



Conference on Equal Pay Day 2021, Nov 11

EU Pay Transparency Directive

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# **GENDER PAY GAP**

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graph LR; A[GENDER PAY GAP] --- B[LOWER-PAID SECTORS]; A --- C[LOWER-PAID POSITIONS]; A --- D[UNEQUAL SHARE OF DOMESTIC AND CARE WORK]; A --- E[PAY DISCRIMINATION]
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**LOWER-PAID SECTORS**

**LOWER-PAID POSITIONS**

**UNEQUAL SHARE OF DOMESTIC  
AND CARE WORK**

**PAY DISCRIMINATION**

What is pay discrimination on the ground of sex?

- ▶ **Direct pay discrimination** is where one person is being paid less because of their sex;
- ▶ **Indirect pay discrimination** is where an apparently neutral provision, criterion or practice puts people of one sex at a particular disadvantage. For instance, if an employer pays 10% less per hour to part-time workers than to full-time workers, where the greatest part of part-time workers are women.

What is the legal situation on pay discrimination at the EU level?

The Treaty provides the *Principle of Equal Pay for the same work and work of equal value for women and men.*

- The Constitution of Malta guarantees same wages for women workers doing the same work as men.
- The Employment and Industrial Relations Act regulates the equal pay for equal work provision which requires that employees in the same class of employment are entitled to same rate of remuneration for work of equal value.

## What is pay?

All forms of pay are covered by equal pay right, including salary, overtime pay, bonuses, any other benefits in cash or kind which the worker receives directly or indirectly, in respect of his/her employment from his/her employer.

## What is work of equal value?

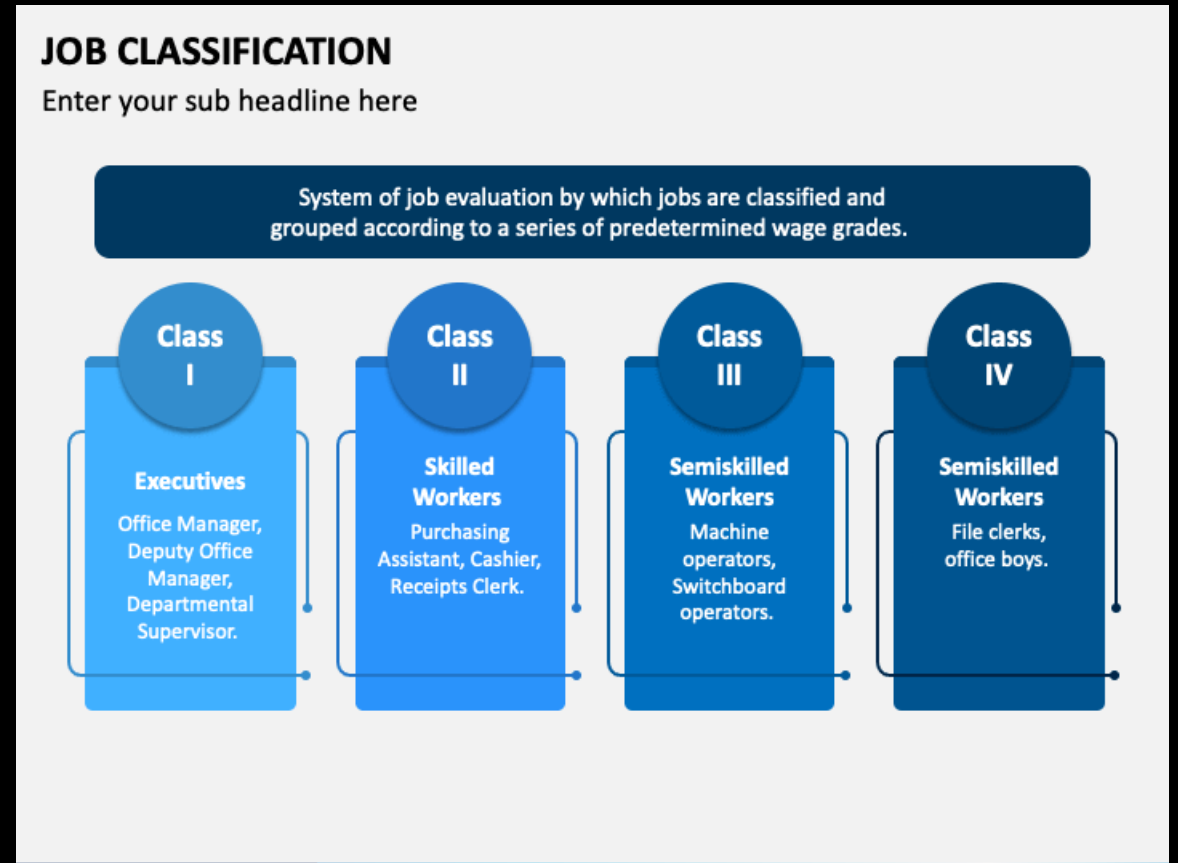
Work of "equal value" means comparable but not necessarily the same jobs. In the UK, for example, courts decided jobs of lower-paid shop staff, mostly women, can compare with jobs of higher-paid warehouse workers, mostly men.

# The meaning of “work of equal value”

- The concept of work of equal value generally means
  - *equivalent skill,*
  - *effort,*
  - *responsibility*
  - *working conditions.*
- Jobs of different nature, e.g. manual vs administrative, can be considered of equal value.
- This concept is important especially when professions are often dominated by one gender. For example mining is dominated by men, nursing dominated by women. If nurses were paid less than mine workers, and if an analysis showed mining and nursing jobs were of equal value, that would be considered unfair.

# Job classification

- Job classification helps determine the relative rank of different jobs in an organization.
- A good job classification leads to fair, equitable, and consistent compensation, and enables succession planning to more senior roles.



# Job classification system

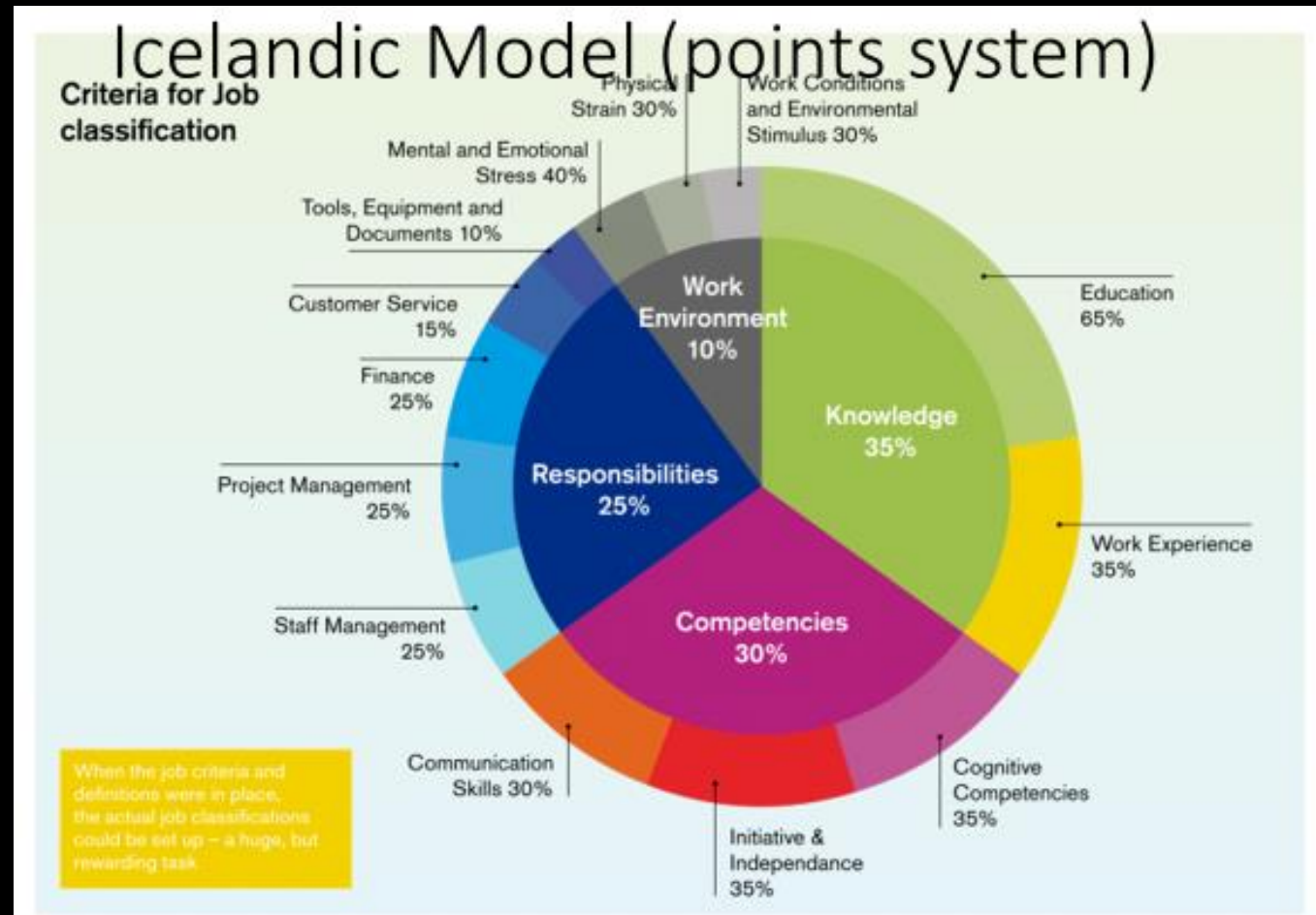
	Description	Example
<b>Job families</b>	Group of jobs that involve similar work and require similar training, skills, knowledge, and expertise. The family is based on function and not on organizational structure. Career progression is most often seen within the job family.	Finance
<b>Job function</b>	Specific occupational area within a family. A job function is a category of work that can be grouped based on similar characteristics or skills.	Accounting
<b>Job</b>	Collections of tasks, duties, and responsibilities as defined in the job description.	Jr. accountant Sr. accountant Accounting manager Accounting director
<b>Role</b>	A role describes the part played by an individual employee carrying out their work. One job can have multiple roles.	Bill, Jr. accountant Jane, Jr. accountant

# Factors taken into consideration where work of equal value is concerned

- **Educational**
- **Professional**
- **Training requirements**
- **Skills**
- **Effort and responsibility**
- **Work undertaken**
- **Nature of tasks involved**

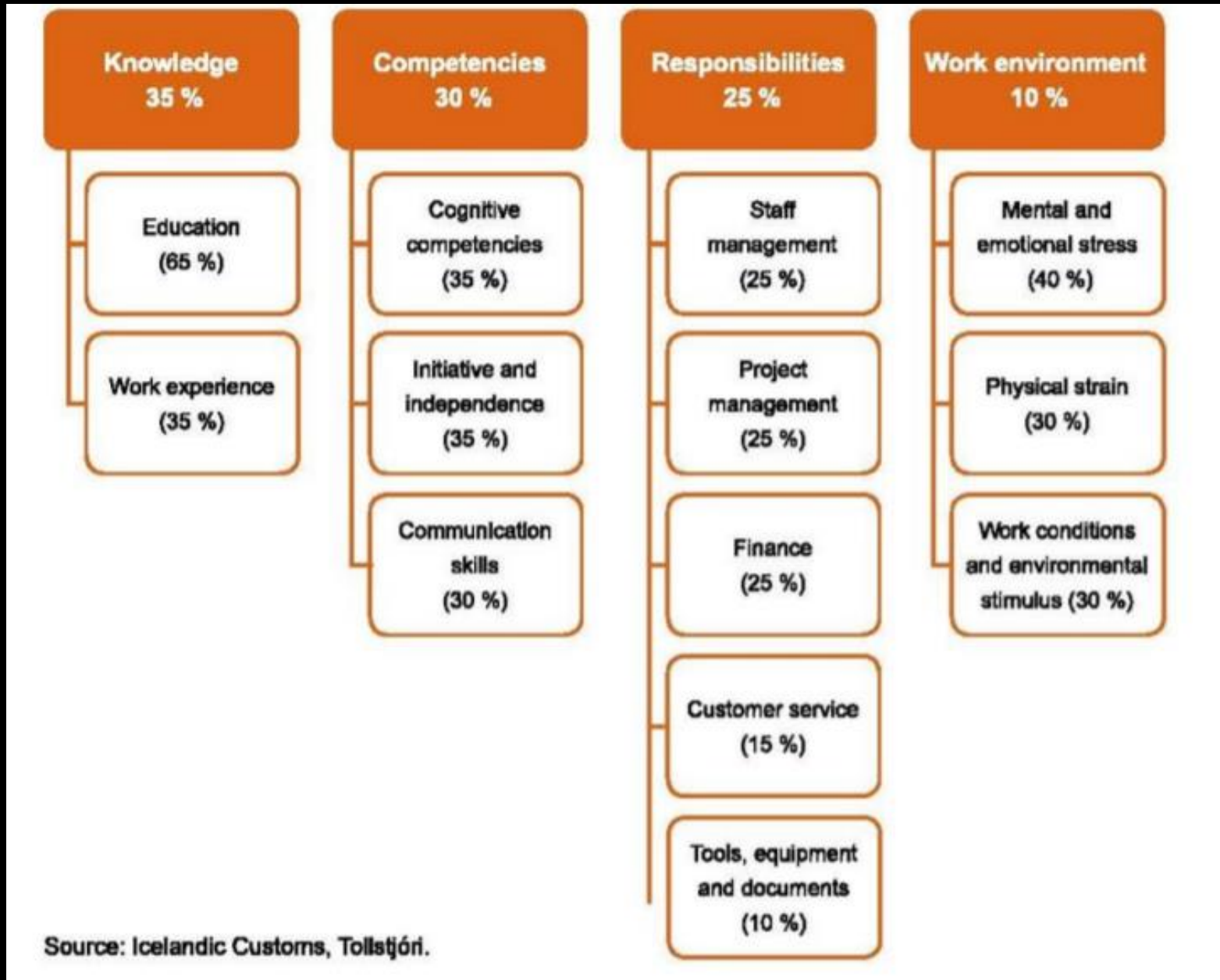
Wagner (2020)

- *Difficulties arise when it comes to adjudicate how gendered tasks or jobs are valued*
- *Due to unconscious bias of adjudicator*





# Icelandic Model – Example of a job classification scheme



# GENDER PAY GAP IN NUMBERS



WOMEN EARN ONLY  
**84 EURO CENTS**  
for every €1 men earn

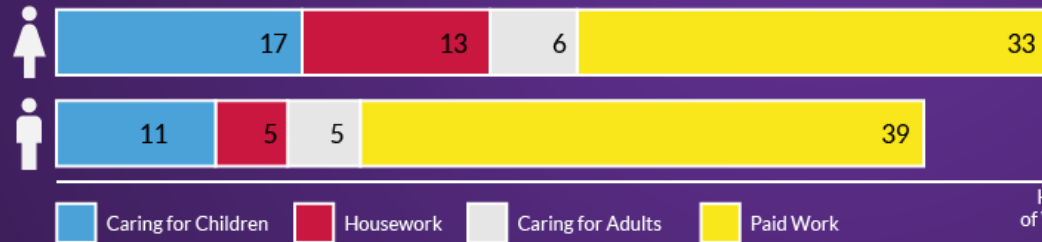


WOMEN WORK  
**2 MONTHS FOR FREE**  
each year, compared to men



WOMEN EARN  
**16% LESS**  
than men per hour

WORK WITHOUT PAY Women do more unpaid work



**LESS THAN 6.9%**  
of top companies' CEOs  
are women

Source: European Commission



## Pay Transparency Proposal (EC)

# Wage transparency for job applicants (Article 5)

- Job applicants have the right to receive information from future employers
  - **Starting salary for the position in question or its range**
  - Information to be provided: -
    - **Published job advertisement**
    - **Upon request prior to the interview**
- Employer cannot ask job applicants during the job interview about the salary in their previous employment

## **Resident Academic - Full Time Post in Computer Information Systems (UM)**

The annual salary for 2021 attached to the respective grades in the Resident Academic Stream is as follows:

- Professor: €45,258 plus an Academic Supplement of €31,523 and a Professorial Allowance of €2,330
- Associate Professor: €41,541 plus Academic Supplement of €24,154 and a Professorial Allowance of €1,423
- Senior Lecturer: €37,606 plus an Academic Supplement of €17,279
- Lecturer: €31,222 with an annual increment of €641 to €33,451 and an Academic Supplement of €14,213

# Option 1 - Individual right to information (Article 7)

1a – information proactively provided by employer

1b – information requested by workers, their representatives or equality bodies

- Individual employees have the right to request
  - information on their individual income
  - Information on the average income, broken down by sex and for categories of workers doing the same work or work of equal value
- The Directive distinguishes between
  - **Average income:** calculated by dividing the total income in the target group by the number of workers.
  - **Median income:** calculated by rank ordering by ascending income and then identifying the income of the most middle income .. i.e. there are an equal number of incomes above and below it.
- Employers are obliged to remind employees annually that they are entitled to this information

# Difference between mean/average and median



**Mean:**  
21 Dollars / 7 people  
= **3 Dollars** per person

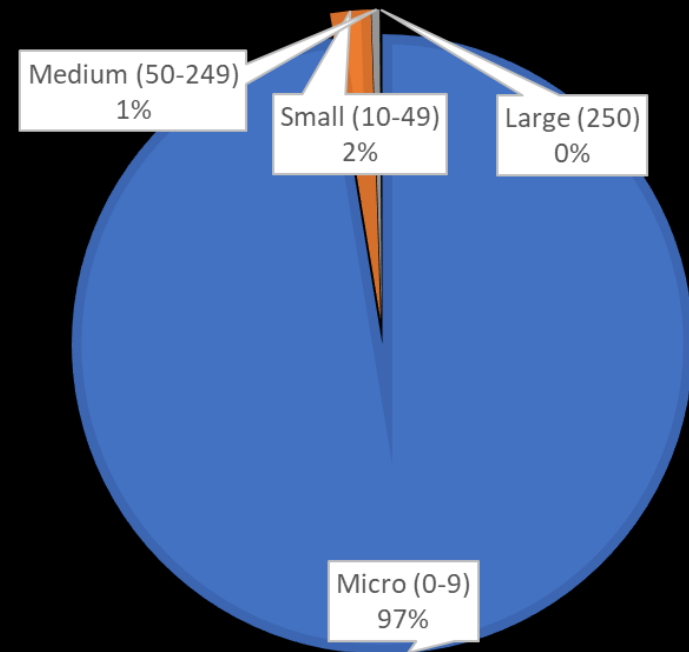
**Median:**  
Person 4 owns 2 Dollars.  
= **2 Dollars** per person

# Reporting on the gender pay gap (Article 8)

- Employers – public + private sector - with at least 250 employees must report annually on **the pay gap** between male and female employees on their website or in a publicly accessible form (estimate cost 379-890 euros p.a.)
- Information is provided internally
- If the report shows a difference in average wage of at least 5% and the employer does not provide an objective and gender-neutral justification (Art 9), a **joint pay assessment** has to be carried out with the help of **workers' representatives**
- **Remedial action** must be taken by introducing a gender-neutral job evaluation and occupational classification

Large companies 135, 0.1%

SIZE  
■ Micro (0-9) ■ Small (10-49) ■ Medium (50-249) ■ Large (250)



## Option 2

# Legislative action to create transparency at employer level (4 sub-options)

- 2a. Equal pay certification (e.g. Iceland)
- 2b. Joint pay assessment by employers and workers' representatives
- 2c. Pay reporting combined with joint pay assessment
- 2d. Strengthened pay reporting and joint pay assessment where there are statistically relevant indications of gender pay inequalities



## Option 3

# Legislative action to facilitate the implementation and enforcement of the existing legal framework

### Preferred Package according to EC

1b. Empowering workers through salary information **prior** to employment and a right to request information **during** employment

2d. strengthened pay reporting and joint pay assessment when there are negative indications





# Reporting on the gender pay gap

Member States need to

- Prepare legislative action to facilitate the implementation and enforcement within 2 years of the launch of the Directive
- Include clarification of existing key concepts of ‘pay’ and ‘work of equal value’
- **Improve access to justice**
- **Improve enforcement mechanisms**
  - appoint a monitoring body to ensure employers comply with this obligation

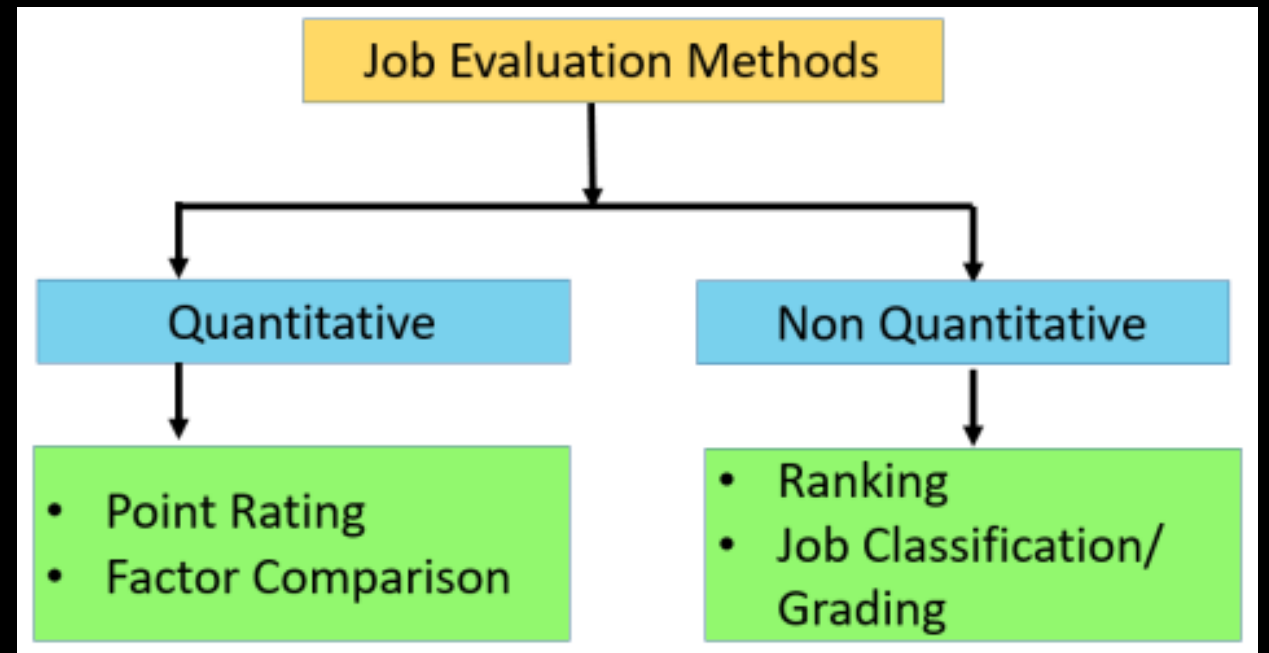
# The total costs for each employer:



- Providing pay information before hiring – **€0**;
- Replying to an individual request for pay information – **€20** (indicative for all sizes of companies);
- Obligatory reporting on average gender pay differences by worker category – **€379-508 to €721-890** (for companies with 250+ employees);
- Carrying out an additional assessment (for companies with 250+ employees, where pay reporting detects a statistically significant pay gap) – **€1,180-1 724 to €1,911-2 266** per employer.

# Support Member States may offer employers

- Dedicated IT infrastructures
- Replacing pay reporting with reporting based on administrative data
- Guidance and training on gender-neutral job evaluation
- Job Classification methods



# Criticism (Briffa et al., 2021)

- Limits the pay audits and action plans to organisations with 250+ employees
- Allows employers to define which jobs can be compared when it comes to equal pay for work of equal value
- Directive refers to 'work representatives' instead of trade unions which could open door to 'fake' unions set up by bosses or 'workers representatives' chosen by bosses



The image shows a screenshot of a Forbes article. At the top, the Forbes logo is visible on the left, and a red 'Subscribe' button is on the right. The article is dated 'Apr 10, 2018, 10:26am EDT'. The title is 'Equal Pay Is A Big Problem For Women In Small Businesses'. The author is 'Tanya Tarr', a Senior Contributor for ForbesWomen, with a bio that reads 'I write about the power of negotiation and equal pay.' Below the author information, there is a 'TWEET THIS' section with two identical tweets: 'Negotiation skills play a vital role when it comes to increasing pay.' To the right of the article content is a large black video player with a white play button. At the bottom of the article, there is a photograph of a woman with long dark hair sitting at a desk, looking out a window. To the left of the photo are social media sharing icons for Facebook, Twitter, and LinkedIn.

# Better access to justice for victims of pay discrimination (Article 14, 16, 19)

- **Compensation for workers** – workers who suffer gender pay discrimination can get compensation, including full recovery of back pay and related bonuses or payments in kind
- **Burden of proof on employer** – the employer needs to prove that there was no discrimination in relation to pay
- **Sanctions** – Member States need to establish penalties for infringements of the equal pay rule
- **Equality bodies and workers' representatives** – may act in legal or administrative proceedings on behalf of workers and lead collective claims on equal pay

# Comparator – work of equal value

- Male Comparator (*Problem if comparator chosen by employer is a migrant or posted worker*)
- In the absence of a male comparator in undervaluation cases employers can choose either proxy comparison or adopt the principle of proportionality. Clear guidance needs to be included in legislation on how to conduct an objective evaluation system (Rubery and Koukaidis 2016).

	Factor	Claimant	Comparator 1	Comparator 2	Comparator 3
Skills	1 Knowledge and understanding				
	2 Problem-solving				
	3 Interpersonal skills				
	4 Physical skills				
Responsibilities	Total points	Total points	Total points %	Total points %	Total points %
	5 People leadership				
	6 Information and resources				
	7 Organisational outcomes				
Conditions and/or demands	8 Services to people				
	Total points	Total points	Total points %	Total points %	Total points %
	9 Emotional demands				
	10 Sensory demands				
	11 Physical demands				
	12 Working conditions				
		Total points	Total points %	Total points %	Total points %
	<b>TOTALS</b>	<b>TOTAL</b>	<b>TOTAL %</b>	<b>TOTAL %</b>	<b>TOTAL %</b>


# Strengthening of equal treatment bodies and employee representations (Article 13)

- Strengthen support options of recognized equal treatment bodies (NCPE) and employee representatives (Trade Unions)
- These bodies are to act on employees' behalf (individual, or group) or in support of affected employees with their consent
- This is intended to overcome procedural and cost-related obstacles where legal action on the behalf of workers is concerned



# Reversal of burden of proof (Article 16)

- If there is evidence of pay discrimination, the employer has the obligation to rebut this presumption
- The same applies if employers violate the rights or obligations in connection with pay transparency



**burden of proof**

You said that the burden of proof lies not with the person making the claim, but with someone else to disprove.

[yourlogicalfallacyis.com/burden-of-proof](http://yourlogicalfallacyis.com/burden-of-proof)



# Sanctions (Article 20, 21)

- Establishing of **compliance body**
- This body needs **expertise in pay equity** to give guidance and support
- Has a number of **Review officers** to **monitor** and to **investigate complaints**,
- This body needs the **legal power** to impose sanctions or fines in cases of non-compliance.



# Sanctions (Article 20, 21)

- Violations of rights and obligations in relation to equal pay requirement are subject to fines
- When there are repeated violations – withdrawal of public benefits or the exclusion from the granting of financial incentives for a **certain period of time**
- Compliance body ensures compliance with the principle of equal pay in the performance of public contracts and concessions
- When there isn't compliance, exclusion from participation in award procedures can be considered

# Rubery et al. (2016)

- Transparency is not enough to ensure the elimination of bias against women and the implementation of equal pay.
- The most effective pay audits and action plans are those that **involve trade unions** in their implementation.
- Introduce legislation to enable trade unions to scrutinize detailed, disaggregated information from pay audits.
- Pay audits need to be made at a national or a sectoral level.
- Actively involve trade unions/workers in implementing gender equality duties



Thank you

# References

- OECD (2021), *Pay Transparency Tools to Close the Gender Wage Gap*, OECD Publishing, Paris, <https://doi.org/10.1787/eba5b91d-en>.
- Parker, A. (2014), *Women Adding Value to the Economy* <https://www.cardiff.ac.uk/research/explore/research-units/women-adding-value-to-the-economy-wave>
- EPSU & ETUI (2021) *Pay transparency and role of gender-neutral job evaluation and job classification in the public services* [https://www.epsu.org/sites/default/files/article/files/GP\\_Pay%20transparency%20and%20role%20of%20gender%20EPSU-ETUI%20report%20June%202021.pdf](https://www.epsu.org/sites/default/files/article/files/GP_Pay%20transparency%20and%20role%20of%20gender%20EPSU-ETUI%20report%20June%202021.pdf)
- Institute for the Equality of Women and Men. Checklist Gender neutrality in job evaluation and classification
- Government of Canada (2018) **Pay equity consultations - What we heard report** <https://www.canada.ca/en/services/jobs/workplace/human-rights/overview-pay-equity-act/what-we-heard-report-2018-consultation.html#h2.3-h3.1>
- Rubery, J. and Koukiadaki, A. (2016) *Closing the gender pay gap: A review of the issues, policy mechanisms and international evidence*. Geneva: ILO
- The facts of <https://canadianwomen.org/the-facts/the-gender-pay-gap/>

# References

- AIHR Academy (2021) **Job Classification: A Practitioner's Guide** <https://www.aihr.com/blog/job-classification/#What>
- EC (2019) Pay Transparency. Time to see the gap! [https://ec.europa.eu/info/sites/default/files/factsheet-pay\\_transparency-2019.pdf](https://ec.europa.eu/info/sites/default/files/factsheet-pay_transparency-2019.pdf)
- Public Service Commission, Ministry for Women, New Zealand Government (2020). Pay Equity in the State Sector: Tools and Resources Pay Equity Claimant and Comparator Process Guide <https://www.publicservice.govt.nz/assets/SSC-Site-Assets/Workforce-and-Talent-Management/Pay-Equity-Claimant-and-Comparators-Process-Guide.pdf>
- Vanguard, L. (2021, July 7) Pay Transparency Act – Is the EU sharpening the teeth of the toothless tiger <https://www.lexology.com/library/detail.aspx?g=3002b2b2-77a3-4a26-a1b8-67c88f6df12e>
- Smith, M., Masselot, A., Rubery, J., and Foubert, P (2021, July 5) Will pay transparency close the gender pay gap? The EU Thinks so. The Conversation. <https://theconversation.com/will-pay-transparency-close-the-gender-pay-gap-the-eu-thinks-so-162708>
- EC (2021, April 3) Commission Staff Working Document. Executive Summary of the Impact Assessment Report. Proposal for a Directive of the European Parliament and of the Council <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2021:42:FIN>
- Wagner, I. (2020). Equal Pay for Work of Equal Value? Iceland and the Equal Pay Standard. *Social Politics*, 0(0), 1.20.

# References

- BRIFFA, K. ET AL. (2021, APRIL 21). EU COMMISSION PROPOSES MEASURES TO ENSURE EQUAL PAY FOR EQUAL WORK: THE EU PAY TRANSPARENCY DIRECTIVE [HTTPS://GVZH.MT/MALTA-NEWS/EU-PAY-TRANSPARENCYDIRECTIVE/?UTM\\_SOURCE=MONDAQ&UTM\\_MEDIU  
M=SYNDICATION&UTM\\_CAMPAIGN=LINKEDIN-INTEGRATION](https://gvzh.mt/malta-news/eu-pay-transparencydirective/?utm_source=mondaq&utm_medium=syndication&utm_campaign=linkedin-integration)