothing to do with discrimination = 'explanations'



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How to define the GPG?

- Common 'explanations' for unadjusted GPG include:
 - Part-time employment
 - Temporary positions
 - Horizontal and vertical segregation (glass ceiling and sticky floor)
 - Frequent career interruptions
 - ...
- Adjusting 'unadjusted' GPG to and 'adjusted' GPG
 - Potentially shows pure discrimination



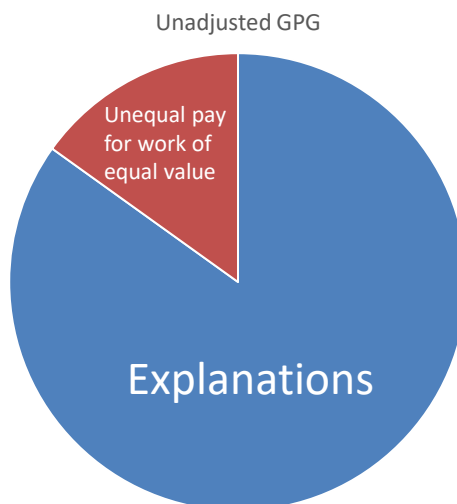
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GPG & equal pay for work of equal value



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EU legislation – primary law

▪ Art. 157 TFEU

“1. Each Member State shall ensure that the principle of **equal pay** for **male and female workers** for **equal work** or **work of equal value** is applied.

2. For the purpose of this Article, “**pay**” means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

(a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;

(b) that pay for work at time rates shall be the same for the same job.

3. [...]

4. [...]”



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EU legislation – secondary law

- Directive 2006/54 (recast)
 - Implements equal opportunities and equal treatment for men and women in employment and occupation
 - Relates, among other things, to working conditions, including pay

EU legislation – secondary law

- Art. 4 Dir. 2006/54 (recast)

“For the same work or for work to which equal value is attributed, **direct** and **indirect** discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

In particular, where a **job classification system** is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.”

EU legislation – secondary law

▪ Art. 19(1) Dir. 2006/54 (recast)

“Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them **establish**, before a court or other competent authority, **facts from which it may be presumed that there has been direct or indirect discrimination**, it shall be for the **respondent** to prove that there has been **no breach** of the principle of equal treatment.”

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Enforcement of equal pay legislation?

- Principle of equal pay
 - Well-reflected in the national legislation of 27 MS and 3 EEA countries
- Despite EU and national laws
 - Equal pay for equal work/ work of equal value still not achieved
 - ✓ Macro level: GPG persists
 - ✓ Micro level: individual cases are being brought to court (CJEU and national levels)

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Equal pay cases before the CJEU

- CJEU case law is not abundant
- Why is enforcement problematic?
 - Finding the right comparator
 - ✓ Comparison across industries? (single source)
 - ✓ Hypothetical comparator?
 - Lack of information on pay
 - ✓ Information is individual and confidential
 - ✓ National laws prohibiting disclosure of wage information + confidentiality clauses in contracts
 - Claimants' lack of resources
 - Issues of job security, reputation
 - National procedural law
 - ...

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Micro level: equal pay cases

- Most CJEU equal pay cases
 - Cases of indirect discrimination
 - Over time, cases have become more complex
 - Interesting lines of case law
 - ✓ Hourly wages/ benefits/ overtime pay for part-time work – e.g. *KfH* (C-184/22 & C-185/22)
 - ✓ Effect on wage of (part-time) parental leave – e.g. *Meerts* (C-116/08), *Praxair* (C-486/18)
 - ✓ Effect on wage of other career breaks (maternity leave, ...) – e.g. *Griesmar* (C)-366/99), *Leone* (C-173/13)
 - ✓ Effect on wage of difference in training/ professional qualifications – e.g. *Kenny* (C-427/11)
 - ✓ Claims by men – e.g. *Leone* (C-173/13)

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Case KfH (C-184/22 & C-185/22)

- Part-time care assistants challenged their employer regarding pay for 'extra' hours worked above their weekly working hours.
- Dispute:
 - Overtime pay was only due when exceeding working hours for full-time staff, meaning part-time staff worked 'extra' hours at a lower rate than full-time peers.
- CJEU's ruling:
 - This constitutes indirect discrimination under Art. 157 TFEU (and the Part-Time Work Directive).



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Pay transparency directive 2023/970

- Commission noticed (2021):
 - Persistent GPG (macro level)
 - Low amount of relevant case law (micro level)
- Directive to strengthen application of principle of equal pay for equal work
 - Through pay transparency measures and
 - Through enforcement measures
- Combination of individual (micro) and systemic (macro) approaches
- Transposition into national law by June 7, 2026



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Pay transparency measures

- **Prior to employment (Art. 5)**
 - Prohibition on enquiring about job applicants' current or previous salaries
 - Right to receive information about initial pay for the position
- **Transparency about pay criteria (Art. 6)**
 - Easy access to objective & gender-neutral pay criteria
- **Right to information (Art. 7)**
 - Right to know individual and average pay levels, broken down by gender

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Pay transparency measures

- **Pay reporting (Art. 9)**
 - Periodically provide information on GPG (> 100 employees)
 - Unjustified pay differences require further action
- **Joint pay assessment (Art. 10)**
 - Unjustified GPG $\geq 5\%$: comprehensive analysis to identify, remedy and prevent pay differences
- **Public procurement (Art. 24)**
 - Economic operators may be excluded from participating in public procurement

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Enforcement measures: proof

- **Burden of proof** (Art. 18)
 - Non-implementation of pay transparency obligations: burden of proof shifts onto the employer
- **Proof of equal work** (Art. 19)
 - Confirmation of CJEU case law
 - ✓ Single source
 - ✓ Comparator: no need to be employed at the same time
 - ✓ Hypothetical comparator allowed
- **Access to evidence** (Art. 20)
 - National courts may order the employer to disclose (confidential) information

▪ ...

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Enforcement measures: remedies

- **Positive injunction** (Art. 17)
 - National courts may order positive measures to ensure the application of the principle of equal pay
- **Collective redress** (Art. 15)
 - Equality bodies, workers' representatives,... may bring claims on behalf of victims, with their consent
- **Penalties** (Art. 23)
 - Effective, proportionate, and dissuasive penalties may be imposed, including fines
 - Specific penalties for repeated infringements

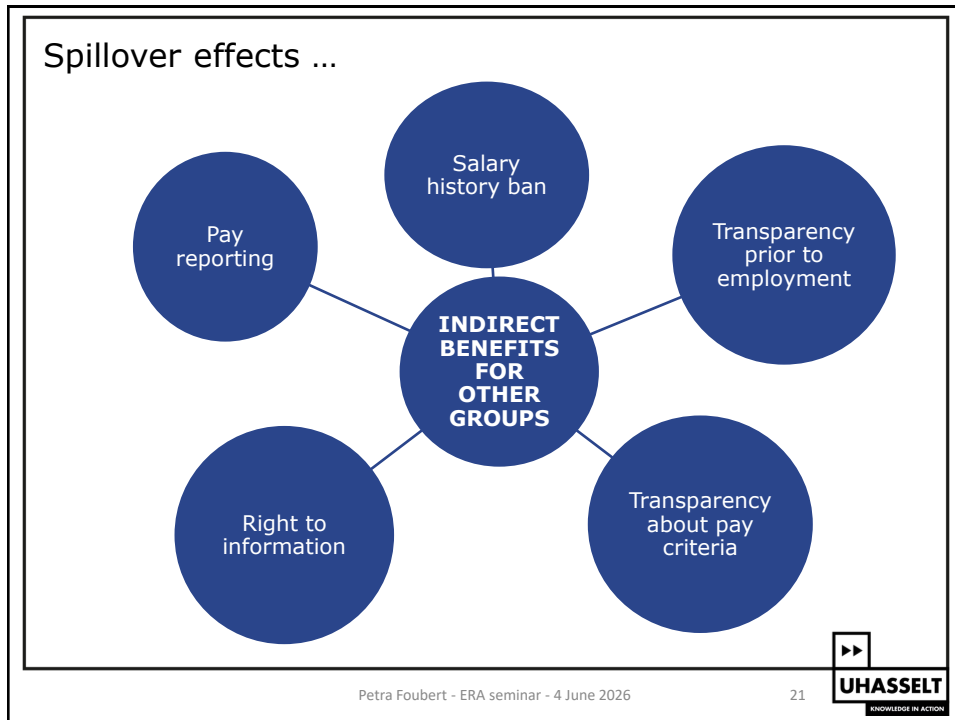
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Thank you for listening!

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Further reading ...

- ✓ Pay Transparency in the EU (2017)
<https://www.equalitylaw.eu/downloads/3862-the-gender-pay-gap-in-europe-from-a-legal-perspective-pdf-518-kb>
- ✓ Enforcement of the equal pay principle (2017)
<https://www.equalitylaw.eu/downloads/4466-the-enforcement-of-the-principle-of-equal-pay-for-equal-work-or-work-of-equal-value-pdf-840-kb>
- ✓ Pay transparency in Europe: First experiences with gender pay reports and audits in four Member States (2018)
<https://www.eurofound.europa.eu/publications/report/2018/pay-transparency-in-europe-first-experiences-with-gender-pay-reports-and-audits-in-four-member>
- ✓ National cases and good practices on equal pay (2019)
<https://www.equalitylaw.eu/downloads/5002-national-cases-and-good-practices-on-equal-pay>
- ✓ Study to support the evaluation of the relevant provisions in Directive 2006/54/EC implementing the Treaty principle on 'equal pay for equal work or work of equal value' (2020)
<https://op.europa.eu/nl/publication-detail/-/publication/fd8a4b90-5848-11ea-8b81-01aa75ed71a1/language-en>
- ✓ S. Benedi Lahuerta, K. Miller & L. Carlson, 'Bridging the Gender Pay Gap through Transparency. Comparative Approaches and Key Regulatory Conundrums', Elgar, 2024, 386 p. (ISBN: 978 1 80392 041 2)



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