

Webinar

Diversity and Pay Transparency - New Legislation

5 March 2024

Agenda

1. Pay Transparency - background
2. Pay Transparency in relation to ESG
3. The applicable area of the Pay Transparency Directive
4. The employer's obligations in relation to Pay Transparency Directive
 - Applicants
 - Workers
 - External reporting
5. Enforcement Mechanisms
6. Case Law
7. Some considerations



Introductions to the presenters



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Christian is a Senior Manager in PwC Denmark's Workforce practice, focusing on reward, performance, systems, processes, reporting, and generally people related aspects. He brings a wealth of experience in HR services and solutions, rewards, HRIS and talent and leadership development having previously served in key roles at global enterprises like Mercer, Oracle, and Gartner.

Introductions to the presenters



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Catrine is Partner with PwC Legal in Denmark, and Head of Employment law, GDPR, Data Ethics and ESG. Catrine has through almost 30 years of experience advising on all matters related to employment and labour law. Catrine focuses on the social element and human rights aspects of the ESG/Sustainability reporting in context of work force and privacy.

Background

- Strengthen the application of the founding principle of right to equal pay between women and men for equal work or work of equal value
- The effective implementation and enforcement of the principle is a challenge
- Lack of pay transparency has been identified as one of key obstacles
- Aim is to equalize the unexplained pay gap between men and women.

Companies face significant new ESG reporting requirements in FY2024 and FY2025



Main changes	Who?	Significant extension of the scope of sustainability reporting
	What?	<ul style="list-style-type: none">• Expanding the content of sustainability reports• EU has created own reporting standards (European Sustainability Reporting Standards)• Reporting at level of / concern
	Where?	Sustainability report mandatory component of the (consolidated) management report together with the financial reporting
	How?	Electronic format and tagging of sustainability reports mandatory
	Responsibility?	Responsibility of management and governance and new role (oversight) of the audit committee
	Enforcement?	Clear responsibilities for preparation, oversight and enforcement
	Audit?	Mandatory audit of sustainability reports with limited assurance

The ESRS is organised by topic, sub-topic & sub-sub topic



Social

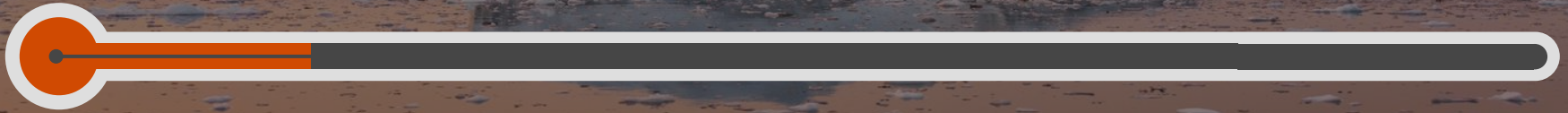
ESRS	Topic	Sub-topic	Sub-sub-topic
ESRS S1	Own workforce	<ul style="list-style-type: none"> Working conditions 	<ul style="list-style-type: none"> Secure employment • Working time • Adequate wages • Social dialogue • Freedom of association, the existence of works councils and the information, consultation and participation rights of workers • Collective bargaining, including rate of workers covered by collective agreements • Work-life balance • Health and safety
		<ul style="list-style-type: none"> Equal treatment and opportunities for all 	<ul style="list-style-type: none"> Gender equality and equal pay for work of equal value • Training and skills development • Employment and inclusion of persons with disabilities • Measures against violence and harassment in the workplace • Diversity
		<ul style="list-style-type: none"> Other work-related rights 	<ul style="list-style-type: none"> Child labour • Forced labour • Adequate housing • Privacy
ESRS S2	Workers in the value chain	<ul style="list-style-type: none"> Working conditions 	<ul style="list-style-type: none"> Secure employment • Working time • Adequate wages • Social dialogue • Freedom of association, including the existence of work councils • Collective bargaining • Work-life balance • Health and safety
		<ul style="list-style-type: none"> Equal treatment and opportunities for all 	<ul style="list-style-type: none"> Gender equality and equal pay for work of equal value • Training and skills development • The employment and inclusion of persons with disabilities • Measures against violence and harassment in the workplace • Diversity
		<ul style="list-style-type: none"> Other work-related rights 	<ul style="list-style-type: none"> Child labour • Forced labour • Adequate housing • Water and sanitation • Privacy
ESRS S3	Affected communities	<ul style="list-style-type: none"> Communities' economic, social and cultural rights 	<ul style="list-style-type: none"> Adequate housing • Adequate food • Water and sanitation • Land-related impacts • Security-related impacts
		<ul style="list-style-type: none"> Communities' civil and political rights 	<ul style="list-style-type: none"> Freedom of expression • Freedom of assembly • Impacts on human rights defenders
		<ul style="list-style-type: none"> Rights of indigenous communities 	<ul style="list-style-type: none"> Free, prior and informed consent • Self-determination • Cultural rights
ESRS S4	Consumers and end-users	<ul style="list-style-type: none"> Information-related impacts for consumers and/or end-users 	<ul style="list-style-type: none"> Privacy • Freedom of expression • Access to (quality) information
		<ul style="list-style-type: none"> Personal safety of consumers and/or end-users 	<ul style="list-style-type: none"> Health and safety • Security of a person • Protection of children
		<ul style="list-style-type: none"> Social inclusion of consumers and/or end-users 	<ul style="list-style-type: none"> Non-discrimination • Access to products and services • Responsible marketing practices

What is pay transparency?

- Disclosing information on pay for different roles within an organisation
- With the goal of promoting fairness, equity, and trust within the workplace
- Allows comparison with similar roles and helps in addressing pay gaps

What is pay transparency?

Degrees of pay transparency



No transparency

“This is your monthly salary”



Benchmarks

“This is how your salary compares to similar roles in the market”



Actual pay levels

“This is how your salary compares to similar roles in the organisation”



Policy for determining pay

“This is how we decide on pay and why we pay you as we do”



Total transparency

“This is everyone’s pay information”

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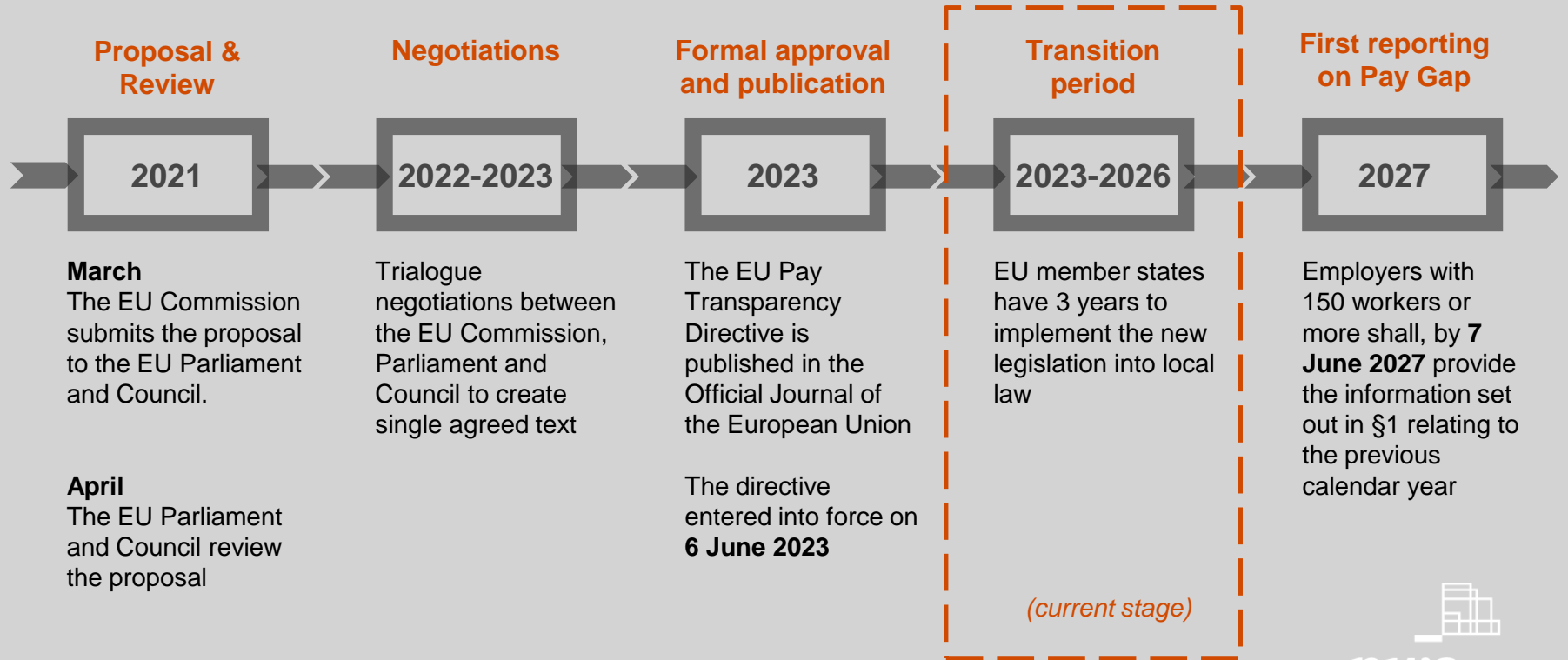
“This is how we decide on pay and why we pay you as we do”



Total transparency

“This is everyone’s pay information”

Timeline



Who will the Pay Transparency Directive apply to?

- All employers in both the private and public sector
- All workers who have an employment contract
- All applicants for employment

Employers with less than 100 employees are exempted from reporting externally about gender pay gap

Pay Transparency Directive - the Employer's Obligations

Obligations in relation to applicants

An applicant has the right to receive information on

1. the initial pay to be attributed for the position based on objective and gender-neutral criteria
2. Pay relevant provisions in collective agreements if such are applicable
3. Restricted to ask for pay history

Obligation to provide information to the workers

The employer is obligated to make the criteria that are used to determine the workers pay, pay levels and pay progression easily accessible to their workers.

Obligation to provide information upon request from the worker

Upon request from a worker, the employer must provide information on the worker's individual pay level and the average pay levels for genders for categories of workers performing the same work as the worker or work equal to the worker's.

Must annually inform of this entitlement.

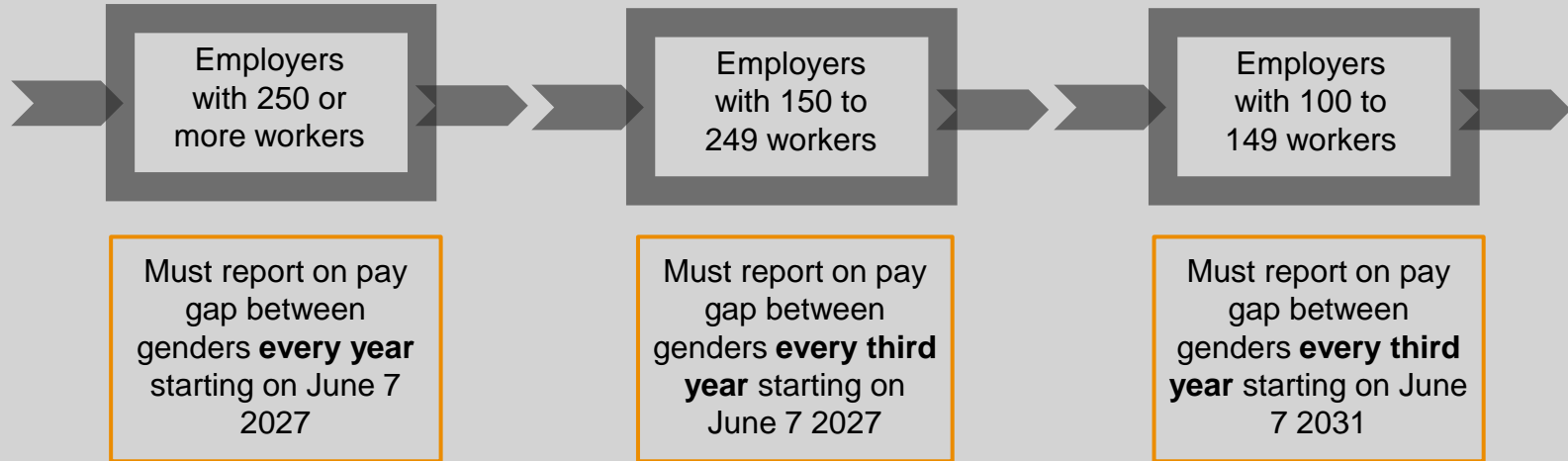
External Reporting

1. The gender pay gap
2. The gender pay gap in complementary or variable components
3. The median gender pay gap
4. The median gender gap in complementary or variable components
5. The proportion of female and male workers receiving complementary or variable components
6. The proportion of female and male workers in quartile pay band
7. The gender pay gap between workers by categories of workers broken down by ordinary wage or salary and complementary or variable components

Perspective to CSRD

CSRD report must address gender equality, equal pay for equal work and gender pay gap

Scope of the External reporting



Report on pay gap is **optional** for employers with **less than 100 workers** (unless national law)

Enforcement mechanisms

Compensation

Easy defence of rights

The employer is obligated to pay compensation to the worker in the event that the worker has sustained damage as a result of an infringement of any right or obligation relating to the principle of equal pay.

The details of the compensation remedy will be determined in the process of implementation of the directive.

Shift of burden of proof

Injunctions

In case of an employer's infringement of any right or obligation relating to the principle of equal pay the courts can, upon request from the claimant, issue:

1. an order to stop the infringement
2. an order to take measures to ensure that the rights or obligations related to the principle of equal pay are applied

Penalties

Member states shall lay down rules on effective, proportional and dissuasive penalties.

Penalties must guarantee a real deterrent effect.

Penalties shall include fines.

Case Law - Equal Pay for Equal Work

Royal Copenhagen case (1996)

A group of porcelain painters, primarily women, received a lower wage than a group of potters, primarily men. The porcelain painters experienced discomfort due to sedentary work while the potters faced issues related to noise, heavy lifting and heat.

The European Court of Justice determined that the two groups of work had the same value and that the difference in wage could not be justified by differing physical requirements for the two groups of work.



Case Law - Equal Pay for Equal Work

Novozymes case (2024)

The union, HK, filed a case against Novozymes alleging a violation of the Danish Act on Equal Pay in relation to a group of laboratory technicians and technicians. Approximately 85% of the laboratory technicians are women while approximately 85% of the technicians are men.

The technicians averagely receive 4,000-5,000 DKK more than the laboratory technicians per month. This constitute af pay gap of 12%.

HK could not provide evidence that the laboratory technicians and the technicians performed work of the same value. The Arbitrators reached the decision, that Novozymes is not violating the Danish Act on Equal pay.



What will pay transparency mean to your organisation?

How do you engage with your people?

- Pay policy
- Leadership training
- Explain it to employees

Do you have the right data to understand your pay practices?

- Data
- Segmentation
- Systems

How do you ensure the pay gaps are there for the right reasons?

- Analysis
- Risk
- Close gaps





Q&A

Thank you for your attendance!



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