

2024 WEPs deep-dive series

#3. Transparency & Accountability- Zooming into EU legislations on Gender Equality

Thu 4 April 2024



08:30 – 09:45 AM New York
09:30 – 10:45 AM São Paulo
14:30 – 15:45 PM Paris / Johannesburg
19:30 – 20:45 PM Jakarta

Special guest:
European Parliament
S&P Global

WOMEN'S
EMPOWERMENT
PRINCIPLES



Welcome Remarks



Mihwa Park

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Opening Remarks



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Today's Speakers



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Overview on EU legislation related to gender equality and reporting obligations

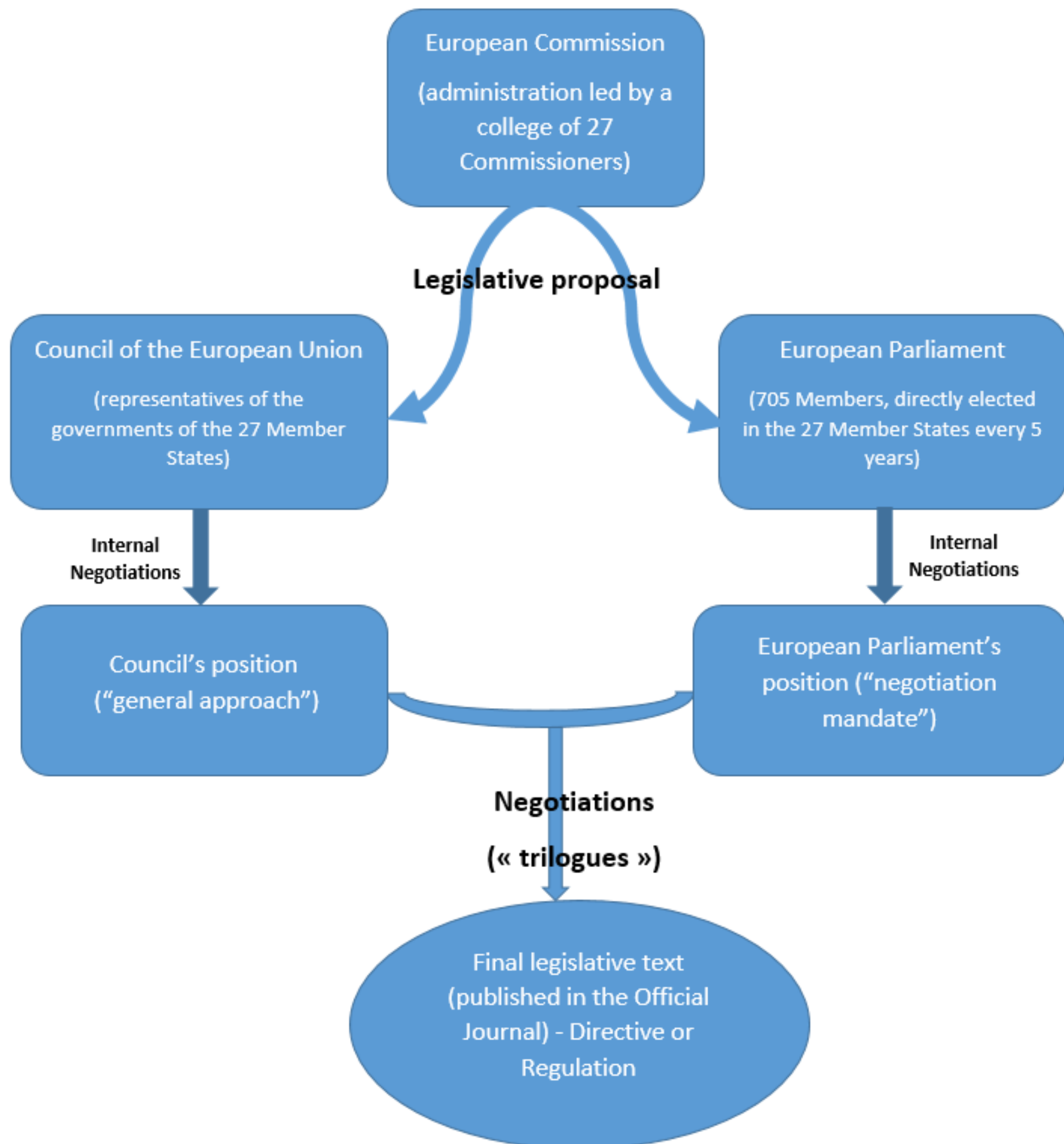
Elodie Carmona and Andreea Chifan, European Parliament

Disclaimer: *as per their duties towards their employer, the authors can only present companies reporting obligations under a selection of EU legislative texts and cannot, in particular, give any legal advice to participants in this webinar*

Structure of the presentation

- The EU legislative procedure in a nutshell (*Elodie*)
- Overview of the (recent) EU legislation on gender equality with provisions on reporting obligations (*Elodie*)
- The companies' reporting obligations under the **Corporate Sustainability Reporting Directive** (CSRD) 2022/2464/EU (*Andreea*)
- The companies' reporting obligations under the newly adopted **Pay Transparency Directive** (*Elodie*)

i. The EU legislative procedure in a nutshell



i. Overview of the (recent) EU legislation on gender equality with provisions on reporting obligations

- [Work-life Balance Directive \(2019/1158\)](#) – transposition by 02/08/2022
 - Article 18, *Reporting and review* (Member States)
- [Women-On-Board Directive \(2022/2381\)](#) – transposition by 28/12/2024
 - Article 7, *Reporting* (MS)
- [The Minimum Wages Directive \(2022/2041\)](#) – transposition by 15/11/2024
 - Article 10, *Monitoring and Data Collection* (MS)
- [The Corporate Sustainability Reporting Directive \(CSRD\) 2022/2464/EU](#) – full transposition by 06/07/2024 (Employers and MS) – see section III
- [The Pay Transparency Directive \(2023/970\)](#) – transposition by 07/06/2026 (Employers and MS) – see section IV

i. The Corporate Sustainability Reporting Directive (CSRD) 2022/2464/EU

Amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting is a **revision of** Directive 2014/95/EU on the disclosure of non-financial and diversity information (the **Non-financial Reporting Directive** – NFRD)

DIRECTIVES

DIRECTIVE (EU) 2022/2464 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 December 2022

amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 50 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) In its communication of 11 December 2019 entitled 'The European Green Deal' (the 'Green Deal'), the European Commission made a commitment to review the provisions concerning non-financial reporting of Directive 2013/34/EU of the European Parliament and of the Council ⁽³⁾. The Green Deal is the new growth strategy of the Union. It aims to transform the Union into a modern, resource-efficient and competitive economy with no net emissions of greenhouse gases (GHG) by 2050. It also aims to protect, conserve and enhance the Union's natural capital, and protect the health and well-being of Union citizens from environment-related risks and impacts. The Green Deal aims to decouple economic growth from resource use, and ensure that all regions and Union citizens participate in a socially just transition to a sustainable economic system whereby no person and no place is left behind. It will contribute to the objective of building an economy that works for the people, strengthening the Union's social market economy, helping to ensure that it is ready for the future and that it delivers stability, jobs, growth and sustainable investment.

These goals are especially important considering the socio-economic damage caused by the COVID-19 pandemic and the need for a sustainable, inclusive and fair recovery. Regulation (EU) 2021/1119 of the European Parliament and of the Council ⁽⁴⁾ makes the objective of climate neutrality by 2050 binding in the Union. Moreover, in its Communication of 20 May 2020 entitled 'EU Biodiversity Strategy for 2030: Bringing nature back into our lives', the Commission commits to ensuring that by 2050 all of the world's ecosystems are restored, resilient and adequately protected. That strategy aims to put Europe's biodiversity on a path to recovery by 2030.

⁽¹⁾ OJ C 517, 22.12.2021, p. 51.

⁽²⁾ Position of the European Parliament of 10 November 2022 (not yet published in the Official Journal) and decision of the Council of 28 November 2022.

⁽³⁾ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

⁽⁴⁾ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).

CSRD

- In force since January 2023
- Full transposition by July 2024
- Complemented by the **European Sustainability Reporting Standards***

CSRD

- EC announced the revision of the NFRD in the European Green Deal (2019) as one of the measures to mainstream sustainability in the financial sector
- **In its Impact Assessment the EC defines the Directive's objective*:**
 - To improve sustainability reporting at the least possible cost, to ensure that there is adequate publicly available information about the risks that sustainability issues present for companies, and the impacts of companies themselves on people and the environment
- It aims to ensure that reported information is comparable, reliable and easy for users to find and make use of with digital technologies

NFRD (2014) leads to the CSRD (2021)

- Subsequent policy developments:
 - *UN SDGs (2015)*
 - *Paris Agreement on climate change (2016)*
 - *EU sustainable finance action plan (2018) and the European Green Deal (2019)*
 - IA: the NFRD's scope, flexibility, lack of granularity of reporting requirements, as well as the NFRD's requirements regarding assurance (i.e. verification of the non-financial information provided), location of the reported information and enforcement, are the drivers behind *the problems identified*:
 - From a user perspective – lack of adequate info on non-financial issues
 - From a preparer perspective – costs, difficulty, complexity re what info to report (different standards & sets of guidance)

CSRD applicability

- The reporting requirements extend to **nearly 50 000 companies in the EU** (currently only 11 000)
 - All **large** companies (with more than 250 employees)
 - All **listed** companies
 - Only listed SMEs if not applies voluntarily
 - Some non-EU companies will also have to report if they generate over EUR 150 million on the EU market

European Sustainability Reporting Standards (ESRS)*

- Adopted via the EC delegated Regulation 2023/2772
- Based on technical advice from EFRAG* - an independent, multistakeholder advisory body, majority funded by the EU and
- Aligned with the standards of the International Sustainability Standards Board (ISSB) and the Global Reporting Initiative (GRI).
- Apply from 1 January 2024 for financial years beginning on or after 1 January 2024 (Article 2)
- **Mandatory for use by companies that are obliged by the Accounting Directive to report certain sustainability information**
- Common standards are expected to help companies to reduce reporting costs in the medium and long term, by avoiding the use of multiple voluntary standards as this is the case today*

ESRS reporting timetable* 1

- **Companies previously subject to the (NFRD)**
 - (large listed companies, large banks and large insurance undertakings – all if they have more than 500 employees),
- **+ large non-EU listed companies with more than 500 employees:**
 - financial year 2024, with first sustainability statement* published in 2025.
- **Other large companies, including other large non-EU listed companies:**
 - financial year 2025, with first sustainability statement published in 2026.
- **Listed SMEs, including non-EU listed SMEs:**
 - financial year 2026, with first sustainability statements published in 2027.

NB: However, listed SMEs may decide to opt out of the reporting requirements for a further two years. The last possible date for a listed SME to start reporting is financial year 2028, with first sustainability statement published in 2029.

ESRS reporting timetable 2

- In addition
 - **non-EU companies** that
 - generate *over EUR 150 million* per year in the EU and
 - have in the *EU either a branch with a turnover exceeding EUR 40 million or a subsidiary that is a large company or a listed SME*
 - **will have to report** on the sustainability impacts at the group level of that non-EU company **as from financial year 2028**, with first sustainability statement published in 2029.
NB: Separate standards will be adopted specifically for this case.

CSRD – 12 ESRS

2 Cross-cutting ESRS

- ESRS 1 – General Requirements
- ESRS 2 – General Disclosures – essential information to be disclosed irrespective of which sustainability matter is being considered – mandatory for all companies under the CSRD scope

CSRD – 12 ESRS

5 Environmental ESRS

- ESRS E1 – Climate
- ESRS E2 – Pollution
- ESRS E3 – Water and marine resources
- ESRS E4 – Biodiversity and ecosystems
- ESRS E5 – Resource use and circular economy

CSRD – 12 ESRS

4 Social ESRS

- Social – ESRS S1 – Own workforce
 - Social – ESRS S2 – Workers in the value chain
 - Social – ESRS S3 – Affected communities
 - Social – ESRS S4 – Consumers and end users
-
- 1 Governance ESRS G1 – Business conduct

CSRD

Reporting obligations from a gender perspective 1

ESRS 2 – General Disclosure – Metrics & targets:

- **Disclosure Requirement GOV-1 – The role of the administrative, management and supervisory bodies**
 - the objective of this Disclosure Requirement is to provide an understanding of:
 - (a) the **composition and diversity** of the *administrative, management and supervisory bodies*;
 - the undertaking shall disclose:
 - (...) (d) **percentage by gender and other aspects of diversity** that the undertaking considers. The board's gender diversity⁽¹³⁾* shall be calculated as an average ratio of female to male board members;

CSRD

Reporting obligations from a gender perspective 2

ESRS S1

- *Topic:* **Own workforce**
 - *Sub-topic:* **Equal treatment and opportunities for all**
 - *Sub-sub-topic:* **Gender equality and equal pay for work of equal value**
 - *Sub-sub-topic:* **Diversity**

ESRS S2

- *Topic:* **Workers in the value chain**
 - *Sub-topic:* **Equal treatment and opportunities for all**
 - *Sub-sub-topic:* **Gender equality and equal pay for work of equal value**
 - *Sub-sub-topic:* **Diversity**

CSRD

Reporting obligations from a gender perspective 3

ESRS S1 Own work force

- This Standard also requires an **explanation** of how the impacts of the undertaking, as well as the undertaking's dependencies on its own workforce, can create material risks or opportunities for the undertaking.
 - For example, **on the matter of equal opportunities, discrimination in hiring and promotion against women** can reduce the undertaking's access to qualified labour and harm its reputation. Conversely, **policies to increase the representation of women in the workforce and in upper levels of management** can have **positive effects**, such as increasing the pool of qualified labour and improving the undertaking's reputation.

CSRD

Reporting obligations from a gender perspective 4

ESRS S1 Own work force – Policies related to own workforce

- The undertaking shall disclose:
 - (a) whether it has specific policies aimed at the **elimination of discrimination**, including **harassment**, promoting **equal opportunities** and **other ways to advance diversity and inclusion**;
 - (b) whether the following **grounds for discrimination** are **specifically covered** in the **policy**: racial and ethnic origin, colour, sex, sexual orientation, gender identity, disability, age, religion, political opinion, national extraction or social origin, or other forms of discrimination covered by Union regulation and national law;
 - (c) whether the undertaking has specific **policy commitments** related to inclusion or positive action for people from groups at particular risk of vulnerability in its **own workforce** and, if so, what these commitments are; and
 - (d) whether and how these **policies** are **implemented** through **specific procedures** to ensure **discrimination is prevented, mitigated and acted upon** once detected, as well as to **advance diversity and inclusion** in general.

CSRD

Reporting obligations from a gender perspective 5

ESRS S1 Own work force – Policies related to own workforce – Metrics & Targets

- Disclosure Requirement S1-9 – Diversity metrics

The undertaking shall disclose the **gender distribution at top management** and the age distribution amongst its employees

- Disclosure Requirement S1-15 – Work-life balance metrics

- The undertaking shall disclose the extent to which employees are entitled to and make use of family-related leave
 - (b) the percentage of entitled employees that took family-related leave, and a **breakdown by gender**.

- Disclosure Requirement S1-16 – Remuneration metrics (pay gap and total remuneration)

- The undertaking shall disclose **the percentage gap in pay between its female and male employees** and the ratio between the remuneration of its highest paid individual and the median remuneration for its employees, including, among others:
 - the gender pay gap, defined as the difference of average pay levels between female and male employees, expressed as percentage of the average pay level of male employees(97);

CSRD

Reporting obligations from a gender perspective 6

ESRS S1 Own work force – Policies related to own workforce – Metrics & Targets

- Disclosure Requirement S1-17 – Incidents, complaints and severe human rights impacts
 - The disclosure shall include, subject to the relevant privacy regulations, **work-related incidents of discrimination** on the grounds of **gender**, racial or ethnic origin, nationality, religion or belief, disability, age, sexual orientation, or other relevant forms of discrimination involving internal and/or external **stakeholders** across operations in the reporting period. This includes incidents of **harassment** as a specific form of discrimination:
 - (a) the total number of **incidents of discrimination**, including **harassment**, reported in the reporting period.

i. Reporting obligations under the Pay Transparency Directive

BACKGROUND

- **Equal pay for equal work** is one of the EU founding principles (**Article 157** of the Treaty on the Functioning of the EU).
- Yet, the **implementation** and **enforcement** of this principle remain a challenge:
 - Lack of pay transparency is one of the key obstacles to closing the gender pay gap: **women earn on average 13% less than men per hour** (2021).
 - The pay gap has a long-term impact on the quality of women's lives, on their risk of exposure to poverty and on the persisting **pension pay gap (~30% in the EU** in 2023).
 - Owing to a lack of pay transparency, **pay discrimination often goes undetected**, and victims face difficulties in making claims for redress.
- On 4 March 2021, the European Commission adopted a legislative proposal on binding pay transparency measures, aiming to strengthen the application of the principle of equal pay for equal work between women and men through **pay transparency** and **enforcement mechanisms (better access to justice for victims** of pay discrimination).
- The Council adopted its general approach on the proposal on 6 December 2021.
- On 5 April 2022, the European Parliament confirmed its negotiation mandate on the proposal,
- Interinstitutional negotiations started on 30 June 2022. On 15 December 2022, after 5 trilogues, an agreement on the proposal was reached ("1st reading agreement").
- The Parliament and the Council endorsed the agreement respectively on 30 March and on 24 April 2023.
- The **Directive** was published in the OJ on 17 May 2023, and has to be transposed into national law by the Member States by **7 June 2026**.

SCOPE (article 2)

- Employers in **public and private sectors** in the EU.
- All workers who have an **employment contract or employment relationship** as defined by law, collective agreements and/or practice in force in each Member State with consideration to the case-law of the Court of Justice,
- Certain aspects also apply to **job applicants**.

MAIN PROVISIONS (articles 5 –5, 14–25) :

- **Access to information**

- Obligation for employers to inform job seekers about the **starting salary or pay range** of advertised positions, whether in the vacancy notice or ahead of the interview.
- Prohibition for employers to ask candidates about their **pay history**.
- Right for workers to ask their employers for information about:
 - **average pay levels**, broken down by sex, for categories of employees doing the same work or work of equal value
 - the **criteria** used to determine pay and career progression, which must be objective and gender neutral

- **Access to justice**

- **Compensation** for victims of gender pay discrimination (including full recovery of back pay and related bonuses or payments in kind).
- **Burden of proof** on the employers.
- **Effective, proportionate and dissuasive penalties** (including fines) in case of violations.

Specific provisions on

- **Intersectional discriminations** (the combination of multiple forms of inequality or disadvantage, such as gender and ethnicity or sexuality) (articles 3, 16, 23, 29)
- The needs of **workers with disabilities** (article 8)
- The wording of job vacancy notices and job titles (employers shall ensure that they are **gender-neutral**) (article 5)

Provisions on reporting – overview of article 9 (Reporting on pay gap between female and male workers)

- Companies with **>250 employees** will be required to **report annually** on the gender pay gap in their organisation to the relevant national authority as of 2027.
- For smaller companies (**100–249 employees**) the reporting obligation will take place every three years (starting in 2027 for companies with 150–249 employees and 2031 for companies with 100–149 employees)

NB: **technical assistance and training provided** to employers with <250 workers and to the workers' representatives concerned to facilitate compliance (article 11)

- Companies with **<100 employees** won't have any reporting obligation (but they have the right to report on their own initiative and MSs can individually decide to impose an obligation)

Provisions on reporting – details of article 9

- Employers have to provide the MSs with the following info:
 - the gender pay gap;
 - the gender pay gap in complementary or variable components;
 - the median gender pay gap;
 - the median gender pay gap in complementary or variable components;
 - the proportion of female and male workers receiving complementary or variable components;
 - the proportion of female and male workers in each quartile pay band;
 - the gender pay gap between workers by categories of workers broken down by ordinary basic wage or salary and complementary or variable components
- The accuracy of the information shall be confirmed by the employer's management, after consulting workers' representatives
- The info is published by the monitoring body and by the company on its website

Joint pay assessment (Article 10):

- In case of a **pay gap of more than 5%** that cannot be justified by objective, gender-neutral criteria and the employer has not remedied such an unjustified difference in the average pay level within six months of the date of submission of the pay reporting, companies will be required to take action in the form of a **joint pay assessment** carried out in cooperation with workers' representatives
- Aim of the JPA: **identify, remedy and prevent** those differences in pay between female and male workers
- Employers shall make the JPA available to **workers and workers' representatives** (and the labour inspectorate and the equality body upon request).
- When implementing the measures arising from the JPA, the employer shall remedy the unjustified differences in pay within a **reasonable period of time**, in close cooperation with the workers' representatives.

Expected consequences of the directive

- **Gender bias** in pay systems and job grading that does not value the work of women and men equally and in a gender-neutral way is very common.
- Since such bias is often unconscious, pay transparency can **help raise awareness of the issue among employers and help them identify discriminatory gender-based pay differences** that cannot be explained by valid discretionary factors and are often unintentional.
- The new legislation should allow workers to **detect and challenge possible discrimination** between women and men.

Panel round table & Q&A Sessoin

Closing Remarks



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Thank you!