

EQUAL GENDER PAY



EDIT TO RIAL

GENDER PAY EQUALITY is a fundamental right embedded in the EU Treaty and in numerous European Directives. Yet, this right is not yet a reality. Women still earn less than men across Europe and are under-represented in decision-making positions.

Many European countries have taken initiatives to address this inequality in pay.

For example, countries such as Austria, Belgium, Denmark, Finland, France, Germany, Italy, the Netherlands, Spain, Sweden, Switzerland and the UK have or will soon have legislation on pay transparency and/or reporting obligations in place, with some countries going further than others.

In some countries, legislative quotas applying to corporate boardrooms have been implemented (e.g. Austria, Belgium, Germany, the Netherlands).

This booklet covers 20 countries in Europe and sets out, for each country, figures and trends, the legal framework on gender pay equality and the sanctions for the employer and the means of action for the employee in the event of any violation of the equal pay legislation.

The contact details of all of the contributing law firms are provided within the booklet, so do feel free to get in contact if you have any questions.

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AUSTRIA

THE GENDER PAY GAP: FIGURES AND TRENDS



The interim Austrian government established in early June 2019 in the aftermath of a government crisis set a strong example of gender equality. Top legal expert and former president of the Austrian Constitutional Court, Brigitte Bierlein, became Austria's first female chancellor and head of a government consisting of six female and six male ministers. Thus, issues of gender equality leapt once more to the forefront of public awareness. Based on the Eurostat gender pay gap definition, the gender pay gap in Austria was 19.9% in 2017. Although the gender pay gap experienced a significant reduction over the preceding decade (from 25.5% in 2007), it is still considerably higher than the EU average of 16% (2017).

On a positive note, the significant gender pay gap in Austria is coupled with a relatively high and increasing female employment rate. The employment rate in women aged 15 to 64 increased from 63.5% in 2007 to 68.2% in 2017.

Statistics Austria (an independent and non-profit-making federal institution) analysed the root causes for the gender pay gap, based on data collected in 2014. It was found that the most significant observed cause for the gender pay gap in Austria is the segregation of the labour market in terms of business sectors: a considerable number of women work in lower paid roles and sectors (such as retail). Along with a number of other characteristics such as education, age, seniority, full and part-time employment and – to a lesser extent – region and size of enterprise, roughly one third of the gender pay gap can be ascribed to structural differences. While the remaining two thirds might be attributable to gender discrimination, unobserved factors (such as admission and promotion requirements) may equally play a role.

Significantly more women are employed on a part-time basis. The number of women employed on a fixed-term basis is slightly higher than that

of men. Both factors however tend to be more detrimental to men's earnings than they are to women's.

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



The principle of equal pay is embedded in the Austrian Equal Treatment Act which prohibits discrimination – amongst others in terms of payment – based on gender, ethnicity, religion or world view, age and sexual orientation.

Pursuant to the Austrian Equal Treatment Act, internal company mechanisms must be in place for purposes of wage transparency. Every two years, companies with a headcount of more than 150 must issue an income report breaking down the number of male and female employees by occupation group and seniority and by the average or median income.

Furthermore, all job advertisements must be gender-neutral and must indicate the minimum salary for the advertised position as well as the employer's readiness to negotiate the payment. This obligation also aims to provide transparency and a stronger bargaining position for employees.

In addition to the symbolic function of the Austrian interim government, the Austrian labour market has been experiencing some positive developments in terms of bridging the gender pay gap. Under statutory law, parental leave is currently taken into account for purposes of seniority-based entitlements (such as length of notice periods and vacation) to an extent of up to ten months. Only a small number of collective agreements count the full term of the parental leave towards an employee's seniority, which, in turn, determines the minimum wage entitlement. Although legislative procedures in this respect have yet to be initiated, the collective agreement for trade, which governs a female-dominated sector, now credits up to 24 months of parental leave towards employees' seniority in its recently revised salary scheme.

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Furthermore, the beginning of 2018 marked the entry into force of a mandatory 30% women's quota on the supervisory board of listed companies and companies with more than 1,000 employees. The women's quota is equally applicable to capital and employee representatives on the supervisory board. The mandatory women's quota applies to supervisory boards with at least six capital representatives in companies with a 20% female workforce.

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



While there are no penalties for gender pay discrimination, affected employees may claim the differential amount in court along with compensation for the personal impairment suffered. There are no specific statutory provisions in respect of the latter amount. Rather, the compensation is awarded by the labour courts on a case by case basis.

Court cases can be initiated by individual employees only, whereas procedures before the Equal Treatment Commission can be initiated not just by employees, but also by employers, works councils, the Ombud for Equal Treatment or by employer/employee representation bodies (such as the Federal Chamber of Employees or the Trade Union Federation).

The Equal Treatment Commission is a governmental agency that employees (amongst others) may call upon for an opinion as to whether they have been discriminated against. The Equal Treatment Commission can however not award any compensation in cases of discrimination. Rather, individuals must raise their compensation claims before a labour court. It is worth noting that, while labour courts must give due consideration to an opinion issued by the Equal Treatment Commission, they are not bound by it and will rule based on the evidence presented to them.

The Ombud for Equal Treatment is a state agency which mainly assists and advises discriminated individuals in asserting their rights. It can also conduct independent investigations in case of suspicion that a discrimination has occurred. Investigations may even include inspections on the employer's premises and review of the company's documents. The Ombud for Equal Treatment can additionally bring forward cases before the Equal Treatment Commission and request that the latter deliver an opinion as to whether a discrimination has occurred.

In cases of suspicion of gender pay discrimination, the Ombud for Equal Treatment can request information about employees' salaries from social insurance and severance funds, which are, in turn, under the obligation to provide the requested information.

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BELGIUM

THE GENDER PAY GAP: FIGURES AND TRENDS



On average, women earn 7.6% less than men for each hour worked.

If the gender pay gap is calculated on an annual basis, then women earn 20.6% less than men on average. The difference between the two figures can be partially explained by the effect of part-time work, where women are over-represented, which has an important impact on the pay gap figure on an annual basis.

(Source: the Annual report for 2017 on the gender pay gap in Belgium, published by the Belgian Institute for the Equality of Women and Men – figures based on the 2014 survey year.)

The gender pay gap is largest in the following industry sectors: (1) aviation, (2) the production and distribution of electricity and gas, (3) the manufacturing of IT- and electronic products, (4) the manufacturing of clothing, and (5) support functions in the insurance and pension sector. Moreover, the pay gap manifests itself more strongly in the highest paid jobs.

The most important reasons for the pay gap are: (i) the unequal distribution of care responsibilities, as a result of which women are more likely to work part-time than men and (ii) the career choice of women.

If we look at the OECD figures, they are even lower than those of the Institute for the Equality of Women and Men identifying Belgium as the Western-European country with the lowest pay gap figure. Based on the OECD-figures, the median monthly salary of Belgian men is only 3.3% higher than that of women. The difference with the figures from the Belgian Institute for the Equality of Women and Men is due to the calculation method: the OECD works with the median salary instead of the average salary and does not take into account the effect of part-time work.

Although Belgium has a relatively small gender pay gap in comparison to other EU countries, this gap is very resilient considering the many years that equal pay has been at the heart of labour and equality policies.

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



Belgium has adopted several 'legal instruments' to fight against the pay gap between men and women.

- The **Act of 22 April 2012** includes measures on reducing the gender pay gap at three levels: (i) the national level (obligation for the 'social partners', i.e. the unions and employer's organisations to put equal pay on the agenda of their biannual negotiations for an 'Interprofessional Agreement'), (ii) the industry level (the collective labour agreements including minimum wages and function classification systems at the industry level must be gender neutral, which is checked by the Employment Ministry), and (iii) the company level. All companies have the obligation to outline differences in pay and labour costs between men and women in their annual accounts (in the "social balance" section). These annual accounts are transmitted to the National Bank to then become publicly available. Moreover, companies that employ at least fifty employees are also required to undertake a biannual analysis of their remuneration policy to determine whether it is gender neutral or not. Every two years, these companies must draft a report including a comparative analysis of the wage structure of female and male employees within the company, to be discussed with the Works Council or the Trade Union Delegation. If this analysis shows that women earn less than men, then the company will be required to produce an action plan. Moreover, a mediator - an employee of the company - can be appointed, who will try to find a compromise with the employer if an employee claims to be the victim of gender pay inequality.
- The **Act of 28 July 2011** has installed a quota that at least one-third of the members of the board of directors of listed companies and autonomous public-sector companies must be female. These companies must give an overview of the efforts that have been undertaken to achieve the quota in their annual report.

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- The National Collective Bargaining Agreement (CBA) n° 25, which transposes Article 119 of the E.U. Treaty into Belgian law, imposes equal pay for men and women for equal or equivalent work. Every employer must add the text of this CBA n° 25 to the company's Work Rules (i.e. a mandatory personnel handbook).
- Besides a 'general' anti-discrimination Act, Belgium also has a specific law on discrimination between men and women, namely the so-called 'Gender Act' of 10 May 2007, which prohibits discrimination based on gender, including pregnancy, giving birth and maternity, sex change and gender identity or gender expression. Moreover, the principles of equality between men and women (Article 10) and non-discrimination (Article 11) are embedded in the Belgian constitution.

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



An employer violating equal pay legislation exposes itself to both criminal and civil sanctions.

CRIMINAL AND ADMINISTRATIVE SANCTIONS

The anti-discrimination legislation includes different criminal and administrative penalties (of up to EUR 8,000).

In addition, the Social Criminal Code includes criminal fines (of up to EUR 4,000) or administrative fines (of up to EUR 2,0000). Certain fines must be multiplied by the number of employees concerned.

The social inspection service has the power of assessment, which means that it can decide to only give a warning or permit a certain period for rectification/regularisation of the breach.

CIVIL SANCTIONS

Moreover, in the case of gender discrimination, the courts can oblige the cessation of such discrimination (summary proceeding, possibly under a periodic penalty payment, i.e. a sum of

money determined by the court to be paid for as long as the discriminatory acts are not voluntarily stopped) and/or order the company to pay compensation for damages.

The employee can claim compensation for damages, consisting of a lump sum amount (which varies according to the circumstances, but up to 6 months' gross salary) or compensation based on the actual damage suffered.

If the employee has filed a complaint for gender discrimination, then he/she is protected against retaliation for a period of 12 months following the filing of the complaint or 3 months following the final judgment in legal proceedings. During this period, if the employer takes a detrimental measure, it must prove that the measure is not linked to the complaint. The employee affected by such detrimental measures has the right to ask the employer for his/her reintegration into the company. Alternatively, the employee can claim compensation for damages, consisting of a lump sum amount of 6 months' gross salary or compensation based on the actual damage suffered.

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CYPRUS

THE GENDER PAY GAP: FIGURES AND TRENDS



TRENDS AND EVOLUTIONS

The general trends for the Republic of Cyprus are promising a positive development in eliminating gender pay inequality. According to the Gender Equality Index 2017, Cyprus displayed a higher level of progress in this regard than the average in the EU. The gender pay gap has been reduced from 16.2%⁽¹⁾ in 2012 to 13.9%⁽²⁾ in 2018. As a result, Cyprus has managed to perform better than the European average, which accounts to 16.2%.⁽³⁾

WHY WOMEN EARN LESS THAN MEN?

- **Women are under-represented in managerial jobs**

One of the reasons why women earn less than men is that women are highly under-represented in managerial and supervisory jobs. Moreover, men are more likely to be promoted than women, and consequently paid better. It is remarkable that, only 6.3% at CEO level are women.⁽⁴⁾

- **Women spend more time on unpaid tasks**

Women tend to spend 22 hours on average per week on unpaid care and household activities. On the other hand, men spend only 9 hours per week. This is reflected in the labour market by the fact that 1 in 3 women reduces her paid hours to part time, in comparison with 1 in 10 men.⁽⁵⁾ In addition, women tend to spend periods off the labour market more often than men; that causes career interruptions, which affect their hourly pay and future earnings.

- **Women are affected by labour market segregation**

The existing segregation in the labour market and in education, results in women being overrepresented in some sectors and underrepresented in others. For example, women are highly represented in teaching and sales, which are usually low paid occupations.⁽⁶⁾

- **Pay discrimination**

Although pay discrimination is illegal, it continues to contribute significantly to the gender pay gap.

SECTORS OF INDUSTRY WITH THE HIGHEST GENDER PAY GAP

According to data from the Statistical Services of Cyprus, the widest gender pay gap can be observed in the arts, entertainment and recreation industry and is as high as 60%. The industries that follow are the financial and insurance industry as well as the scientific and technical industry, with a gender pay gap of 27.8% and 29.9% respectively.⁽⁷⁾

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



THE EQUAL PAY BETWEEN MEN AND WOMEN FOR THE SAME WORK AND FOR WORK OF EQUAL VALUE LAW 177(I)/2002 AND THE EQUAL TREATMENT OF MEN AND WOMEN IN EMPLOYMENT AND VOCATIONAL TRAINING LAW 205(I)/2002

These laws transpose European Directives 75/117/EEC, 76/207/EEC, 97/80/EC and 2006/54 EC into Cypriot law. The purpose of this legislation is to enshrine the principles of equal pay between men and women for equal employment and also, impose a burden of proof that allows for more effective action to be taken in cases of discrimination, on the grounds of sex. Moreover, it is safeguarded that both sexes have equal opportunities and access to vocational training and employment.⁽⁸⁾

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



PENALTIES AGAINST THE EMPLOYER IN CASE OF BREACH OF LAWS 177(I)/2002 AND 205(I)/2002

Criminal sanctions in case of breach of the abovementioned legislation may be imposed on persons, legal or otherwise, and they may include a fine, imprisonment or both. Criminal fines may be as high as 12.208,30 EUR for legal persons and 6.976,17 EUR for natural persons, depending on the nature of the violation and the status of the violator and the prison sentence may be up to 6 months for natural persons.

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MEANS OF ACTION THAT ARE AVAILABLE TO EMPLOYEES ⁽⁹⁾

• Reporting obligations

Inspectors have to submit annual reports concerning equality of treatment in employment and vocational training to the Chief Inspector, who shall further submit these to the Minister of Labour, Welfare and Social Insurance on the basis of which the Minister drafts and publishes an Annual General Report of Facts, a copy of which is notified to the ILO, the Attorney General of the Republic, the House of Representatives, the Gender Equality Committee in Employment and Vocational Training, and the Labour Consultative Body. The Minister also notifies to the European Commission every four years the texts of all legislation, regulations and administrative provisions relevant to affirmative action, as well as implementation of such measures, specifically in favour of women. In addition, Inspectors submit to the Minister of Labour, Welfare and Social Insurance annual reports concerning investigated complaints regarding payment inequality, on the basis of which the Minister drafts and publishes a relevant Annual General Report of Facts, a copy of which is notified to the ILO, the Attorney General of the Republic, the House of Representatives, the Labour Consultative Body and the European Commission.

• Raising complaints through the Equality Authority of the Ombudsman's Office

The Equality Authority's main purpose is to ensure compliance with the provisions of the European Directives, particularly Directive 2006/54/EC, to promote the equality principle in employment, self-employment, occupation and vocational training as well as to examine *complaints* of discriminatory conduct.

The Ombudsman may carry out an investigation into the said complaint, order that an infringement is stopped within a set deadline, make recommendations to the infringing party, monitor the situation and impose an administrative fine of up to 610,41 EUR.

• Seeking mediation through the Equality Inspectors of the Ministry of Labour

The inspectors' main duty is to ensure better implementation of the legislation relating to gender-based discrimination and the promotion of gender equality. Their role is to *investigate discrimination complaints* and act, where possible, as *mediator* between the parties. If an agreement is reached, the Inspectors will write a report and both parties will then sign it. If an agreement cannot be reached between the parties to the complaint, a different report is drafted with all the Inspectors' findings and this can be used as evidence before a competent court.

• Obtaining assistance through the Gender Equality Committee in Employment and Vocational Training

The Committee is responsible for promoting *social dialogue* between the representatives of employers and the representatives of employees, as well as with non-governmental organisations that have a legitimate interest in promoting equality between men and women. It has also been appointed as the competent body for providing victims of discrimination with *independent assistance*, including *legal representation*, in Court.

• Court protection

Any person may pursue their rights under equal pay legislation before the competent court, even in case where the alleged relevant infringement has ended and s/he may use any appropriate means that substantiate the fact of infringement and all types of damage suffered due to this infringement. Where the party alleging infringement establishes a *prima facie* claim, the burden of proof shifts to the other party to prove on the balance of probabilities that there has been no infringement.

Where damage to this effect has been suffered due to administrative acts which violate equal pay legislation and later annulled by the Administrative Court (or the Supreme Court upon appeal), the injured party may file a civil action to the District Court to obtain fair and reasonable compensation, as well as compensation for all the pecuniary and non-pecuniary loss suffered, plus legal interest from the date when the damage was suffered up to the full payment of compensation.

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In all other cases, the Industrial Disputes Tribunal is competent to award fair and reasonable compensation which covers all the pecuniary and non-pecuniary loss suffered, plus legal interest from the date when the damage was suffered up to the full payment of compensation. The Industrial Disputes Tribunal may also order reappointment of an employee and oblige an employer to accept the services of such an employee, provided the employee has requested such remedy, and, where it considers necessary, may issue a binding order recognising the rights of the applicant in relation to the alleged infringement.

⁽¹⁾ European Commission, 'Equal Pay Day: Gender Pay Gap stagnates at 16.4% across Europe' (28 February 2014) http://europa.eu/rapid/press-release_IP-14-190_en.htm

⁽²⁾ *ibid.*

⁽³⁾ European Commission, 'The gender pay gap in the European Union' (November 2018) https://ec.europa.eu/info/sites/info/files/aid_development_cooperation_fundamental_rights/equalpayday-eu-factsheets-2018_en.pdf.

⁽⁴⁾ *ibid.*

⁽⁵⁾ European Commission, 'The gender pay gap in the European Union' (November 2018) https://ec.europa.eu/info/sites/info/files/aid_development_cooperation_fundamental_rights/equalpayday-eu-factsheets-2018_en.pdf.

⁽⁶⁾ *ibid.*

⁽⁷⁾ Statistical Service of the Republic of Cyprus, 'Structure of Earnings Survey 2014 (July 2016)' [https://www.mof.gov.cy/mof/cystat/statistics.nsf/All/0D65766EC11A4DB0C2257777003AD5BC/\\$file/EARNINGS_SURVEY_RESULTS-2014-150716.pdf?OpenElement](https://www.mof.gov.cy/mof/cystat/statistics.nsf/All/0D65766EC11A4DB0C2257777003AD5BC/$file/EARNINGS_SURVEY_RESULTS-2014-150716.pdf?OpenElement)

⁽⁸⁾ Maria Liapi, 'The Effects of the Economic Crisis on Gender Pay Gap: A Comparative Analytical Report between Cyprus, Greece and Portugal' https://www.inek.org.cy/GPG/images/pdf/car_final/CAR_Final_report-the_Effects_of_the_Economic_Crisis_on_GPG_opt_opt.pdf

⁽⁹⁾ The Republic of Cyprus, 'Report on the implementation of European Directives 76/207/EEC, 2002/73/EC and 2006/54/EC (relating to the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions)' [http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/439C12D90ACA3137C22580AB002BF9B7/\\$file/Report%20on%20the%20Implementation%20of%20the%20EU%20Directive%202006-54-EC.pdf](http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/439C12D90ACA3137C22580AB002BF9B7/$file/Report%20on%20the%20Implementation%20of%20the%20EU%20Directive%202006-54-EC.pdf)

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CZECH REPUBLIC

THE GENDER PAY GAP: FIGURES AND TRENDS



According to the latest data available from EUROSTAT (2017),⁽¹⁾ the gender pay gap in the Czech Republic (based on the average gross hourly earnings) is 21,1%, which is above the EU average of 16%.

More recent data published in March 2019 (for 2018) by Czech Average Earnings Information System suggest that the gender pay gap (based on the average gross monthly earnings) does not change significantly since then.⁽²⁾

Based on a middle value of the gross monthly earnings, the gender pay gap in Q 4 2018 was 17 %.⁽³⁾

The gender pay gap based on the average gross monthly earnings seems to be the most significant in the fields requiring university education. When comparison is made based on middle value of the gross monthly earnings, the biggest difference is in fields of secondary education without A-level examination.⁽⁴⁾ The job categories with the highest gender pay gap appear to be managers and specialists/professionals.⁽⁵⁾

The inequalities in remuneration between men and women are, according to the literature published, caused by various, factors, including gender structure of the labour market, remuneration systems, gender stereotypes, a long parental leave (up to 4 years a child)⁽⁶⁾ and greater involvement of women in the family life, or a strong representation of women in specific professions,⁽⁷⁾ which have the character of vocation and entail lower remuneration.⁽⁸⁾

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



The Czech legislation on gender pay equality is rather fragmentary. The equal treatment of men and women is guaranteed on the constitutional level, as well as the right of employees to obtain fair remuneration. In particular, the issues

of equality find their constitutional grounds in the Act No. 2/1993 Coll, the Charter of the Fundamental Rights and Freedoms.

- **Article 1** establishes the general equality of people in their rights.
- **Article 3(1)** guarantees enjoyment of the fundamental rights to everybody regardless of the gender.
- **Article 28** provides for the right of employees to obtain fair remuneration.

In the field of employment law, the following acts and provisions are particularly important:

- **Act No. 262/2006 Coll., Labour Code**
Section 16 Provides for the employer's duty to secure the equal treatment of the employees, as regards employee working conditions, remuneration for work and other emoluments in cash and in kind (of monetary value), vocational (professional) training and opportunities for career advancement (promotion).

Under **Section 110** all employees employed by one employer are entitled to receive equal wage, salary or remuneration (pursuant to an agreement) for the same (equal) work or for work of the same value.

Section 279 Provides for the employer's duty to inform the employees about the measures adopted to secure the equal treatment of male and female employees and on prevention of discrimination.

- **Act No. 435/2004 Coll., on Employment**
Section 4 Provides for a general duty of all persons and entities participating in the employment relationships to contribute to the equal treatment of people exercising their right to employment. Any form of discrimination of persons exercising their right to employment is prohibited.

The provision of **Section 140 (1)(a)** defines a general administrative offence of breaching the prohibition of unlawful discrimination and failure to secure equal treatment according to the Act on Employment, which is sanctioned by the Labour Inspection by penalties (see below).

- **Act No. 251/2005 Coll., on Labour Inspection**
The provisions of **Sections 13(1)(a)** and **26(1)(a)** of

CZECH REPUBLIC

the Act on Labour Inspection define administrative offences of the employers consisting in the failure to secure equal remuneration of employees performing equal work or work of equal value; the offences are sanctioned by the Labour Inspection by penalties (see below).

- **Act No. 198/2009 Coll., on Equal Treatment and Legal measures of Protection against Discrimination (“Antidiscrimination Act”)**

The Act defines the general notion of discrimination, as well as permissible exception from equal treatment

Section 1(c) expressly makes the Act applicable on the matters of employment and remuneration

Sections 8 and 9 provide for specific measures in the field of the consideration provided by the employer in order to substitute or supplement the benefits provided from the basic scheme of social protection.

Section 10 provides for remedies in case of discrimination (please see below).

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE

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The sanctions bestow in monetary fines, which may be imposed on the employer by the Czech Labour Inspection. The amount of the fine is provided for by the section 140(4)(a) of the Act on Employment and may be up to CZK 1 000 000 (approx. EUR 38 760) and by the Sections 13(2)(a) and 26(2)(a) of the Act on Labour Inspection according to which it may be up to CZK 500 000 (approx. EUR 19 380) for both natural and legal persons, lower threshold not being provided for.

Further, the person affected by discrimination may also raise their claim to the court and seek remedy under **Section 10 Act on Equal Treatment and Legal measures of Protection against Discrimination**.

Such remedy may bestow in termination of the discriminatory conduct, removal of the effects of the discriminatory conduct or in reasonable satisfaction, which may be also of a monetary nature.

However, the current practice shows that

discrimination issues are not frequent at higher courts (the decisions of which are published). The cases, if any, are often resolved and terminated at lower instances (mostly at the appeal stage). In addition to that, discrimination claims are of rather sensitive character which fact decreases the willingness of the employees affected to raise the claims. As a result, the employees often refrain from bringing the claim to the court.

⁽¹⁾ Eurostat <https://ec.europa.eu/eurostat/tgm/table>.

⁽²⁾ Czech Average Earnings Information System (tables CR_184_MZS.xlsx and CR_184_PLS.xlsx; in Czech only). see <https://www.ispv.cz/getdoc/b33a5c7c-ae91-4e1f-a301-c84984d99373/Aktualni.aspx>.

⁽³⁾ Czech Statistical Office <https://www.czso.cz/csu/czso/art/average-wages-4-quarter-of-2018>.

⁽⁴⁾ Czech Statistical Office <https://www.czso.cz/documents/10180/60622084/300002180436.pdf/23acab4b-719f-45d7-a2b5-ca634845dd3c?version=1.1> (in Czech only).

⁽⁵⁾ Czech Statistical Office <https://www.czso.cz/documents/10180/60664318/11002618A1.pdf/2793b94a-e19d-471a-b1bf-c62a1d7b7025?version=1.0>.

⁽⁶⁾ At this place, it should be distinguished between the statutory parental leave under employment law, which may be taken until the child reaches the age of three years, and the parental financial support under social security law, which may be taken by the full-time caring parent until the child reaches four years of age (note: parents thus may stay at home with a child up to 4 years, while the employer must provide the leave for up to 3 years, the last year may be provided as unpaid leave).

⁽⁷⁾ Women prevail in human health and social work activities, while men prevail in construction, transportation and storage and manufacturing (https://www.czso.cz/csu/gender/3-gender_pracemzdy).

⁽⁸⁾ See Krížková, A., Vohlídalová, M., Pospíšilová, K., Maříková, H.: Aktuální rozdíly v odměňování žen a mužů v ČR Studie k projektu “Rovnost žen a mužů na trhu práce se zaměřením na (ne)rovné odměňování žen a mužů“. Czech Ministry of Labour and Social Affairs, 2017. Available at <http://www.rovnaodmena.cz/wp-content/uploads/2017/12/Aktu%C3%A1ln%C3%AD-rozd%C3%ADly-v-odm%C4%9B%C5%88ov%C3%A1n%C3%AD-%C5%BEen-a-mu%C5%BE%C5%AF-v-%C4%8CR.pdf> In Czech only.

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DENMARK

THE GENDER PAY GAP: FIGURES AND TRENDS



According to Statistics Denmark, the gender pay gap was at 13 per cent in 2017. The statistics show a tendency towards more equal pay compared to 2005, where the pay gap was at 16.2 per cent. The pay gap is, in fact, even lower when various factors are taken into consideration, such as choice of education and work etc. However, even when these factors are taken into consideration, there is still a pay gap that cannot be explained right away.

According to the first ever study ⁽¹⁾ conducted on the effects of pay transparency on the gender pay gap, the 2006 legislation in Denmark on mandatory gender-segregated wage statistics for companies has had a profound impact on the pay gap in Denmark. The study has given rise to debate in Denmark as to whether (more) pay transparency is the solution to end unequal pay.

One explanation for the gap is that women more often than men work in the public sector where the salaries are lower than in the private sector.

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY

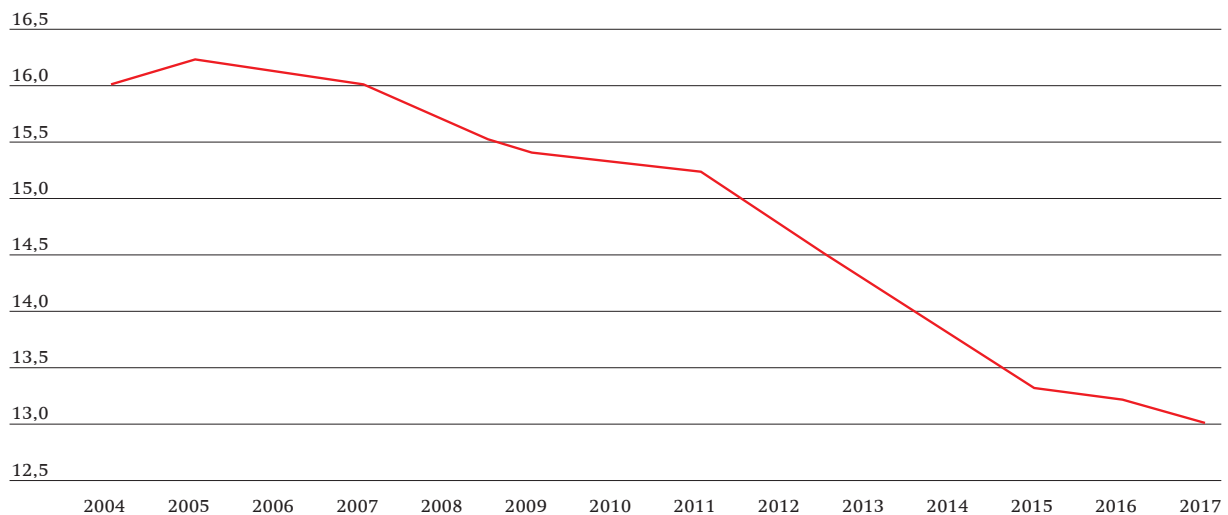


In Danish law, gender pay equality is regulated by the Act on Equal Pay to Men and Women. The Act is an implementation of Directive 2006/54/EC on the implementation of the principle of equal treatment of men and women in matters of employment and occupation. The Directive imposes, inter alia, an obligation on the member states to ensure that men and women receive equal pay for equal work. Therefore, pursuant to Section 1 of the Danish Act on Equal Pay to Men and Women, employers are obliged to pay men and women equal pay for equal work, and any gender-based discrimination regarding payment, direct or indirect, is prohibited.

Pursuant to Section 3 of the Danish Act on Equal Pay to Men and Women, an employer is not allowed to dismiss or treat an employee, including an employee representative, in an unfavourable manner as a reaction to a complaint about equal pay or because the employee or the employee representative has raised a claim for equal pay, or because he or she has passed on information regarding his or her salary.

GENDER EQUALITY INDICATOR OF GENDER PAY GAP

Indicator: Gender pay gap (per cent)



Source: Statistics Denmark

DENMARK

REPORTING OBLIGATION

Section 5a (2) of the Danish Act on Equal Pay to Men and Women contains rules regarding wage statistics. These rules are not imposed on the member states by the Directive, and the rules therefore stem from Denmark.

Danish companies employing 35 employees or more have since 2006 been obliged to prepare annual gender-segregated wage statistics for groups of a minimum of 10 persons of each gender performing the same work function. The employer can either forward the information regarding the employees' salaries to Statistics Denmark and have them work out the statistics (paid for by the Ministry of Employment) or choose to work out the statistics themselves.

The alternative to working out the statistics is to make a report on the various conditions that influence the employees' salaries and the initiatives that must be taken to prevent unequal pay. However, this alternative is only possible if the employees agree to it.

COLLECTIVE AGREEMENTS

Due to the Danish labour market model and the practice of collective bargaining agreements, equal pay for men and women can also be regulated in the collective agreements entered into by the trade unions and employers' associations. The parties to the collective agreements can, in fact, agree on more favourable terms for the employees than those applicable under the Directive and the Danish Act on Equal Pay to Men and Women. If the terms in the collective agreements do not meet the minimum requirements of the Directive, the terms in the Danish Act on Equal Pay to Men and Women will be applicable instead.

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



In case of a possible violation of the Danish Act on Equal Pay to Men and Women or a collective

agreement implementing the Directive, the employee does not have to satisfy the usual burden of proof under Danish law. As a rule, the plaintiff must prove that the defendant has in fact violated the plaintiff's rights. Instead, however, the violated employee merely has to establish facts from which it may be presumed that direct or indirect discrimination has taken place, and it is for the employer to prove that there has been no violation of the Act. In other words, the burden of proof shifts from the employee to the employer.

COMPENSATION AND PENALTIES

Pursuant to Section 2 of the Danish Act on Equal Pay to Men and Women, the employee will be entitled to the difference between the wrongfully paid salary and the rightful salary if there is a violation of the rules on equal pay.

Further, an employee whose right to equal pay has been violated will be entitled to a financial compensation. Pursuant to the Directive, this compensation may not be restricted by the fixing of a prior upper limit (except in cases where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of the Directive is the refusal to take his/her job application into consideration)

Pursuant to Section 6b of the Danish Act on Equal Pay to Men and Women, an employer who does not comply with the obligations under the rules on wage statistics can be imposed a fine.

⁽¹⁾ Bennedsen, Morten and Simintzi, Elena and Tsoutsoura, Margarita and Wolfenzon, Daniel, *Do Firms Respond to Gender Pay Gap Transparency?* (January 2019). NBER Working Paper No. w25435.

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FINLAND

THE GENDER PAY GAP: FIGURES AND TRENDS



According to Statistics Finland's information from 2017, the gender pay gap stands at 16.1 % with women's average monthly earnings for normal working hours being 83.9 % of men's. The gender pay gap has been on a slowly narrowing trend during the past decades, with the public sector having the narrowest gap with women earning 87.0 % and 87.1 % compared to men in the central government and in the municipalities respectively.

Possible contributing factors to the pay gap include management and supervisory positions being overwhelmingly held by men, women doing more unpaid tasks such as household work and caretaking, women tending to spend periods off the labour market more often than men, and choosing different fields and occupations.

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



Equality and equal treatment is regulated in Finland through national legislation, European Union law and international agreements. The Constitution prohibits discrimination and includes an obligation to promote gender equality. Discrimination is forbidden under employment law, which also includes a general obligation of equal treatment of employees. Similarly, discrimination at work and in business is prohibited under the Criminal Code. The Equality Act promotes gender equality and prohibits gender-based discrimination placing consequences for violations of these regulations.

Under the Equality Act, placing an employee or employees in a less favourable position due to their gender compared to one or several other employees doing the same or same level of work for the same employer is considered discrimination, unless an acceptable reason can be established. Similarly, employer's actions can be considered discrimination if an employee is placed at a disadvantage due

to pregnancy, childbirth or another reason related to their gender. The Act further prohibits countermeasures against those who appeal to their rights or take part in investigating gender discrimination.

Under the Act, employers must, among a number of things, promote equality between women and men in the terms of employment, including pay. Employers with at least 30 employees are required to prepare a gender equality plan dealing particularly with pay and other terms of employment. The gender equality plan must include, among other things, a pay survey on the whole personnel presenting the classifications of jobs performed by women and men, the pay for those jobs, and the differences in pay.

The pay survey is used to ensure that there are no unjustified pay differences between women and men who are working for the same employer and engaged in either the same work or work of equal value. If the analysis of different employee groups of the pay survey reveals clear pay differences between women and men, the reasons and grounds for these differences must be analysed. If the workplace has established pay systems in which wages consist of pay components, the central components must be inspected in order to clarify the reasons for the differences. If there is no justification for the pay differences, the employer must take appropriate measures to rectify the situation.

Compliance with the Equality Act is supervised by the Ombudsman for Equality and the National Non-Discrimination and Equality Tribunal. The Ombudsman for Equality has a right to receive information and documents and carry out inspections. On the other hand, employee representatives referred to in the Act have a right to receive, subject to certain conditions, information on pay and terms of employment concerning individual employees from the Ombudsman. The Ombudsman further provides guidance and advice to concerning discrimination

FINLAND

matters and may take measures to reconcile the situation, which include placing the matter before the National Non-Discrimination and Equality Tribunal and imposing conditional fines.

Employers must upon request provide an employee with a report on the grounds for their pay and other necessary information concerning the employee which could be used to assess whether pay discrimination has taken place.

The Equality Act includes quotas under which the proportion of both women and men must be at least 40 % in certain bodies of government. A similar equality rule applies to institutions exercising public authority and to companies in which the government or a municipality is the majority shareholder.

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



A person who has experienced discrimination has to present likely reasons based on which it can be presumed that discrimination took place. In order to rebut the presumption, the employer must prove that its actions were due to another acceptable reason, or will otherwise become liable to pay compensation to the person who has been discriminated against.

The minimum amount of compensation to be paid is EUR 3,240, although in some cases the compensation can be reduced or waived completely. In general, there is no cap, but in cases concerning employee recruitment, the maximum amount is EUR 16,210 for an employee in regard to whom the employer is able to show that she/he would not have been chosen for the job even if the choice would have been made on non-discriminatory grounds. The amount of compensation is determined taking into account the nature, extent and duration of the discrimination, as well as any other financial penalties imposed on the employer as a result of the discrimination.

Payment of compensation does not prevent the injured party from further claiming damages for financial loss under other legislation besides the Equality Act. The compensations must be claimed by legal action brought at the competent court within two years of the discrimination. However, in cases concerning employee recruitment, the action must be brought within one year of the discrimination. In addition, under the Criminal Code, the employer and their representatives can be sentenced for work discrimination to a fine or to imprisonment for six months at most.

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FRANCE

THE GENDER PAY GAP: FIGURES AND TRENDS



In France, according to INSEE (the French national statistics office), in 2018, women earn on average wages 18.5% less than men. The further you go up into the wages scale, the larger the gap between women and men is.

The distribution between men and women remains highly differentiated according to the sectors of activity. In retail trade and many service activities, jobs are mainly held by women. Hourly wages and the number of hours worked are often the lowest for both men and women. In the entire “tertiary sector”, women’s average wages are 27.5% lower than men.

In the industrial and construction sectors, the wage gaps between men and women are smaller, but women’s average wages remain 18.8% lower than men.

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



French legislation focused on this issue for the first time by enacting the Law on Equal Wages for Men and Women for Work of Equal Value dated December 22, 1972 and then by the Law of July 4, 1975, which regulated recruitments and dismissals. But it was above all the Law of July 13, 1983, known as “Loi Roudy”, (named after Yvette Roudy, the first woman to be appointed as Minister for Women’s Rights), which especially left its mark by promoting professional equality between women and men who work within companies.

Under French law, the employer is required to ensure equal wages for equal work, or work of equal value, between women and men: this obligation prohibits any wage differentiation based on sex.

These provisions shall not prevent the use of temporary measures taken for the sole benefit of

women to establish equal opportunities between women and men, in particular by addressing de facto inequalities affecting women’s opportunities.

These measures result either from regulatory provisions, from provisions of extended Industry-Level Agreements or extended Collective Bargaining Agreements, or from the implementation of the Equal Employment Plan between women and men.

Based on these provisions, the Court of Cassation, in its decision of July 12, 2017, accepted that a company-wide agreement may “provide only for female employees, a half-day of rest on the occasion of International Women’s Rights Day” (i.e. March 8), “since this measure aims to establish equal opportunities between men and women by addressing de facto inequalities affecting women’s opportunities”.

Recently, the Decree of January 8, 2019, resulting from the “Professional Future” Law, aims to eliminate pay gaps by forcing companies to publish an “Equality index”.

To this end, an obligation to monitor equal pay indicators between women and men will apply from January 1st, 2019 for companies with more than 250 employees and from January 1st, 2020 for companies with between 50 and 250 employees.

It includes a measurement tool including between 4 and 5 criteria “rated” in points, on a 100-point scale. These criteria - or indicators – correspond to : the gender pay gap, the gap in the rate of individual wages increases not corresponding to promotions between women and men; the gap in the rate of promotions between women and men; the percentage of female employees who have benefited from a wage increase in the year of their return from maternity leave, if wage increases occurred during the period during which the leave was taken; and the number of employees of the under-represented sex among the ten employees who received the highest remuneration.

FRANCE

In companies with at least 50 employees, where the results obtained fall below the 75-point level, negotiations on professional equality must also cover appropriate and relevant corrective measures and, if necessary, a financial measures programming to catch up on wages. In the absence of an agreement providing for such measures, they shall be determined by decision of the employer, after consultation with the Social and Economic Committee.

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



Civil and criminal remedies and sanctions are provided for in the event of failure to respect gender equality.

Companies with at least 50 employees will have to publish their "Equality Index" or face almost immediate penalties. However, it will be up to the French Labour Authorities control officer, who will issue a formal notice to the employer, to set a period of time that will be granted to him to remedy to this situation. This period may not be less than one month. The amount of the penalty may not exceed 1% of the total wage bill.

If this index is published, but if the results obtained by the company, with regards to the criteria mentioned above, are below the required level, the company will have three years to comply. At the end of this period, if the results obtained are still below the required level, the employer may also be subject to a financial penalty, for an amount set at a maximum of 1% of the total wage bill for the calendar year preceding the expiry of the three-year period.

Depending on the company's efforts to achieve equal wages for women and men and the reasons for its failure, it may be granted an additional period of one year to comply.

Finally, in the event of an individual dispute before the French Labour Court (example: dismissal) a woman can always claim compensation in the event of a breach of the principle of equality.

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GERMANY

THE GENDER PAY GAP: FIGURES AND TRENDS



The unadjusted gender pay gap in Germany is 21 percent. The adjusted gender pay gap – which takes into account structural differences in career choice, scope of employment, level of education, work experience or the lower proportion of women in management positions - is 6 percent. While the unadjusted pay gap was already 21 percent in 1995, the pay gap widened to 23 percent in the 2000s and fell again to 21 percent in 2016.

It is the economically strongest federal states, Baden-Württemberg, Bavaria and Hesse in South Germany that show the highest gender pay gaps, while the federal states in East Germany show comparatively very low pay gaps, due to other historical developments and higher labour force participation of women.

Multiple factors contribute to the fact that women earn less than men, such as for instance the

- Segregation of the labour market
 - vertical:** according to hierarchical levels
 - horizontal:** according to occupations and industries.The proportion of women is still particularly high in low-paid occupations such as cleaning staff, sales assistants or in the health sector.
- Design and course of employment biographies such as the care of children and that of other relatives and, as a consequence, longer periods of absence, fewer opportunities for advancement, part-time employment.

The gender pension gap, which describes the difference in retirement income between men and women, is currently 53 percent.

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



TRANSPARENCY OF REMUNERATION ACT

The Transparency of Remuneration Act (Entgelttransparenzgesetz) entered into force in July 2017. The Act prohibits direct or indirect

discrimination on grounds of sex with regard to payment; provisions in agreements that violate the equal pay principle are invalid. The core stipulation of the Act is the individual right to information for all employees of a company with more than 200 employees. Thereupon, the employer has to inform the employee about the procedure and criteria to determine the employee's individual remuneration and must identify the relevant comparative remuneration as well as the statistic median of the average monthly gross remuneration that the opposite gender receives. The Act does not explicitly stipulate a legal basis for the employee to request a remuneration adjustment. Therefore, if an employee wants to pursue such a claim, the employee must rely on the principles so far established by German labour courts. The individual right to information has some conceptual weaknesses. The term equal work or work of equal value is very broad, leading to difficulties in defining the comparison group. Although the Act lists some criteria for determination, there still is a large margin of interpretation. In particular, the statistic median is no help to prove wage discrimination in a legal proceeding. The median of the comparative pay of the male comparative workers may be meaningless.

Companies with more than 500 employees that are already obliged to submit a management report according to the German Commercial Code now also have to provide information on the status of equality and especially the measures taken to promote equality between women and men within their management report.

Private companies with more than 500 employees are encouraged, but not obliged, to regularly review their remuneration systems in order to confirm they are compliant with the equal pay requirements. Employees must be informed of the results of the company audit.

It is criticized that the Transparency Act has little effect in practice. Employees rarely exercise their individual right to information and only a small number of companies implemented the provisions of the Transparency Act in their company practice.

GERMANY

QUOTA

A mandatory gender quota of 30 percent has been in force since 2016 for the supervisory boards of listed companies with equal representation (employers and employees have the same number of seats on the supervisory board). At present, this applies to only about 100 companies in Germany. If a company has less than 30 percent women in its supervisory body, it must allocate vacant positions to women until the 30 percent mark is reached. Otherwise, the position on the Supervisory Board would remain vacant ("empty chair"). Companies that are either listed or co-determined are obliged to set targets for increasing the proportion of women on supervisory boards, management boards and top management levels.

The Federal Equal Treatment Act and the Federal Law on the Staffing of Committees were also amended in order to increase the proportion of women in management positions in the federal civil service. Since 2016, a gender quota of at least 30 percent has also applied to all new appointments to supervisory bodies in which the State holds at least three seats.

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



One reason for the inefficiency of the Transparency Act is that the law does not prescribe any legal consequences in the event of unfair payment. The only aspect that is relevant is that the employer bears the burden of proof that there has been no breach of the principle of equal pay within the meaning of the Transparency Act in case he does not fulfil his duty to provide information. In the case of gender-based wage discrimination under the Transparency Act or the General Law on Equal Treatment (Allgemeines Gleichbehandlungsgesetz), the unfair wage must be adjusted, and the claimant is entitled to damages (to compensate her for the wage difference) as well as to additional compensation.

HUNGARY



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HUNGARY

THE GENDER PAY GAP: FIGURES AND TRENDS



The gender pay gap in Hungary remains significant, with female workers earning on average 14,2% less than men according to the Eurostat gender pay gap (GPG) statistics issued for 2017. However, this is a massive improvement in comparison to the 20% gap measured in 2012.

One of the key factors that explains the gender pay gap in Hungary is that Hungarian society is a traditional one where women are spending more time out of the workforce than men in order to care for children or family members. Therefore, they not only miss out on career opportunities but are also forced to choose jobs that offer more flexibility. The result is that women are more likely to work in sectors and occupations that are lower-paying, such as in the care, hospitality services and retail industries.

This is fully supported by the Gender Statistics Database published for 2019 B1. In the largest listed companies, 85,7% of presidents, board members and employee representatives are men in Hungary, while only 14,3% are women.

Despite the foregoing, we can see that serious efforts are being made to close the gender pay gap and to support women entering and re-entering into the labor market.

In 2010, the Hungarian government adopted the “National Strategy for the Promotion of Gender Equality – Guidelines and Objectives 2010–2021”. The Strategy provides an analysis of the current social situation, arranged into six thematic, strategic areas, and then foresees measures which could be taken in these separate strategic areas, one of which concerns the economic equality between women and men and tackling the gender pay gap. The National Strategy sets forth as its stated aim that women’s participation in leading positions should be increased by the end of the period (e.g. by

the year 2021), both in the public and in the private sectors, by making equal opportunities plans more pronounced so that the ratio of women on boards would be at least 1/3 higher as compared to the starting point and/or the rate of both genders would reach at least 40%.

In 2012 a new labor code entered into force which introduced atypical forms of employment and definitions of transition period part time roles for employees returning from maternity leave. Despite this, the overall national incidence of these recently-introduced roles remains, at present, relatively low.

The only atypical work arrangement that is more and more popular is the flexible working arrangement: both flexible work time and teleworking are becoming more widespread. Recent changes in the law have aimed at lowering administrative burdens and the risk that employers take on when employing teleworkers.

In order to support women when they are reentering the labor market, the government has also developed some social reform policy initiatives. As of January 1, 2020, Grandparent Child Care Benefit will be available for grandparents who are the primary carer of their grandchildren.

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



The Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities is the main legislation guaranteeing equal treatment in Hungary, and is also applicable to employment relationships.

The Hungarian Labor Code also provides for the principle of equal treatment, including the remuneration of work. The “equal value of work” for the purposes of the principle of equal treatment must be determined based on the nature of the work performed, its quality and quantity, the working conditions, the required vocational

training, the physical or intellectual efforts expended, experience, responsibilities and labor market conditions.

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



Employees may seek a remedy and pursue their claims arising from the employment relationship by judicial process. In the case of the breach of anti-discrimination laws, employees may file a claim with the relevant labor courts and can also claim compensation for any damages that they may have suffered.

Since 2003, there has been an Equal Treatment Authority operating at a national level and it is responsible for monitoring the implementation of the principle of equal treatment. Its jurisdiction extends across the whole of Hungary. The Authority is an independent and autonomous administrative body. The Authority's primary responsibility is to investigate complaints and reports filed concerning cases involving alleged discrimination. The Authority acts either at the request of the injured party or upon its own motion (ex officio). Submitting a request can be done personally, by paper and also electronically. In the event that a breach is found, the Authority may order the breaching party to stop committing the unlawful practice and also to abandon such practice in the future. It may publish its decisions and may also impose a fine. The maximum amount of the fine that it can impose is 6 million HUF (that is approx. EUR 18,000). The Authority is also entitled to publish its decisions i. in order to contribute to the prevention of future, similar types of violations of the law, or ii. if publishing the decision will contribute to the redressing of grievances suffered by the individual or group discriminated against.

ITALY

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ITALY

THE GENDER PAY GAP: FIGURES AND TRENDS



According to the European Commission, In Italy, the gender pay gap (which is the difference in **average gross hourly wage** between men and women) stands at 5.3%.⁽¹⁾

On the other hand, wage differentials can also be studied on an *annual* rather than *hourly* base. To this purpose, the **gender overall earnings gap** (which is the difference between the average annual earnings between women and men) stands, in Italy, at 43.7%.⁽²⁾

One of the main factors affecting pay gaps in Italy is gender segregation. The literature typically distinguishes between horizontal segregation (when women are concentrated in *certain occupations or sectors that pay low wages*) and vertical segregation (when women are concentrated in *low-level positions*).

As per the first one, at Italian level, the most female-represented *industries* are “education”, “health and social work”, “retail trade and repair of household goods” and “clothing sales”; while the *occupations* where female participation is highest are “clerical workers”, “intermediaries occupations” and “teaching professionals. These occupations, predominantly carried out by women, offer lower wages than occupations predominantly carried out by men, even when the same level of experience and education is needed.

As per the second one, in Italy high-level and supervisory positions are often held by men. Women made up a measly 16% of decision-making bodies in 2017, says ISTAT (Italian institute for statistics) and just under 34% of board members on listed companies were female, after Italy introduced a quota that requires boards to include at least 33% women.

In addition, it is worth considering that women take charge of important unpaid tasks, such as household work and caring for children or relatives on a far larger scale than men do. Men employees spend

on average 9 hours per week on unpaid care and household activities, while working women spend 22 hours. Clearly, annual payments depend on the amount of hours worked, hence part-time employment is an essential factor to be kept in consideration: more than 1 in 3 women reduce their paid hours to part-time, while only 1 in 10 men do the same. Then, women tend to spend periods off the labour market more often than men.

But, most of all, fewer than half of working-age Italian women are in employment, according to the OECD. For this reason, the gender gap in employment occupation itself is by far the main contribution to the disparity in overall pay (56.3%), followed by the gender gap in the amount of paid hours (32.7%) and the gender hourly pay gap (11%).

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



Pursuant to Section 37 of the Constitution of the Italian Republic: “*Working women are entitled to equal rights and, for comparable jobs, equal pay as men. Working conditions must allow women to fulfil their essential role in the family and ensure appropriate protection for the mother and child*”. However, this fundamental law is not applied in practice.

Section 46 of Legislative Decree 11 April 2006 n. 198 offers a bland protection by obliging private and public companies with over 100 employees to disclose, every two years, company’s remuneration data with a gender breakdown. However, this provision applies only rarely since the majority of Italian companies staff less than 100 employees. In addition, in case of breach of this transparency provision, only the suspension of any contributory benefit enjoyed by the company may be ordered as a sanction for the company.

However, effective April 1, 2019, Decree Law No. 4 of January 28, 2019 introduced a basic income (“*Reddito di cittadinanza*”) to strengthen employment and fight poverty, inequality, and social exclusion.

ITALY

Pursuant to the Decree, unemployed individuals who declare their availability to find a work, can benefit, for a maximum of 18 months, of a basic income – equal for both man and woman – paid by the Italian Government. The income consists of two separate components: an annual family income supplement of as much as Eur 6,000 which is calculated through a complex formula established in the applicable regulations, and an income supplement equal to the annual fee provided for in the rental contract up to Eur 3,360 for households residing in rented dwellings.

According to some analysts, this measure could lead a large segment of the population – including women – not to accept some low-paid/part time employments whose remuneration is not competitive with payment of the basic income.

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



Private and public companies with over 100 employees are obliged to disclose, every two years, company's remuneration data with a gender breakdown. In case of breach of this transparency provision, the suspension of any contributory benefit enjoyed by the company may be ordered as a sanction for the company.

⁽¹⁾ Eurostat, 2016

⁽²⁾ Eurostat, 2014

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LATVIA

THE GENDER PAY GAP: FIGURES AND TRENDS



The research data suggest that the gender pay gap in Latvia has gradually decreased over the last 3 years. Nevertheless, from 2008 to 2017 the gender pay gap varied from 15% up to 18,5%. The decrease in gender pay gap is not as rapid as it should be, thus the gender pay gap should be addressed more efficiently.

The data published by Eurostat, European Institute for Gender Equality (EIGE), European Commission and Central Statistical Bureau of Latvia provide that the gender pay gap in Latvia is estimated to be approximately 15% - 16%.

Male employees still receive higher remuneration for work in the same positions. The statistics show that the gender pay gap in Latvia gradually decreases for positions where higher education is required. Nevertheless, the areas where the gender pay gap is the highest are finance, insurance, IT & communication services and mining industry.

In 2018, the Cabinet of Ministers adopted a decree to raise awareness of the topical issues and requested the Ministry of Welfare to address more efficiently the equal treatment issues in Latvia, including the gender pay gap.

The current key issues highlighted as main causes gender pay gap in Latvia, which shall be addressed in the following years are:

- Lack of research and assessment on the reasons in difference in gender pay;
- Principles of gender equality rights are insufficiently integrated in the current political instruments and employment related measures;
- Widespread stereotypes on segregation of the labour market and choice of profession for a particular gender;
- Lack of understanding of the social partners (employer and employee representatives) on the aspects of male and female equality rights.

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



The main legislative act, which governs the rights to gender equal pay is the Labour Act. Paragraphs 1 and 2 of Article 7 of the Labour Act among others provide:

Everyone has an equal right to work, (..), as well as to fair work remuneration.

These rights shall be ensured without any direct or indirect discrimination - irrespective of a person's (..), gender, (..) or other circumstances.

Paragraph 1 of Article 29 of the Labour Act provides direct prohibition of differential treatment based on gender, including work remuneration:

Differential treatment based on the gender of an employee is prohibited when establishing employment legal relationships, as well as during the period of existence of employment legal relationships, in particular when promoting an employee, determining working conditions, work remuneration (..).

Pursuant to Paragraph 2 of Article 29 of the Labour Act *differential treatment based on the gender of employees is permitted only in cases where a particular gender is an objective and substantiated precondition, which is adequate for the legal purpose reached as a result, for the performance of the relevant work or for the relevant employment. E.g. hiring an actress for a female role in a play would be justified.*

Paragraph 3 of Article 29 of the Labour Act provides that *if in case of a dispute employee indicates conditions which may serve as a basis for direct or indirect discrimination based on gender, the employer has the obligation to prove that the differential treatment is based on objective circumstances.*

The above legislation provides general principles of equality and prohibition of differential treatment, which includes equal gender pay. A specific employer's obligation is included in Article 60 of the Labour Act, which sets out the following:

LATVIA

Employer is obliged to establish equal work remuneration for men and women for the same kind of work or work of equal value.

E. g. the notion “work of equal value” is difficult to determine; nevertheless, the Ministry of Welfare has explained that it is necessary to evaluate job duties and the requirements for the position, as well as the level of responsibility. It means that as jobs of equal value could be jobs in different positions, but with the same level of responsibilities.

The articles cited above provide a general legal framework of gender pay equality in Latvia.

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



The employer can be called to all kinds of account for the breach of gender equal pay in Latvia – civil, administrative, and criminal.

The Labour Act provides that an employee can bring a **civil claim** against an employer if the employer breaches the equal pay obligation. The employee can request the remuneration that the employer normally pays for the same work or for work of equal value. If the civil liability is established, the employer is obliged to pay the difference in remuneration.

The employee can bring such a claim against the employer in three months from the day when the employee has learned or should have learned of the breach of employer’s obligation to provide equal work remuneration. Claims brought after the term are not adjudicated by the court; thus, the employee must be proactive in protection of his / her rights.

The State Labour Inspectorate may impose fines to the employer for violation of the provisions of employment laws. Paragraphs 1 and 4 of Article 41 of the Code of Administrative Violations provide

that the employer can be held **administratively liable** for violation of gender equal pay and fines from EUR 700 up to EUR 2900 for the failure to comply can be imposed.

Article 280 of the Criminal Act provides criminal liability for violation of employment laws, which results in material consequences and Article 149.1 of the Criminal Act provides **criminal liability** for violation of prohibition of discrimination. Criminal liability can be imposed on the responsible natural person of the employer and theoretically coercive measures can be applied to the legal entity as the employer.

Considering the substantial difficulties to prove the employer having intentionally violated the obligations to comply with the gender equal pay obligations and considering that administrative or criminal liability is not imposed unless the guilt is proven beyond a reasonable doubt that the employer violated provisions of the Labour Act, there is very little case law of any persons being charged or sentenced for breach of the equal gender pay obligations under the provisions of the Code of Administrative Violations or the Criminal Act.

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THE NETHERLANDS

THE GENDER PAY GAP: FIGURES AND TRENDS



Based on the most recently available data, in 2016 the gender pay gap in The Netherlands was 19% in the private sector (22% in 2008) and 8% in the public sector (16% in 2008). When considering factors such as age, background, education, sector and location the wage gap is considerably lower: in 2016, the corrected gender pay gap was 7% in the private sector (9% in 2008) and 5% in the public sector (7% in 2008).

The decrease of the pay gap since 2008 is likely caused by the fact that more women have become higher educated in the past years and more women work full-time.

An explanation provided in Dutch literature as to why women still earn less than men in the Netherlands is that women more often work part-time than men. Part-time workers tend to get paid less for the same work than full-time workers. In literature on this topic it is mentioned that a further explanation for the pay gap is that women are less demanding than men in salary negotiations.

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



The Dutch constitution forms the basis of legislation on gender pay equality in the Netherlands and contains a provision which prohibits discrimination on the basis of gender. More specifically, pay discrimination is regulated in article 7:646 of the Dutch Civil Code, the Dutch Equal Treatment Act, and the Dutch Equal Treatment of Men and Women Act. Unequal payment between men and women who perform work of equal value or virtually equal value constitutes direct discrimination. This is in all cases prohibited and any provision in violation hereof is null and void.

The Dutch Supreme Court acknowledged the general principle of equal pay under the same circumstances

in the landmark AGFA/Schoolderman case of April 8th, 1994. In this case it was ruled that an employer should pay its employees the same wage if these employees perform the same work, unless there is an objective justification ground for not doing so, for instance one employee has more experience than the other employee. Generally, an employer which is confronted with an equal pay claim will invoke the AGFA/Schoolderman case and argue that either the work of the two employees involved is not the same and/or that the employees are not comparable. In practice therefore we don't see a lot of equal pay claims being brought to the courts and those claims which are brought to court, are not commonly supported by courts.

QUOTA AND REPORTING OBLIGATIONS

As for quota and reporting obligations, the Dutch Civil Code (article 2:166 and 2:276) contains a temporary (until 1 January 2020) obligation for certain large (private) limited companies to strive for at least 30% of the managing board and the supervisory board members to be women (and 30% men). If the company has not fulfilled these 30% quota, it is obliged to state in the annual report why this is the case, what attempts were made to reach the quota, and how the company intends to become compliant in the future. There are no sanctions for non/compliance with these rules.

Companies with a stock exchange listing are on the basis of the non-binding Dutch Corporate Governance Code required to create a diversity policy which includes the division between men and women for the composition of the (supervisory) board. The annual report must contain what goals have been set with regard to diversity, the way the policy has been followed and the results of the policy of the previous year. If the goals set have not been met, the report must state which measures will be taken in the future to meet the goals.

Furthermore, a legislative act (the Equal Pay for Men and Women Act) was proposed in April 2019 by several Dutch left-wing parties and will likely be

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voted on by Dutch Parliament in the course of 2019 or 2020. The proposal aims at better enforceability of the existing equal payment rules. In short, the proposal is aimed at companies with more than 50 employees and contains the following:

- The company will have to acquire a certificate (which will remain valid for three years) proving that men and women are paid equally for the same or similar work in the company. In case the company does not have such certificate in place, and an equal pay claim is instigated, the company is deemed to have discriminated against the claimant. The company has the burden of proof to prove that it did not discriminate against the claimant.
- The company is obliged to include information regarding the differences in pay between men and women in the same or similar work in the annual report. In case of unjustified differences, the company has to indicate how these differences will be solved.
- The company must give individual employees insight into the wages that are paid to other employees that conduct the same or similar work, if so asked by one or more employees. The employee can file a complaint against the company if there is an unjustified inequality in pay with the Dutch Labour Inspectorate which can impose a fine on the company in question.

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



The legal consequence of an unjustified difference in pay between men and women is that the contractual provision regarding the salary of the claimant is null and void. The general view is that the claimant has the right to be paid the same as the 'reference person' used to compare the claimant's salary to from the moment the unjustified unequal pay occurred. Under current case law there is room for courts to take other measures if so requested by the claimant.

As said, the proposed Equal Pay for Men and Women Act contains the possibility for the Labour Inspectorate to impose a fine on the company in case of an unjustified inequality in pay. As this proposal has not (yet) been adopted, public authorities currently do not have the possibility to sanction employers.

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POLAND

THE GENDER PAY GAP: FIGURES AND TRENDS



Based on the results of the survey presented in 2018 by the Central Statistical Office (GUS), the gender pay gap in Poland in 2016 was 7.2%. The indicator differs depending on the region.

The occupational category of “Managers” has the greatest difference, being 26%, whereas construction is one of the three sectors (alongside water supply; sewerage, waste management and remediation activities and transportation and storage) where the average earnings of women are higher than those of men. At the same time, however, this is the sector with the lowest share of employed women. This is because these industries require efficient manual workers and only a few female employees hold managerial positions there. It is worth adding that women earn less despite respondents with higher education in this area more often being women (48.8% compared to 30.6%).

Compared with data from 2014, – we have noted a decline in the gender pay gap (7.2% in 2016 compared to 7.7% in 2018). However, generally, the data shows that the gender pay gap in Poland over the last 10 years has changed only slightly. Strong fluctuations have occurred, depending on the economic situation. In the period of strongest economic growth – i.e. in 2008 – the indicator was at its highest (almost 12%) whereas the indicator was lowest at the time of the strongest slowdown – i.e. in 2010 (only around 4%).

Generally, in 2006-2016, the average hourly gross wage of women ranged from 86.5% to 91.7% of the average gross hourly wage for men.

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



In Poland, the principle of equality between women and men is expressed in the Constitution. This states that a woman and a man have the right to equal remuneration for work of equal

value. This principle is confirmed in the Polish Labour Code, which clarifies that remuneration, in this sense, includes all components of reward for work, irrespective of their name or nature, as well as other work-related monetary or non-monetary benefits granted to employees. When it comes to work of equal value, the provisions state that it is work that requires similar professional qualifications from employees, as confirmed by certificates defined in separate regulations, or similar practice and professional experience, as well as similar responsibility and effort.

The failure to apply the principle of equal treatment by an employer includes different treatment of an employee on one or more discriminatory grounds (including sex), particularly unfavourable conditions of remuneration for work unless a difference of treatment is justified by a legitimate aim demonstrated by the employer. Consequently, the employee must first prove (at least substantiate) that the employer has violated the principle of equal treatment against him and only then does the burden of proving that he was guided by objective considerations when differentiating the employees' situation rest with the employer.

It is worth mentioning that Supreme Court case law specifies that discrimination in employment may only be established when the employee's remuneration noticeably differs from that of other employees doing the same work or work of equal value. The assumption is that a different standpoint would lead to a situation where courts could decide salary scales for employers, which is not acceptable.

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



Under Polish law, any person in respect of whom the principle of equal treatment in employment has been violated, for example, through unequal pay due to sex, has the right to compensation equal at least to

POLAND

the amount of the statutory minimum wage. What is important is that the regulations do not set an upper limit to the compensation required. The prevailing view of the Supreme Court and doctrine, however, is that in the case of differentiated remuneration, compensation is to compensate for the difference between the remuneration received by the employee and the remuneration he should have received had he not been discriminated against.

The courts specify four main attributes of such compensation – it should be effective, proportionate, preventive and dissuasive. When determining its amount, the circumstances concerning both parties of the employment relationship, including the scale of the infringement on the part of the employer, should be taken into account.

Moreover, in the case of unequal pay due to sex, the court can also set non-discriminatory pay conditions for the future as a result of employees bringing actions to determine the substance of the employment relationship.

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SLOVAKIA

THE GENDER PAY GAP: FIGURES AND TRENDS



According to the latest official available data published by the Ministry of Labour, Social Affairs and Family of the Slovak Republic, the gender pay gap in Slovakia for 2017 was 18%. The good news is that the pay gap between men and women in Slovakia is steadily decreasing although the decrease tends to be slower than in the past. The largest difference in salaries of men and women is in management positions, especially in the business sector. In general, women in Slovakia work more in the public sector, mostly in the area of education, health, social work or public administration, where salaries are lower than in the business sector.⁽¹⁾

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



In the Slovak Republic there are no laws requiring to comply with particular gender quotas or to report data on differences in salaries for men and women and the like. The respective legal regulations provide for, however, equal rights of women and men in relation to salaries and for equal pay for equal work. The general principle of equal rights of men and women is contained in the **Constitution of the Slovak Republic**.⁽²⁾ The prohibition of discrimination on grounds of sex in labour-law relationships is explicitly specified in the **Anti-discrimination Act**.⁽³⁾

The requirement to comply with the anti-discrimination principles contained in the Anti-discrimination Act is reiterated in the Slovak **Labour Code**,⁽⁴⁾ which is the main legal regulation in the field of employment. The **Labour Code** requires employers to advise employees on provisions on equal treatment upon commencement to work.

On top of that, the **Labour Code** specifically regulates the principle of **equal salaries** regardless of sex. The respective legal regulation contained in the Slovak Labour Code provides for that women and

men have right to an equal salary for “equal work or work of an equal value”. Work carried out by employees in employment at the same employer:

- that is of the same or comparable complexity, responsibility and that is equally or comparably strenuous (or demanding), and
 - that is that is carried out in equal or comparable work conditions, and
 - where the employees reach the same or comparable performance and results,
- is regarded as the “equal work or work of an equal value”.

In this connection, the respective legal regulation specifically imposes the following obligations upon employers:

- to agree salary conditions without any discrimination on grounds of sex – this obligation shall apply to any performance to be provided for work, as well as performances paid or to be paid in connection with the employment,
- to create an evaluation system of job positions (if the employer creates such system) based on the same criteria for men and women, without any discrimination on grounds of sex. Where the employer assesses the value of female and male work, in addition to the above-mentioned criteria (complexity, responsibility, ...) also other criteria can be taken into account but these must be objectively measurable and applicable to all employees regardless of sex.

The above-mentioned principle of “equal pay for equal work” does not apply only to female and male work but also generally applies to employees of the same sex carrying out the same work.

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



MEANS OF ACTION FOR THE EMPLOYEE

Pursuant to the Slovak Labour Code, an employee who believes that the principle of equal treatment

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was violated, may submit a **complaint** with the employer. The employer must respond to such complaint without undue delay, and – provided that the complaint is justified – remedy the situation, refrain from the wrongdoing and remedy adverse consequences of the wrongdoing. In practical terms that means that if the employee receives a lower salary than he/she should receive if the principle of equal pay was complied with, the employee's salary should be adjusted and the employee should be compensated for the prior reductions in the salary.

On top of that, every employee who believes that his/her rights or interests protected by law have been violated due to a failure to comply with the principle of equal treatment (which may include also the violation of the principle of equal pay for equal work), may file a **court petition** and seek a protection pursuant to the Anti-discrimination Act. The employee may, in particular, request the court to order to the employer, as a person violating the principle of equal gender pay:

- to refrain from the violation of the equal gender pay provisions,
- to rectify such violation, if possible, or
- to provide adequate satisfaction for such violation.

In certain cases specified by law, if the adequate satisfaction is not sufficient, the employee may also request monetary compensation for intangible harm.

If the employee is convinced about the discrimination on grounds of sex and violation of her/his right in relation to the equal pay and files a petition with the court, the burden of proof in the court proceedings shall be on the employer's side.

Last but not least, an employee may file also a motion to the respective labour inspectorate to carry out a labour inspection and to review of the salary politics applied by the employer. The labour inspectorates may, however, initiate the labour inspection also without any motion.

SANCTIONS

There is no specific financial penalty prescribed specifically for the violation of the obligations concerning the equal pay. However, for the said violation the employer may be penalized by the respective authorities (such as labour inspectorates) based on general provisions on sanctions for violation of the Labour Code and labour-law regulations in general. The maximum financial sanction for the violation of duties under the Labour Code – which may include the violation of the equal pay obligation – is EUR 100,000. The particular amount of the financial sanction imposed depends on various factors such as the gravity of the identified violation and whether the violation is repeated or not. In certain cases, the financial sanction may be imposed also upon the individuals – managing directors of the employer (or another statutory body) or managing employees (managers) – if these violated the respective obligations and were at fault for the violation or if they gave instructions for such violation etc. In such case, they may be sanctioned up to 4-times their average monthly earnings.

⁽¹⁾ Official published information on the web page of Ministry of Labour, Social Affairs and Family of the Slovak Republic: <https://www.employment.gov.sk/sk/informacie-media/aktuality/den-rovnosti-odmenovani-3.html>

⁽²⁾ Act No. 460/1992 Coll., the Constitution of the Slovak Republic, as amended.

⁽³⁾ Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection Against Discrimination and on Amendment of Certain Acts, as amended.

⁽⁴⁾ Section 119a of Act No. 311/2001 Coll. The Labour Code, as amended.

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SPAIN

THE GENDER PAY GAP: FIGURES AND TRENDS



In Spain, the equal gender pay gap stands at an approximate rate of 12%, meaning that Spanish women perceive 12% less salary than Spanish men for the same job. Despite the fact that this pay gap is quite significant, we can observe a positive trend in comparison with past years. For example, since 2002 gender pay gap has been reduced in almost a 30%. This reduction takes place at all ages but specially for those young employees (in which the gap has been reduced up to a 61%). This trend allows us to be optimists however, as we see, still there is a lot of work to do.⁽¹⁾

The gap becomes lower when employees are younger or just graduated. On the contrary, when we review those profiles who are older (age over 50) or who have a higher seniority, the gap becomes higher. Additionally, such gap is more significant in those cases when the level of salaries is also higher.

It is remarkable that those professional sectors in which the average of men is higher, the pay gap between men and women is notable (i.e. manufacturing, construction, energy supply, etc.). On the other hand, other sectors with a balanced number of men and women, such as education or catering, the pay gap is lower.

There is not a single factor that may allow us explain the reasons for the pay gap in Spain. However, a series of elements interact in our labor market and could be seen as leitmotifs of such gap, among others: (i) the women's use of parental leaves (more frequently than men), (ii) those positions that are well-remunerated are not performed by women (they do not have easy access to top manager positions) or (iii) less participation of women in the labor market (it has been observed that they mainly focus their preferences on private life, rather than professional).

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



Gender pay gap is a subject that has not been regulated in detail under the Spanish legislation. In this regard, the first seed of this regulation could be found in the Organic Law 3/2007, of May 22, for the Effective Equality between Women and Men. Such law sacred a specific equality principle between men and women in terms of labor access, opportunities and employment conditions (which involved equal pay for the same job). This law could be considered as the first legislative milestone that laid the ground for mitigating the existence of gender pay gap.

Recent changes in the Spanish Government have brought legal developments on this topic. In particular, the Government has recently passed Royal Decree 6/2019, of March 1, which establishes new urgent measures for guaranteeing equal treatment and opportunities between men and women. It deepens and reinforces the principles contained in the referred Law 3/2007 and introduces amendments in several articles of the Spanish Workers' Statute that are linked to equal pay between men and women.

Among others, this law sets specific obligations for employers such as the creation of a register that should show average salaries, complements and non-salary items per gender, breaking down by professional groups, categories and positions. Employees are entitled to request such register to the company through their relevant representatives. Additionally, this law compels companies employing 50 employees or more, which have a pay gap between men and women of a 25% or more, to justify the objective reasons for such gap. In this regard, it should be highlighted that this law also provides a definition for "*work of equal value*" with a view to ensuring same remuneration, regardless of whether it is developed by men or women.

The referred new regulation also states the obligation to elaborate an Equality Plan for those companies that employ 50 or more employees.

This plan will have to contain the measures to remove obstacles and issues that could challenge the effective equality between men and women. Prior to the approval of the plan, companies and their workers' representatives are instructed to negotiate a diagnosis regarding several key gender aspects (among them, reviewing the remuneration conditions).

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



Any violation of the equal pay legislation could be denounced by employees or detected by the Labor Inspectorate (e.g. by conducting inspection campaigns on this specific issue).

Royal Legislative Decree 5/2000, of August 4, that regulates the Infringements and Sanctions of the Employment Order (LISOS) penalizes any actions or measures that may violate the above referred laws in terms of equal pay. Particularly, according to article 7.13 LISOS, any breach of Law 3/2007 previously referred could be considered as a serious infringement punishable with fines of between 626 euros and 6,250 euros per each infringement.

Furthermore, any company decision that may imply a direct or indirect discrimination due to gender reasons (including those related to remuneration conditions) could also be considered as a very serious infringement pursuant to article 8.12 LISOS. As a result of this infringement companies could be sanctioned with fines of between 6,251 euros and 187,515 euros per infringement, depending on the seriousness and circumstances of the latter. Together with such sanctions, companies could be excluded from public employment allowances and tax rebates.

⁽¹⁾ Data obtained from the Spanish Employers' Organizations Confederation (CEOE) report published on March 2019 - "Analysis of gender pay gap in Spain".

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SWEDEN

THE GENDER PAY GAP: FIGURES AND TRENDS



The Swedish National Mediation Office (*Sw. Medlingsinstitutet*) is an authority under the Ministry of Employment. One of their main tasks is being the responsible authority of the official statistics over pay and analyzing the wage trend from a gender equality perspective. The National Medication Office's latest report shows that in 2017, women in Sweden had 88.7 % of the men's salary. This implies a pay gap of 11.3 % between the genders.

It is possible to take into consideration that differences between the genders may occur due to men and women being divided differently over professions, sectors, education, age and employment time. After such consideration, there is still an unexplained pay gap between the genders of 4.3 %. The unexplained difference in pay between men and women is unexplained in terms of statistics and may be based on factors that are not included in the statistics.

When studying the measurable factors significance to the pay gap, the factors that explain the most part of the pay gap is due to men and women holding different professions and working in different sectors with different wages. The largest pay gap (20.6 %) is for those working within the counties (*Sw. Landsting*). Within the counties, a large part of the women work as assistant nurses, while a large part of the men work as doctors. Further, women generally work within the public sector to a larger extent than men, where the wage structure usually is compressed, and the wage career is more limited.

The National Mediation Office's report states that research confirms that another reason for the pay gap between the genders is parenthood. Women earn considerably less after having children. This decline in wage is reflected in the fact that women have longer absence from work when becoming

a parent. Further, women usually take more responsibility for family and household, work part time and is more often the one to stay at home to care for children. Women are also on a sick leave to a greater extent than men. These circumstances together contribute to a lower range of work, which in turn may affect the career possibilities.

However, there is a distinct trend regarding the pay gap, which has decreased every year for the past ten years. Two possible reasons for the decrease in the gender pay gap are the increased number of female university graduates and the fact that more women become managers. Since 2008, the number of female managers has increased with 49 % while the increase of male managers is 15 % during the same period.

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



Discrimination based on gender is in some cases the explanation to pay gap between women and men. Thus, an important factor in the work towards gender equality is through the Swedish Discrimination Act (*Sw. Diskrimineringslagen*).

The Swedish Discrimination Act was amended in 2016 requiring employers to conduct a systematic work in the form of active measures to prevent discrimination in the work place and to yearly study and analyze salary in order to discover, rectify and prevent non-objective differences in salaries and other terms of employment. Further, companies with at least 10 employees shall on a yearly basis document the results, outcomes and actions that need to be taken as a result of the studies and analyses with regard to wage differences. Employers with at least 25 employees are also required to yearly document all parts of their work on active measures to prevent discrimination.

Further, under the Parental Leave Act (*Sw. Föräldraledighetslagen*) a prohibition against disfavoring those who exercise their right to parental

leave regarding, inter alia, salary is stipulated. This implies inter alia that an employee who is on parental leave typically should receive the same salary increase as if he/she were working.

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



The Equity Ombudsman (Sw. *Diskrimineringsombudsmannen*) supervise the compliance with the Swedish Discrimination Act and every year, they investigate a selection of employers. If the Equity Ombudsman find that employers do not comply with the provisions under the Swedish Discrimination Act, inter alia the provisions regarding active measures to prevent discrimination and to conduct salary surveys, the employers are required to fulfill their obligations. If the employers do not rectify the shortcomings, the employers may be required to fulfil their obligations under penalty of a fine.

The Equality Ombudsman, trade unions and individuals may also bring cases of pay discrimination to court.

If someone through a provision in an agreement or collective bargaining agreement has been discriminated in a way that is prohibited under the Swedish Discrimination Act, such provision shall be adjusted or declared invalid upon request from the one who has been exposed to the discrimination.

Employers who violate the prohibitions of discrimination may also face discrimination damage in court, involving both compensation for discrimination (Sw. *kränkningersättning*) for the offence resulting from the infringement and compensation for any loss that arises.

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SWITZERLAND

THE GENDER PAY GAP: FIGURES AND TRENDS



Between 2012 and 2014, the pay gap between women and men in Switzerland fell from 21.3% to 19.5%. However, in 2016, it increased again to 19.6%. According to the results of the Federal Statistical Office (FSO), 42.9% of these wage differences are unexplained.⁽¹⁾ In the private sector, the pay gap between the sexes is bigger (2016: 19.6%) than in the public sector (2016: 16.7%).⁽²⁾ There is also a noticeable variation between different economy branches: While the pay gap was 8.3% in the hospitality sector in 2014, it amounted to 33.3% in the credit and insurance sector.⁽³⁾

There are multiple reasons for the gender pay gap in Switzerland. On the one hand, young women often have typical “women professions” for which the entrance wage is around CHF 200 less per month than in typical “male professions”. On the other hand, even if they have the same qualifications and identical education, young women get paid less than their male colleagues. Furthermore, even in well paid professions, women often choose or get assigned work content with lower compensation, even if their education qualifies them for better paid tasks. Also, there are inequalities concerning the division of labour within the family to the disadvantage of women: The division usually affects the profession which is less lucrative and this is often the women’s profession. As a consequence, inequalities between men and women are created and consolidated early in the Swiss working life.⁽⁴⁾

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



The Federal Constitution of the Swiss Confederation (FC) guarantees various fundamental rights, among others the principle of equality of rights in Article (Art.) 8 BV. Paragraph 3 of the said article states that men and women are entitled to equal pay for work of equivalent value.⁽⁵⁾ The Federal Act on Gender Equality (GEA) supports the goal of Art. 8(3)

FC and prohibits discrimination on grounds of sex in working life in general and in particular wage discrimination. The prohibition applies equally to public law and private law.⁽⁶⁾ The GEA facilitates the enforcement of the principle of equal pay with an individual right to sue (Art. 5), a reduced burden of proof (Art. 6), a protection against dismissal (Art. 10), and the right of organisations to sue (Art. 7).⁽⁷⁾

In 2018, the Federal Assembly decided to revise the GEA to further enhance the equal treatment of men and women with government measures.⁽⁸⁾

Generally, employers who employ 100 or more employees will soon be required by law to carry out an in-house wage equality analysis every four years and have it reviewed. The result of such analysis must be published, but there are no sanctions if the analysis shows that no equal wages are paid. If the analysis shows that the wage equality is being complied with, the employer will be released from the obligation to make an analysis.⁽⁹⁾

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



An employee can submit a claim for equal pay for equivalent work based on Art. 8 (3), sentence 3 FC or Art. 3 GEA. Claims based on one of the two Articles shall be asserted before the Federal Supreme Court in private law wage disputes after exhaustion of the cantonal remedies with complaints in civil matters (Art. 72 et seq. Swiss Federal Supreme Court Act (BGG)) and in public law employment relationships with complaints in public law matters (Art. 82 et seq. BGG). If both complaints mentioned above are not available, the subsidiary constitutional complaint pursuant to Art. 113 et seq. BGG shall be used. Both parties (discriminants or discriminators) are entitled to bring actions under federal law.⁽¹⁰⁾

The Federal Office of Justice recognized in its evaluation of the not yet revised GEA that it does not provide for official enforcement of the constitutional

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right to equal pay. Therefore, employers who discriminate their employees with regard to wages based on gender were only held responsible in a few individual cases. In addition, the sanctions that could be imposed for wage discrimination were not very severe. As a result, certain companies accepted the risk of wage lawsuits.⁽¹¹⁾

However, the revised version of the GEA passed by parliament does not provide for more severe sanctions than its predecessor. Moreover, not even 1% of the companies in Switzerland are affected by the obligation of the revised GEA to execute a wage equality analysis and the duration of the reformed GEA is limited to 12 years. Nonetheless, 1% of the Swiss companies employ 46% of the Swiss employees and the employers have to inform their employees about the result of the wage analysis.⁽¹²⁾

Furthermore, for public procurement, the Swiss Federal Law on Public Procurement (BöB) constitutes that the Confederation may only award contracts to companies that guarantee equal pay for men and women (Art. 8 (1) (c) BöB). Nevertheless, certain labour unions are still not satisfied with the circumstances and are calling for a strike.⁽¹³⁾

⁽¹⁾ Bundesamt für Statistik, Analyse der Lohnunterschiede zwischen Frauen und Männern 2016, Medienmitteilung.

⁽²⁾ Bundesamt für Statistik, a.a.O.

⁽³⁾ Bundesamt für Statistik, a.a.O.

⁽⁴⁾ Michael Marti / Kathrin Bertschy, Belodis – Berufseinstieg und Lohndiskriminierung – neue Erklärungsansätze zu einer Schlüsselphase für geschlechtsspezifische Ungleichheiten, NFP 60, 2013, S. 2.

⁽⁵⁾ Art. 8 (3) BV; BGE 130 III 145 E. 3.1.2, 158 f.

⁽⁶⁾ Bundesamt für Justiz, Erläuternder Bericht zum Entwurf zur Änderung des Bundesgesetzes über die Gleichstellung von Frau und Mann, 2015, S. 3.

⁽⁷⁾ Bundesamt für Justiz, a.a.O., S. 3.

⁽⁸⁾ BBl 2017 5507, p. 5508.

⁽⁹⁾ BBl 2018 7875, p. 7875.

⁽¹⁰⁾ Rainer J. Schweizer/ Margrith Bigler-Eggenberger/ Regula Kägi-Diener, Die Schweizerische Bundesverfassung – St. Galler Kommentar, 3. Aufl., Zürich 2014, Art. 8 BV, para. 131.

⁽¹¹⁾ Bundesamt für Justiz, a.a.O., p. 4.

⁽¹²⁾ sda, Gleichstellung: National- und Ständerat einigen sich bei Lohnanalysen, 3.12.18, retrieved from <<https://www.tagblatt.ch/schweiz/gleichstellung-national-und-staenderat-einigen-sich-bei-lohnanalysen-ld.1075466>>.

⁽¹³⁾ Cf. Frauen*streik, <<https://www.14juni.ch/>.file:///C:/Users/SWE/Desktop/WALDERWY.png>>

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UK: ENGLAND & WALES

THE GENDER PAY GAP: FIGURES AND TRENDS



According to the UK Office of National Statistics (ONS) in 2018 the gender pay gap was 8.6% for full-time employees. This is the lowest it has been since records began in 1997, when the average hourly pay for male full-time employees was 17.4% higher than for women.

The downward trend reflects increased public awareness of equal pay legislation and social pressure on organisations to ensure there is parity in pay between men and women.

But while the gap for full-time employees has narrowed, if you take into account atypical workers, particularly those working part-time, the picture is rather different. In 2018, the gender pay gap for all employees was 17.9%. This can be explained by the higher proportion of women who work part-time, often earning less per hour on average than their full-time male counterparts. The part-time pay gap has widened considerably since the early 2000s, perhaps due to an increased desire for a better work-life balance.

The gender pay gap for employees within certain age ranges or industries also varies. For full-time employees under the age of 39 the gap is marginal but from the age of 40 the gap jumps to over 12.5%, perhaps as a result of women taking time out to have a family and look after elderly relatives. In skilled trades occupations (those with a substantial period of training, often provided by means of a work based training programme) the pay gap is almost 24%, while London, with its heavy concentration of financial services, senior managers and professional workers has the widest pay gap of any UK region. This likely reflects the fact that women are often underrepresented in technical roles, including those in the IT sector, and senior leadership positions.

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



The UK has specific laws providing for the principle of equal pay. Equal pay legislation on the grounds of sex has been in place since 1970 and is now contained in the Equality Act 2010.

To assist pay transparency, the Equality Act makes 'pay secrecy clauses' unenforceable to the extent that they prevent an employee from making 'relevant pay disclosures' and makes it unlawful to victimise an employee for making or seeking a relevant pay disclosure. Protection is also afforded by direct and indirect sex discrimination legislation.

The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (the Regulations) came into force on 5 April 2017 and require employers with 250 or more employees to publish details of their gender pay gap on an annual basis.

Employers within scope of the Regulations are required to publish the following figures:

- Overall gender pay gap figures for relevant employees, calculated using both the mean and median average hourly pay.
- The proportion of men and women in each of four pay bands (quartiles) based on the employer's overall pay range.
- Information on the employer's gender bonus gap.
- The proportion of male and female employees who received a bonus in the relevant 12 month period.

These figures must be accompanied by a written statement confirming that the published gender pay gap information is accurate.

Over 10,000 employers published their results for 2018 and 2019. The reports have not shown that the gender pay gap is caused by lower pay for women in the same jobs as men; rather, it has highlighted that women are underrepresented

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in more senior roles. Employers can therefore expect their pay, promotion and bonus processes to be under greater scrutiny in the future from employees, the media, and the general public.

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



Sanctions are available where an organisation is in breach of equal pay legislation, for example where a woman is being paid less than a man for doing the same or similar work. These claims would be brought by individuals or as class action cases. They are most commonly brought in the employment tribunal, which would determine what awards should be made on a case by case basis.

Where there is unequal pay for equal work, the law implies an equality clause into the contract, modifying any term that is less favourable, for example increasing the woman's pay to match that of a male comparator. The tribunal can also make a declaration of an employee's rights, require payment of any arrears (usually up to six years) and award damages.

However, there are no financial penalties for employers who reveal a gender pay gap under the Regulations, or if they fail to publish their statistics. Public scrutiny has been cited as the main driving force to ensure organisations publish their figures, although in April 2018 the UK Equality and Human Rights Commission (EHRC) wrote to almost 1,500 employers it believed had failed to comply with the Regulations. It has since 'named and shamed' 47 organisations who failed to report their gender pay information for 2018/19 and notified them that it will start formal investigations and assessments.

Separately, the UK's Advisory, Conciliation and Arbitration Service (ACAS) has issued guidance to employers, encouraging them to go beyond the requirements of the Regulations and implement an

action plan that aims to reduce the gender pay gap in their organisation. Further, the Government's Equalities Office and the Women's Business Council have published 'toolkits' providing practical advice for organisations on closing the gender pay gap. In a related move, the Government has introduced CEO pay reporting, requiring directors of a UK-listed company with 250 or more employees to report annually on the difference in pay between their CEO and average workers.

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THE GENDER PAY GAP: FIGURES AND TRENDS



Employment law in Scotland is reserved to the UK Parliament, in part due to the number of labour issues regulated by European laws. This means many of the applicable laws are the same across the UK. However, there are some Scottish nuances which should be considered, amid growing pressure for more powers to be devolved to Scotland. We set out below the UK position and key Scottish differences.

Scotland's gender pay gap is currently 15% in favour of men – slightly better than the figure across the UK across all employees, which was 17.9%. In the past 20 years, the UK figure has fallen from 27.3%, so there has been some significant improvement. Looking just at full-time employees, the figure is somewhat lower, being 5.7% in Scotland and 8.6% in the UK (falling from 17.4% in 1998). The gender pay gap for full-time employees is close to zero for those aged between 18 and 39, but then increases significantly for those over 39.

There is a gender pay gap in favour of men across all sectors in the UK, but particularly significant is the gap in skilled trade occupations (23.9%), process plant and machine operatives (19.1%), managers, directors and senior officials (13.6%), and professional occupations (11.7%).

In accordance with reporting by the Office of National Statistics, the 'average' used for gender pay gap statistics is the median, which is the 'middle' value if all earnings were listed from lowest to highest. These figures do not show differences in rates of pay for comparable jobs. Women are heavily over-represented in occupations which tend to be lower paid compared to those that are male dominated.

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



EQUAL PAY

Since 1970, it has been unlawful in Scotland (and the rest of the UK) to pay men and women different rates

of pay where they are performing the same job, or to reserve certain jobs for men and other (lower-paid) jobs for women. The most recent enactment of this law is found in the *Equality Act 2010* which sets out that men and women should receive equal pay for equal work.

UK law implies a "sex equality clause" into a woman's contract of employment, bringing a statutory modification to any less favourable contractual terms for women to bring them on to equal terms to those of their male counterparts, and vice versa. There are also specific provisions aimed at protecting women's pay during pregnancy and maternity leave. A woman who has taken maternity leave must not lose the benefit of any pay rise that she would otherwise have had, in calculating either her maternity pay or her pay on return to work.

UK PRIVATE EMPLOYERS:

GENDER PAY GAP REPORTING

The *Equality Act 2010 (Gender Pay Gap Information) Regulations 2017* (the **GPG Regulations**) came into force on 6 April 2017, and we have now had two reporting cycles published. These regulations apply to all Scottish/UK private companies with more than 250 employees. Organisations with fewer than 250 employees may comply on a voluntary basis. Under the regulations, employers must publish annually:

- the percentage difference between mean and median hourly pay for male and female employees;
- the proportion of males and females who received a bonus in the past 12 months;
- the percentage difference between mean and median bonus pay; and
- the proportion of male and female employees in each salary quartile.

Employers are encouraged to include an explanation of any existing pay gap and set out what action they plan to take to resolve the gap, though this is not required. The reports must be uploaded both to the company's website and to a central government database.

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SCOTTISH PUBLIC SECTOR EMPLOYERS

Scottish public bodies are not within the scope of the GPG Regulations but are covered by the Public Sector Equality Duty under the *Equality Act 2010*. The Scottish government has interpreted this duty to require public bodies with more than 20 employees to publish a report every two years. This biennial report must highlight the progress the employer has made with the performance of the equality duty and, specifically, must set out the difference between the average hourly pay of men and women. These reporting arrangements have been in place since 2012.

GENDER REPRESENTATION ON PUBLIC BOARDS (SCOTLAND) ACT 2018

As part of actions to ensure higher representation of women in higher-paid roles, Scotland introduced in 2018 a “gender representation objective” for 50% of non-executive members on Scottish public bodies’ boards to be women. This provides that if the board is not gender-balanced then, where more than one candidate applies for a non-executive vacancy and they are equally qualified for the position, the woman should be appointed. Those appointing individuals to boards must also promote opportunities to encourage women to apply.

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



Equal pay claims are usually brought in the employment tribunals. Often claims are made in groups, commonly supported by trade unions or no-win, no-fee lawyers. If it is found that an employer has breached their duty under the Equality Act to pay men and women the same amount for work of the same value, then the tribunal can make a declaration of the claimant’s rights under the equality clause and require payment of any arrears, with interest (in Scotland, arrears of up to five years can be awarded). The tribunal can, and in some cases must, also order employers who have been found

in breach of equal pay law to carry out equal pay audits.

A failure to comply with the GPG Regulations is classified as an unlawful act under the Equality Act 2006, and may result in enforcement action by the Equality and Human Rights Commission. So far, the EHRC has limited its intervention to writing to non-compliant employers and operating a ‘name and shame’ system to highlight those companies in breach of the GPG Regulations.

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THE GENDER PAY GAP: FIGURES AND TRENDS



The official statistics continue to prove that female employees in Ukraine earn on average less than their male colleagues. The report of the national statistics agency, the State Committee of Statistics of Ukraine, regarding the average monthly salaries for the first quarter of 2019 shows the difference in pay of men and women at the level of 22.8 %. That being said, the ILO Global Wage Report 2018/19 on gender pay inequalities reveals the figure of 32.0% in respect of Ukraine, as measured by Gini coefficient.

Although the gender pay gap is relevant for nearly all spheres of economy, the reported national statistical data shows that finance and insurance sectors are the leaders with the gap of 38.9 % in the first quarter of 2019. Education, social and support services, as well as healthcare show the lowest level of the gap in remuneration.

The reasons and factors contributing to the existing gap in male and female remuneration vary, from certain legislative provisions to public perception and structure of employment market. To start with, Ukrainians continue to divide professions into «female» and «male» and often view certain high-skilled jobs as typically «male». Furthermore, there is a legislative list of jobs with heavy and harmful conditions, on which the law prohibits work of women. The pay for these jobs is naturally higher due to their demanding character. As the consequence, such an occupational segregation affects the level of remuneration of female employees.

Another factor to mention is disproportionate distribution of unpaid work in the household, such as caring for children or elderly members of family. This work is typically «female» in Ukraine, as often serves as the reason for women to work part time or choose jobs that are less demanding or offer flexible working conditions. Applicable labour law impacts to this factor, as some of the benefits, such as parental leave or extra vacation days, are available only to female employees.

Apart from this, local HR agencies often report a gap between expectations of male and female job applicants. Usually, female candidates tend to have lower wage and position expectations, even despite of the same education, qualification, and work experience as those of their male colleagues. Hence, men traditionally dominate in senior level positions and tend to get higher remuneration upon start of work and quicker pay raise.

SPECIFIC LEGISLATION ON GENDER PAY EQUALITY



While Ukrainian law addresses gender discrimination in remuneration, no sufficiently proactive legal requirements currently exist to eliminate the gender pay gap.

The Constitution of Ukraine in its Article 23 grants the equality of the rights of women and men in all fields of activity, particularly, by securing equal remuneration for equal work. The Labour Code of Ukraine echoes this rule in its Article 21, which also prohibits any form of discrimination in the sphere of labour, including discrimination based on gender.

The legislative act with the detailed rules devoted to combating gender discrimination is the Law of Ukraine «On Ensuring Equal Rights and Opportunities for Women and Men». Pursuant to Article 17 of this Law, employers must ensure equal pay for work of male and female employees with the same qualification and working conditions. The Law further provides for a general requirement to include provisions on elimination of gender pay gap to a collective bargaining agreement of an enterprise, if it was signed.

In 2017, Ukrainian government approved the State Social Program for Ensuring Equal Rights and Opportunities for Women and Men by 2021 with the list of steps and objectives to eliminate gender discrimination. One of such objectives is to narrow the gender pay gap to 20 % by the end of 2021. However, the Program is generally silent on the specific measures to be taken in order to reach this objective.

The only gender quota that currently exist at the legislative level is the electoral quota for the party candidates taking part in elections to municipal councils. Since 2015, a party is eligible for municipal elections if at least 30 % of its candidates are female. In addition, at the beginning of 2019 the lawmakers unveiled the draft law that proposes to introduce a 40 % quota for women in supervisory and executive boards of banking institutions and companies with state capital. Currently, the draft law waits for vote by the parliament of Ukraine.

From time to time, there emerge legislative attempts to give more shape to gender pay gap legislation, for instance, by introducing reporting obligations for employers. As of today, however, none of such proposals is under consideration of the parliament.

SANCTIONS FOR THE EMPLOYER IN CASE OF VIOLATION OF EQUAL PAY LEGISLATION AND MEANS OF ACTION FOR THE EMPLOYEE



The general remedy that is available for employees who faced unequal treatment at the workplace is the compensation of damages, including moral damages. The employees may file relevant claim directly with a competent local court. Further, collective bargaining agreements may provide for additional protection against violation of equal pay legislation in respect of the employees. In practice, however, any such additional protection, as well as damages claims, are relatively rare.