



## European Disability Forum proposals for amendments to the Pay Transparency Directive

### The European Disability Forum

The European Disability Forum ([EDF](#)) is an umbrella organisation of persons with disabilities that defends the interests of over 100 million persons with disabilities in the European Union. We are a unique platform which brings together representative organisation of persons with disabilities from across Europe. We are run by persons with disabilities and their families, and as such represent a strong, united voice of persons with disabilities in Europe.

Specific expertise on gender and women's rights issue is provided by EDF Women's Committee. EDF is committed to the women's movement and an active member of the European Women's Lobby.

### Introduction

In view of the recent European Commission proposal for a [Directive on Pay Transparency](#) establishing minimum requirements to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanism, EDF would like to stress three key points:

1. The Directive must introduce an **intersectional approach**, including through the recognition of multiple and intersectional forms of discrimination and measures to assess and recognise the gender and disability pay gap. A specific provision on assessment of intersectional and multiple forms of discrimination by national court and competent authority must be introduced.
2. Pay transparency obligations must apply to **all employers**, irrespective of the size of the company/organisations, and types of employment. For instance, it must apply to employers in sheltered workshops in which women with disabilities, especially women with intellectual disabilities may be working, and it must apply to part time work.
3. Information on pay transparency must be available to all persons with disabilities in a variety of **accessible communication and formats**, including easy to read and accessible digital documents.

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## Proposed amendments

### Article 2. Scope – Paragraph 2

This Directive applies to 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.

This Directive applies to 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.  
***This includes part-time workers, fixed-term contract workers or persons with a contract of employment or employment***

	<b><i>relationship with a temporary agency.</i></b>
<p>Justification:  On average, only 48.3% of women with disabilities are in employment in the EU, compared with 53.3% of men with disabilities (EU-SILC 2017). When looking at full time employment, only 20,7% of women with disabilities are in full time employment, compared to 28,6% of men with disabilities (Gender Equality Index 2019). We recommend that article 2 paragraph 2 explicitly mentions that part time workers and fixed term contract works fall within the scope of the Convention, in line with paragraph 11 of the recital.</p>	

### **Article 3. Definition – Paragraph 2**

<p>2. For the purposes of this Directive, discrimination includes:  (a) harassment and sexual harassment, within the meaning of Article 2(2) of Directive 2006/54/EC, as well as any less favourable treatment based on a person's rejection of or submission to such conduct, when such harassment or treatment relates to or results from the exercise of the rights provided for in this Directive;  (b) instruction to discriminate against persons on grounds of sex;  (c) any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Council Directive 92/85/EEC61.</p>	<p>2. For the purposes of this Directive, discrimination includes:  (a) harassment and sexual harassment, within the meaning of Article 2(2) of Directive 2006/54/EC, as well as any less favourable treatment based on a person's rejection of or submission to such conduct, when such harassment or treatment relates to or results from the exercise of the rights provided for in this Directive;  (b) instruction to discriminate against persons on grounds of sex;  (c) any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Council Directive 92/85/EEC61;  <b><i>(d) failure by the employer to provide reasonable accommodation to workers with disabilities within the meaning of Article 5 of Directive 2000/78/EC.</i></b></p>
<p>Justification:  The EU and all its Member States have ratified the <a href="#">UN Convention on the Rights of Persons with Disabilities</a> (CRPD). Article 2 of the CRPD recognises denial of reasonable accommodation is a form of discrimination on the basis of disability. In relation to employment, States Parties must “ensure that reasonable accommodation is provided to persons with disabilities in the workplace” (article 27(1)(i)). Although</p>	

Article 5 of Directive 2000/78/EC includes an obligation for employers to provide reasonable accommodation, this obligation is not implemented in compliance with the CRPD. A [Report on Equality and Non-Discrimination](#) published by EDF in 2019 found that only in five EU Member States, legal provisions on reasonable accommodation would qualify as complying with the CRPD. We recommend that the Directive on Pay Transparency specifically mentions the denial of reasonable accommodation as a form of discrimination, which may also affect women with disabilities.

### Article 8. Reporting on pay gap between female and male workers – Paragraph 3

1. Employers with at least 250 workers shall provide the following information concerning their organisation, in accordance with paragraphs 2, 3, and 5:

- (a) the pay gap between all female and male workers;
- (b) the pay gap between all female and male workers in complementary or variable components;
- (c) the median pay gap between all female and male workers;
- (d) the median pay gap between all female and male workers in complementary or variable components;
- (e) the proportion of female and male workers receiving complementary or variable components;
- (f) the proportion of female and male workers in each quartile pay band;
- (g) the pay gap between female and male workers by categories of workers broken down by ordinary basic salary and complementary or variable components.

1. Employers with at least 250 workers shall provide the following information concerning their organisation, in accordance with paragraphs 2, 3, and 5:

- (a) the pay gap between all female and male workers;
- (b new) the pay gap between female and male workers without disabilities and female and male workers with disabilities when they have communicated their disability to the employers;**
- (c) the pay gap between all female and male workers in complementary or variable components;
- (d) the median pay gap between all female and male workers;
- (e) the median pay gap between all female and male workers in complementary or variable components;
- (f) the proportion of female and male workers receiving complementary or variable components;
- (g) the proportion of female and male workers in each quartile pay band;
- (h) the pay gap between female and male workers by categories of workers broken down by ordinary

	basic salary and complementary or variable components.
<p>Justification:</p> <ul style="list-style-type: none"> <li>• Women with disabilities are affected by both the gender and disability pay gap. According to the <a href="#">Gender Equality Index 2020</a>, the average mean monthly earning of women with disabilities was 1.734 EUR comparing to 2.368 EUR for men with disabilities and 1899 EUR for women with disabilities. The yearly mean equivalised net income of women with disabilities was on average 16.571 EUR, comparing to 17.273 EUR for men with disabilities, and 19.904 for women without disabilities.</li> <li>• Under the Article 27(1)(b) of the CRPD, the EU and its members states have an obligation to protect the rights of persons “on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value.”</li> </ul> <p>We recommend that the Directive includes an obligation to provide information on the gender and disability pay gap faced by women with disabilities.</p>	

### Article 8. Reporting on pay gap between female and male workers – Paragraph 3

<p>3. The employer shall publish the information referred to in paragraph 1, points (a) to (f) on an annual basis in a user-friendly way on its website or shall otherwise make it publicly available. The information from the previous four years, if available, shall also be accessible upon request. In addition, the employer shall share this information with the monitoring body referred to in paragraph 6.</p>	<p>3. The employer shall publish the information referred to in paragraph 1, points (a) to (f) on an annual basis in a user-friendly way on its website or shall otherwise make it publicly available. <b>The information shall be published in accessible formats for persons with disabilities in line with EU harmonised accessibility legislation.</b> The information from the previous four years, if available, shall also be accessible upon request. In addition, the employer shall share this information with the monitoring body referred to in paragraph 6.</p>
<p>Justification:</p>	

The European Union has adopted in recent years a set of accessibility legislation for both the public and the private sectors, namely the [Web Accessibility Directive](#) and the [European Accessibility Act](#). These Directives are underpinned by harmonised European Standards, such as the [EN 301 549](#) on accessibility requirements for ICT products and services. Website owners must comply with the state of the art accessibility requirements in order to publish digital information in an accessible manner for persons with disabilities.

### **NEW. Article 22 bis Intersectionality**

***Member States shall take the necessary measures to ensure that in legal proceedings relating to the enforcement of rights and obligations relating to equal pay between men and women for the same work or work of equal value, the court or other competent authority duly assesses the existence of discrimination based on a combination of sex and another ground of discrimination protected under Directive 2000/43/EC or Directive 2000/78/EC and takes due account of such circumstances for substantive and procedural purposes.***

**Justification:**

Many women face multiple and intersectional forms of discrimination, as recognised in paragraph 14 of the recital. This is the case of women with disabilities who face higher unemployment rate and discrimination than women without disabilities and men with disabilities, as recognised in the European Parliament resolution of 29 November 2018 on the situation of women with disabilities ([2018/2685\(RSP\)](#)). Unfortunately, this is rarely recognised and addressed at national level. We recommend that the Directive specifically requests EU Member States to take measures to ensure that national courts and other competent authorities assess the existence of multiple and intersectional forms of discrimination.

### Article 26. Monitoring and awareness-raising – Paragraph 3

3. Member States shall ensure that the tasks of the monitoring body include the following:

- (a) to raise awareness among public and private undertakings and organisations, social partners and the general public to promote the principle of equal pay and the right to pay transparency;
- (b) to tackle the causes of the gender pay gap and devise tools to help analyse and assess pay inequalities;
- (c) to aggregate data received from employers pursuant to Article 8(6), and publish this data in a user-friendly manner;
- (d) to collect the joint pay assessment reports pursuant to Article 9(3);
- (e) to aggregate data on the number and types of pay discrimination claims brought before the courts and complaints brought before the competent public authorities, including equality bodies.

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- (a) to raise awareness among public and private undertakings and organisations, social partners and the general public to promote the principle of equal pay and the right to pay transparency;
- (b) to tackle the causes of the gender pay gap and devise tools to help analyse and assess pay inequalities;
- (c) to aggregate data received from employers pursuant to Article 8(6), and publish this data in a user-friendly manner **and in an accessible manner for persons with disabilities in accordance with EU harmonised accessibility legislation**;
- (d) to collect the joint pay assessment reports pursuant to Article 9(3);
- (e) to aggregate data on the number and types of pay discrimination claims brought before the courts and complaints brought before the competent public authorities, including equality bodies.

#### Justification:

The European Union has adopted in recent years a set of accessibility legislation for both the public and the private sectors, namely the [Web Accessibility Directive](#) and the [European Accessibility Act](#). These Directives are underpinned by harmonised European Standards, such as the [EN 301 549](#) on accessibility requirements for ICT products and services. Website owners must comply with the state of the art accessibility requirements in order to publish digital information in an accessible manner for persons with disabilities.

## Article 28. Statistics

Member States shall provide the Commission (Eurostat) with up-to-date gender pay gap data annually and in a timely manner. These statistics shall be broken down by gender, economic sector, working time (full-time/part-time), economic control (public/private ownership) and age and be calculated on an annual basis.

Member States shall provide the Commission (Eurostat) with up-to-date gender pay gap data annually and in a timely manner. These statistics shall be broken down by gender, economic sector, working time (full-time/part-time), economic control (public/private ownership), **disability** and age and be calculated on an annual basis.

### Justification:

According to Article 31 of the CRPD, the EU and its Member States have an obligation to “collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the CRPD”. The information collected must be “disaggregated, as appropriate, and used to help assess the implementation of States Parties’ obligations under CRPD and to identify and address the barriers faced by persons with disabilities in exercising their rights.” As women with disabilities face both a gender and disability pay gap, we recommend that the Directive requests that the data collected by disaggregated by disability.

## Recital 14

Article 10 of the Treaty on the Functioning of the European Union provides that, in defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Article 4 of Directive 2006/54/EC provides that there shall be no direct or indirect discrimination on grounds of sex, notably in relation to pay. Gender based pay discrimination where a victim’s sex plays a crucial role can take many different forms in practice. It may involve an intersection of various axes of discrimination or inequality

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where the worker is a member of one or several groups protected against discrimination on the basis of sex, on the one hand, and racial or ethnic origin, religion or belief, disability, age or sexual orientation (as protected under Directive 2000/43/EC or Directive 2000/78/EC), on the other hand. Migrant women are among groups who face such multiple forms of discrimination. This directive should therefore clarify that, in the context of gender-based pay discrimination, such a combination should be taken into account, thus removing any doubt that may exist in this regard under the existing legal framework. This should ensure that the courts or other competent authorities take due account of any situation of disadvantage arising from intersectional discrimination, in particular for substantive and procedural purposes, including to recognise the existence of discrimination, to decide on the appropriate comparator, to assess the proportionality, and to determine, where relevant, the level of compensation awarded or penalties imposed.

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Justification:

The EU and all its Member States have ratified the [UN Convention on the Rights of Persons with Disabilities](#) (CRPD). Article 6 of the CRPD requires all Parties to take all appropriate measures to ensure the full development, advancement and empowerment of women with disabilities. The issues faced by women with disabilities in employment were highlighted in the European Parliament resolution of 29 November 2018 on the situation of women with disabilities (2018/2685(RSP)), and data on employment rate and earning is available in the [Gender Equality Index 2020](#). The Directive should explicitly recognise and address the gender and disability pay gap faced by women with disabilities.

## Recital 20

The lack of information on the envisaged pay range of a job position creates an information asymmetry which limits the bargaining power of applicants. Ensuring transparency should enable prospective workers to make an informed decision about the expected salary without limiting in any way the employer's or worker's bargaining power to negotiate a salary even outside the indicated range. It would also ensure an explicit and non-gender biased basis for pay setting and would disrupt the undervaluation of pay compared to skills and experience. This transparency measure would also address intersectional discrimination where non-transparent pay settings allow for discriminatory practices on several discrimination grounds. The information to be provided to applicants prior to employment, if not published in a job vacancy notice, could be provided to the applicant prior to the job interview

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partners. **The information must be provided in accessible manner for persons with disabilities in accordance with EU harmonised accessibility legislation, including Directive (EU) 2016/2102 and Directive (EU) 2019/882.**

Justification:

Women with disabilities may face discrimination in accessing information if it is not provided in accessible formats. The European Union has adopted in recent years a set of accessibility legislation for both the public and the private sectors, namely the Web Accessibility Directive and the European Accessibility Act. These Directives are underpinned by harmonised European Standards, such as the EN 301 549 on accessibility requirements for ICT products and services. Website owners must comply with the state of the art accessibility requirements in order to publish digital information in an accessible manner for persons with disabilities.

### Recital 32

Workers should have the necessary procedures at their disposal to facilitate the exercise of their right to access justice. National legislation making use of conciliation or the intervention of an equality body compulsory or subject to incentives or penalties should not prevent parties from exercising their right of access to court.

Workers should have the necessary procedures at their disposal to facilitate the exercise of their right to access justice. National legislation making use of conciliation or the intervention of an equality body compulsory or subject to incentives or penalties should not prevent parties from exercising their right of access to court. **Member States should ensure that women with disabilities, including those under substituted decision-making mechanisms, have access to justice and remedy on an equal basis with others.**

Justification:

Women with disabilities face barriers in accessing justice, especially those who are under substituted decision-making mechanisms such as guardianship and curatorship, and may be pay below the minimum wage and face both disability and gender pay gap. Member States must

ensure that women with disabilities have equally access to justice and remedy than other women in compliance with article 13 of the CRPD.

### Recital 49

Compiling wage statistics broken down by gender and providing the Commission (Eurostat) with accurate and complete statistics is essential for analysing and monitoring changes in the gender pay gap at Union level. Council Regulation (EC) No 530/199959 requires Member States to compile four-yearly structural earnings statistics at micro level that provide harmonized data for the calculation of the gender pay gap. Annual high-quality statistics could increase transparency and enhance monitoring and awareness of gender pay inequality. The availability and comparability of such data is instrumental for assessing developments both at national level and throughout the Union.

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#### Justification:

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## Document credits

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