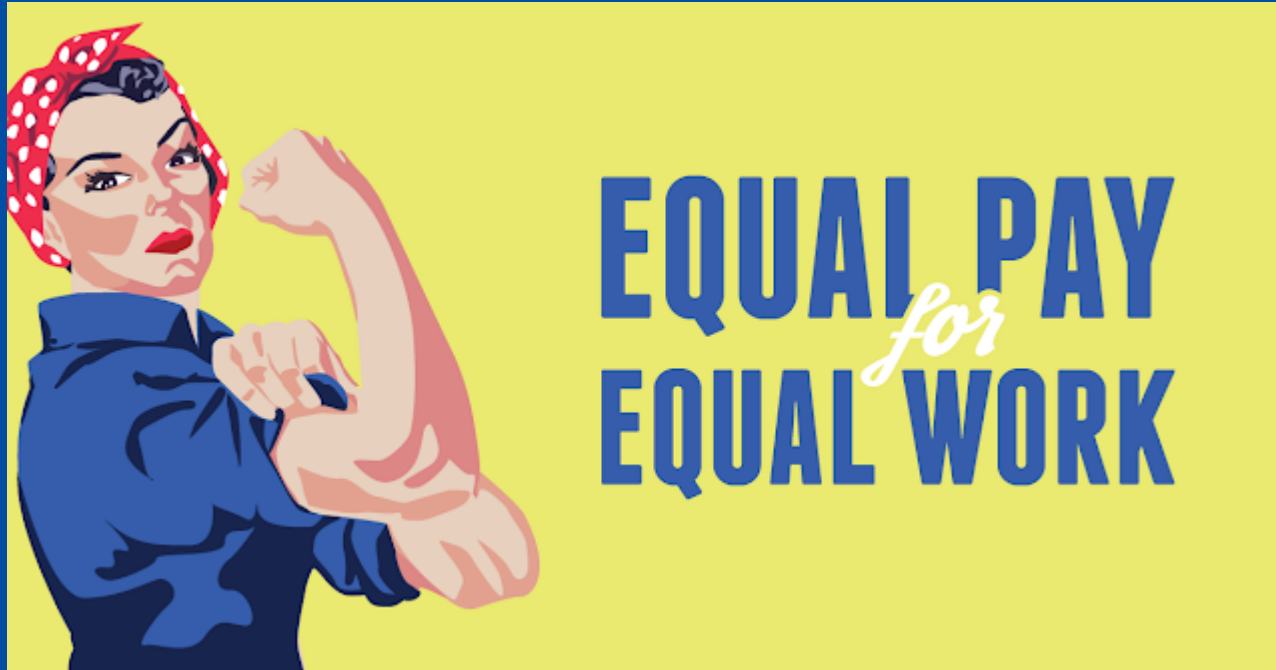


PAY TRANSPARENCY DIRECTIVE



Vitalijus Novikovas, DG JUSTICE, Unit D3
16 June 2023, Diversity Charters meeting

The principle of equal pay between men and women for equal work or work of equal value

- The principle is enshrined in the Treaties since 1957, Art 157 TFEU (Ex 119 EC Treaty)



- Directive 2006/54/EC (ex 75/117/EEC and 97/80/EC) and 2014 Pay Transparency Recommendation
- New Directive 2023/970

State of play

- **March 2021** – Commission's proposal (COM/2021/93 final)
- **Entry into force** – 6 June 2023
- **Transposition** - 3 years (by June 2026)

Main obstacles in practice – to be addressed by new directive:

- **Lack of legal clarity of key concepts:** pay, work of equal value ...
- **Lack of transparency** in pay settings and on pay progression
- **Obstacles in access to justice** - lack of information, burden of proof, lengthy and costly procedures, short limitation periods, equality bodies' mandate ...



Transparency – at worker’s level (1)

Transparency on pay prior to employment - to ensure an informed and transparent negotiation on pay

- **Information** on initial pay or its range based on objective and gender neutral criteria - in a vacancy notice or prior to job interview
- **Prohibition to ask job applicant** about current and previous salary

Transparency – at worker’s level (2)

Transparency on pay during employment

- Applicable to all workers and employers
- **Worker’s right to ask information** on their individual pay and average pay level within the category of workers performing equal work or work of equal value
- Accessibility of information to persons with disabilities
- Prohibition of pay **confidentiality clauses** – workers are allowed to disclose their pay (poss. restriction: for the purpose to exercise the right to equal pay)
- **Transparency on pay settings** and **pay progression policy** – to be available to all workers (employers with less than 50 workers may be exempted)

Transparency at employer's level (1)

Pay reporting: information about the situation on gender pay gaps in the organisation (employers having at least 100 workers)

- Basic – overall gender pay gaps at company level, proportion of female and male workers receiving complementary or variable components, etc. (*to be sent to a monitoring body*) –
 - Possibility to compile such information based on administrative data (by Social security, Tax or Statistic institution)
- Strengthened – gender pay gap within categories of workers doing equal work or work of equal value (*to be shared only internally*, with their workers and their representatives)

Reporting intervals:

- Employers with at least 250 workers: every year as of 2027
- Between 150 to 249 workers: every three years as of 2027
- Between 100 to 149 workers: every three years as of 2031

Transparency at employer's level (2)

- Categories of workers: MSs to take measure ensuring that analytical tools or methodologies are available and easily accessible – to support and guide the assessment and comparison of the value of work
- Standard criteria: skills, efforts, responsibility, working conditions – to be complemented by other criteria relevant to specific jobs.
- Criteria should not be directly/indirectly based on worker's sex

Transparency at employer's level (3)

Joint pay assessment – only when needed!

Triggered once 3 conditions are fulfilled:

- having a gender pay gap of at least 5% in any category of workers
- the employer cannot justify the gap by objective and gender-neutral factors
- the employer does not address the pay gap within 6 months.

Actions: Analysis of the reasons of pay differences; the remedial action - in cooperation with workers' representatives, equality bodies, and/or labour inspectorates; revision of existing job evaluation system or its establishment

Better enforcement - proof and comparators (1)

- Strengthened shift of burden of proof (automatic where an employer has not implemented the pay transparency obligations) – except criminal proceedings
- Comparison is not limited to a comparator employed at the same time as the alleged victim concerned
- Comparator from a single source establishing the pay conditions
- Hypothetical comparator (comparison of how a worker would be treated in a comparable situation – in case there is no real-life comparator)

Better enforcement – compensation and penalties (2)

- Full compensation or reparation – incl. full recovery of back pay and related bonuses or payments in kind, compensation for lost opportunities, non-material damage
 - no upper limit
- Penalties include fines (to be set by Member States) – with a real deterrent effect;
- Specific penalties - in case of repeated infringements

Better enforcement (3)

- Competent authority or court has an access to relevant evidence which lies in the respondent's control (including safeguards related to confidential information)
- Minimum standards on limitation periods (min 3 years) – starts to run only when the claimant is aware, or can reasonably be expected to be aware of infringement of their right
- Equal pay matters in public procurements and concessions - economic operators to comply with their obligations related to equal pay

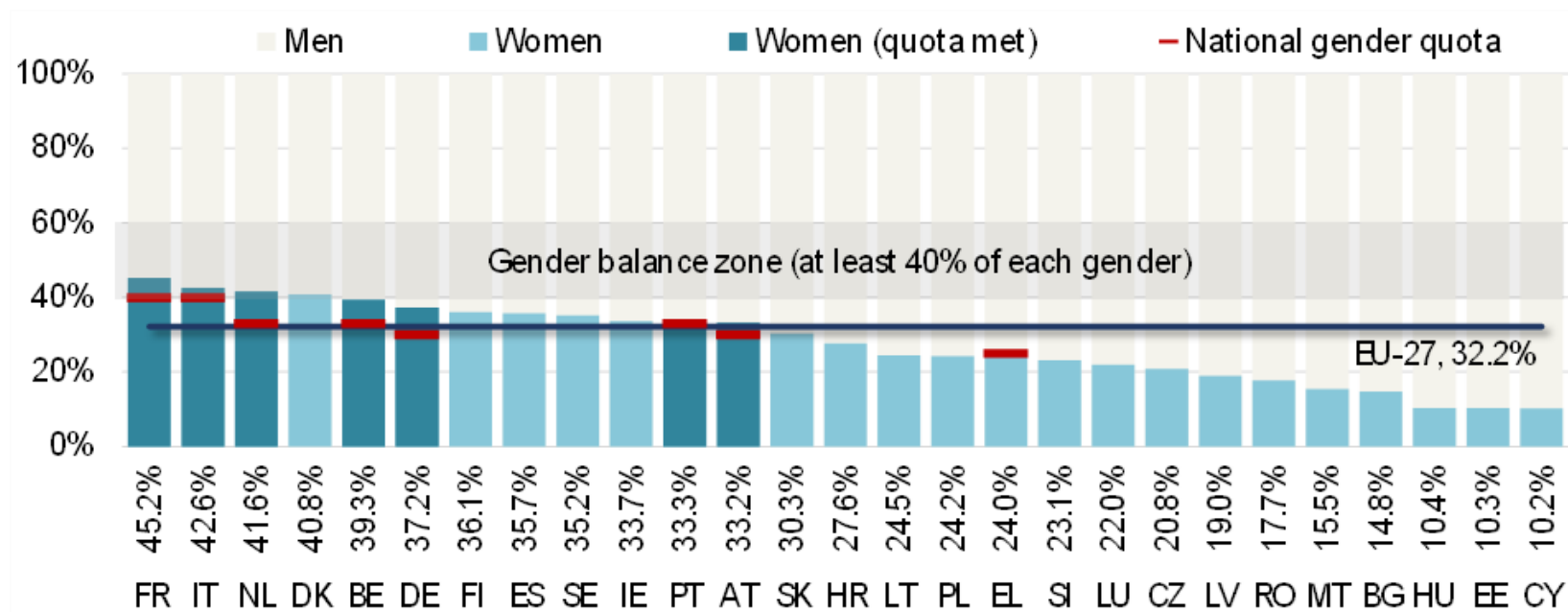
Social partners

- Recognition of the role of social partners (effective involvement, entrusting to develop tools, etc)

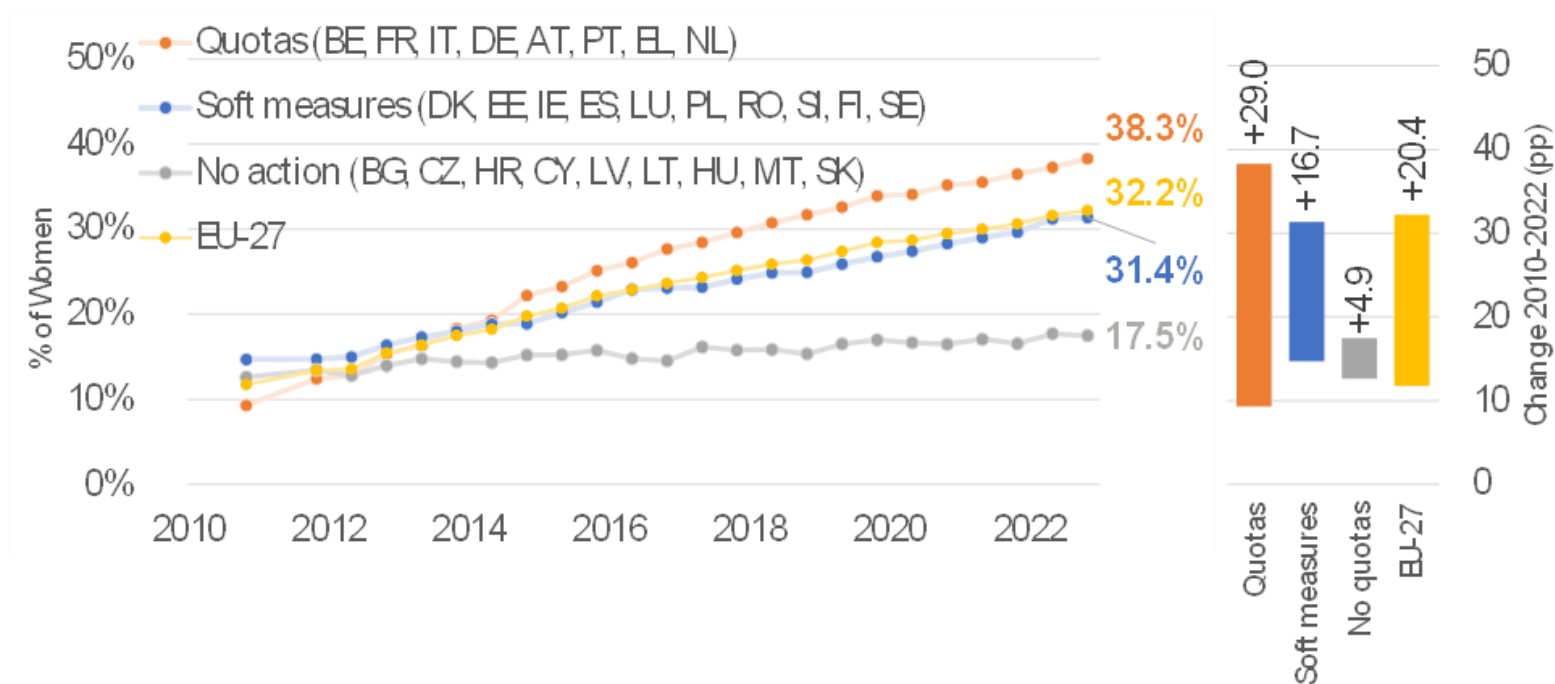
Gender balance in corporate boards



Share of women and men on the boards of the largest listed companies in the EU, Oct-2022



Proportion of women on the boards of the largest listed companies in EU Member States with and without measures, 2010-2022



New directive 2022/2381

- Not gender quota
- Aims to tackle the 'glass ceiling' – one of the main barriers
- Binding rules on a transparent selection process – if 40% for supervisory boards (or 33% for all directors) target for under-represented gender is not attained by June 2026
- *Transparency of selection of candidates:*
 - **to be based on pre-established, clear, neutrally formulated and unambiguous criteria;**
 - **comparative analysis of qualifications of all candidates.**
- Individual quantitative objectives regarding executive directors (in case main target concerns only supervisory boards)

Scope and applicable law

- Large listed EU companies
- Does not apply to SMEs
- Applicable legislation of a Member State in which company has its registered office

Supervision

*MS to designate one or more bodies for the promotion, analysis, monitoring and support of gender balance on boards
(Equality Bodies - an example, but in practice it could be a body supervising corporate sector).*

Reporting and penalties

- **Reporting** - once a year: the gender representation on their boards, and measures taken with a view to achieving the applicable objectives
- Companies that fail to meet the objective(s) must report the **reasons and the measures** they are taking to address this shortcoming.
- Member States foresee **penalties** for companies that fail to comply with selection and reporting obligations.
- **Peer-pressure** to complement the enforcement - Member States publish information on companies that are reaching targets

Implementation

- Entry into force – 27 December 2022
- 2 years for implementation
- Directive allows Member States to continue applying their national measures which are equally effective (such as gender quotas) and where tangible progress – instead of procedural requirements of the directive
- The directive is set to expire on 31 December 2038.

Thank you

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