

Linklaters

The EU Pay Transparency Directive

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Session agenda

- > Relevance of the Directive for firms
 - > Overview of the EU Pay Transparency Directive
 - > Key requirements and implications
 - > Practical impacts
 - > Q&A session
 - > Next for Level 20
- > Please note that the session notes and recording will be distributed to all participants afterward. The recording will be **stopped before the Q&A session** to maintain Chatham House Rules and ensure a candid and open discussion.

Relevance of the Directive: Level 20 research



TRANSPARENCY
Embed a transparent promotions and reward system.

36/41
Transparency, fairness and the evidence of a 'meritocracy' are priorities for firms wanting to attract and retain talent.
Clear expectation-setting and feedback to clarify performance expectations are seen as clear enablers of career development.

IMPORTANCE OF TRANSPARENCY BY COUNTRY

INTERNAL CULTURE
A good team culture is one that is inclusive of all team members.

33/41
Internal culture is key to the attraction, retention and promotion of women in the industry.
Cultures with a positive culture can also deliver better feedback and more women to leave firms or leave LE.

IMPORTANCE OF INCLUSIVE CULTURE BY COUNTRY

IMPORTANCE OF INCLUSIVE CULTURE BY FIRM SIZE

When you spend 90% of your life with your colleagues... if you enjoy being there, you get along, you feel welcomed, you have someone to go to lunch with, just share ideas with, you are likely to stay."

"Things like giving feedback in a positive way... just be constructive [in giving feedback]. ... It's not so hard to... support someone who you think can use a little bit more self-confidence by offering training... or a mentor."

"The role expectations are not written according to what [it takes for] success in that role, or... success for the team, but rather, written according to types of behaviour that mirror the behaviour [of] people who have been successful in the firm..."

"Don't believe that you have to be eight to nine in the office to be promoted. I think this is something which is clearly moving in the whole industry... It is a clear merit of the industry that we are result driven... People are just willing to be efficient. They don't care if you have a great deal in two months or in one week - what matters is that you have the deal!"

"I walked into the meeting and the guy, the manager, just goes... "Hey, can you bring me a coffee?"... My Partner, my boss, said "You do realise that she is the person running this meeting!". The manager... apologised for everything. I felt good that my Partner... wouldn't stand for it."



Most firms have written policies for maternity & paternity leave

RESULTS IN CONTEXT

The visibility and accessibility of policies is increasingly important to women in the industry.

Policy

Policy	Percentage of Firms	Percentage of Firms with Policy
Maternity leave	95%	95%
Paternity leave	85%	85%
Shared parental leave	64%	64%
Adoption	54%	54%
Flexible working	49%	49%
Carer's leave	35%	35%
Sabbatical	1%	1%
Menstruation	7%	7%

Are details of your family leave policies packaged?

Policy	Yes	No	Don't know
Provided to employees without having to request them (e.g. on company intranet)	70%	30%	0%
Only visible internally (e.g. intranet or on your website)	1%	88%	11%
Provided to job applicants without having to request them from HR	1%	75%	24%

"Things like giving feedback in a positive way... just be constructive [in giving feedback]. ... It's not so hard to... support someone who you think can use a little bit more self-confidence by offering training... or a mentor."

Relevance of the Directive: external environment

The screenshot shows the FCA website header with the logo and navigation menu (About us, Firms, Markets, Consumers). Below the header, the breadcrumb trail reads: Home > Publications > CP23/20: Diversity and inclusion in the financial sector – working together to drive change. The main heading is: CP23/20: Diversity and inclusion in the financial sector – working together to drive change.

Sexism in the City: 'No matter how hard I work, they will never ever recognise me'

Exclusive: Witnesses to UK parliament's inquiry share their stories from the world of finance



More than 40 women from the financial services industry shared their stories with the Treasury committee's Sexism in the City inquiry. Photograph: Shomos Uddin/Getty Images

Latest News | Equal pay | Gender pay gap | Pay structures

Two-fifths preparing for EU pay transparency rules

by Jo Faragher | 20 May 2024

Opinion Inside Business + Add to myFT

Labour has leverage to carry out private equity tax reform

Shadow chancellor Rachel Reeves has committed to scrapping industry break on 'carried interest'

JONATHAN GUTHRIE + Add to myFT

fulfil those recommendations, and that will take some time. The priority right now for us is the non-financial misconduct guidance that you

- Nikhil Rathi, Chief Executive of the FCA

ES. Evening Standard + Follow

139.2K Followers

Banker bonus gap widens as men awarded more variable pay than women at top financial firms

Story by Simon Hunt • 6d • 2 min read

The global picture



Recent global trends

United States

+22

Growing number of states and localities have enacted pay transparency laws.

Rules vary by jurisdiction:

- > Ban on asking for pay history; and/or
- > Requirement to disclose pay range (basic pay only, or total comp); and
- > Pay level of peers: California.

Asia

2

Law moving slowly: Japan and Taiwan.

Rules vary by country:

- > Voluntary disclosure by some companies.
- > Push from competition/war for talent, rather than regulation.

Multi-state/Global employers > most onerous – forecast EU/UK?

UK approach:

- > No legislative amendments announced. However, the potential impacts of a labour government.
- > Cultural shift across the globe – issue in the spotlights.
- > Impact of EU pivot on UK employers.



Gender pay gap + Add to myFT

UK's gender pay gap will take decades to close at current rate

Income inequality between women and men has only narrowed marginally since 2017

Taylor Swift urges fans to back equal pay for U.S. women's soccer team

By Lin Taylor

August 12, 2019 3:12 PM GMT+2 · Updated 5 years ago



LONDON (Thomson Reuters Foundation) - Singer Taylor Swift has urged her millions of fans to get behind the U.S. women's soccer team's fight for equal pay, saying the world champions had taken a "historic stand" for equality.

Gender discrimination on pay was "happening everywhere", the American singer-songwriter said as she accepted the inaugural Icon Award at this year's Teen Choice Awards from Alex Morgan, co-captain of the women's team, on Sunday.

The current European landscape

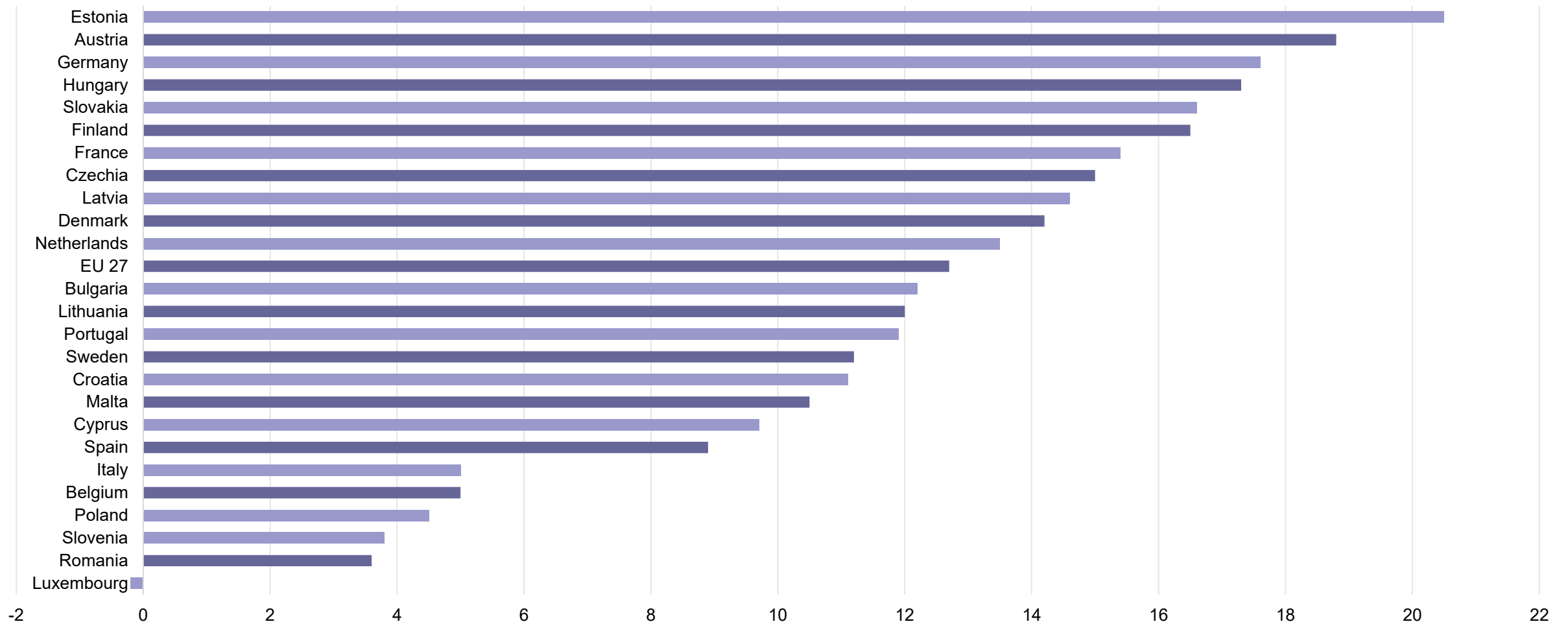
Legislation is in force covering the same or similar obligations	Workers have some limited protections in relation to these rights	No existing legislation
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	Belgium	France	Germany	Italy	Luxembourg	Poland	Portugal	Spain	The Netherlands	UK
Job candidates have a right to be informed about the pay rate or range prior to the job interview. (Article 5(1))	●	●	●	●	●	●	●	●	●	●
Employers may not ask applicants about their pay history . (Article 5(2))	●	●	●	●	●	●	●	●	●	●
Employers must make available a statement of the criteria to determine pay levels and pay progression. (Article 6(1))	●	●	●	●	●	●	●	●	●	●
Workers have a right to request information on their individual pay and average pay for categories of workers doing the same work or work of equal value to them. (Article 7(1))	●	●	●	●	●	●	●	●	●	●
Employers must produce annual gender pay gap reports setting out average pay and bonus gaps. (Article 9)	●	●	●	●	●	●	●	●	●	●
Compulsory pay audits where there is an average pay gap of at least 5% which has not been justified by objective criteria nor remedied within six months of the pay report. (Article 10)	●	●	●	●	●	●	●	●	●	●
Workers have the right to bring an equal pay claim to recover uncapped damages to compensate for back pay, bonuses and lost opportunities. (Article 16)	●	●	●	●	●	●	●	●	●	●

EU Pay Transparency Directive: why now?



Unadjusted gender gap pay in EU Member States, 2021



Source: Eurostat

What are the requirements and what is the timeline?



What are the requirements? (1/2)

Overarching requirement – Article 4

Mandatory job classification?

- > Employers should have pay structures that ensure **equal pay for equal work or work of equal value**.
- > Pay structures shall be such as to enable the assessment of whether employees are in a comparable situation in regard to the value of work on the basis of objective, **gender-neutral criteria agreed with employee representatives where such representatives exist**; those criteria shall not be based directly or indirectly on employee sex; they shall include skills, effort, responsibility and working conditions, and, if appropriate, any other factors which are relevant to the specific job or position; they shall be applied in an objective gender-neutral manner, excluding any direct or indirect discrimination based on sex. In particular, relevant soft skills shall not be undervalued.

What are the requirements? (2/2)

All firms

Transparency

Pre-employment:

- > Salary transparency at the point of recruitment.
- > Ban on asking about salary history.

During employment:

- > Pay transparency – statement of criteria on pay setting & pay progression.
- > Right to request individual information and pay level peers.
- > Right to ask questions for workers and their representatives, labour inspectorates and equality body about gender pay gap reports.

Big firms

Reporting

Reporting and compulsory pay audits

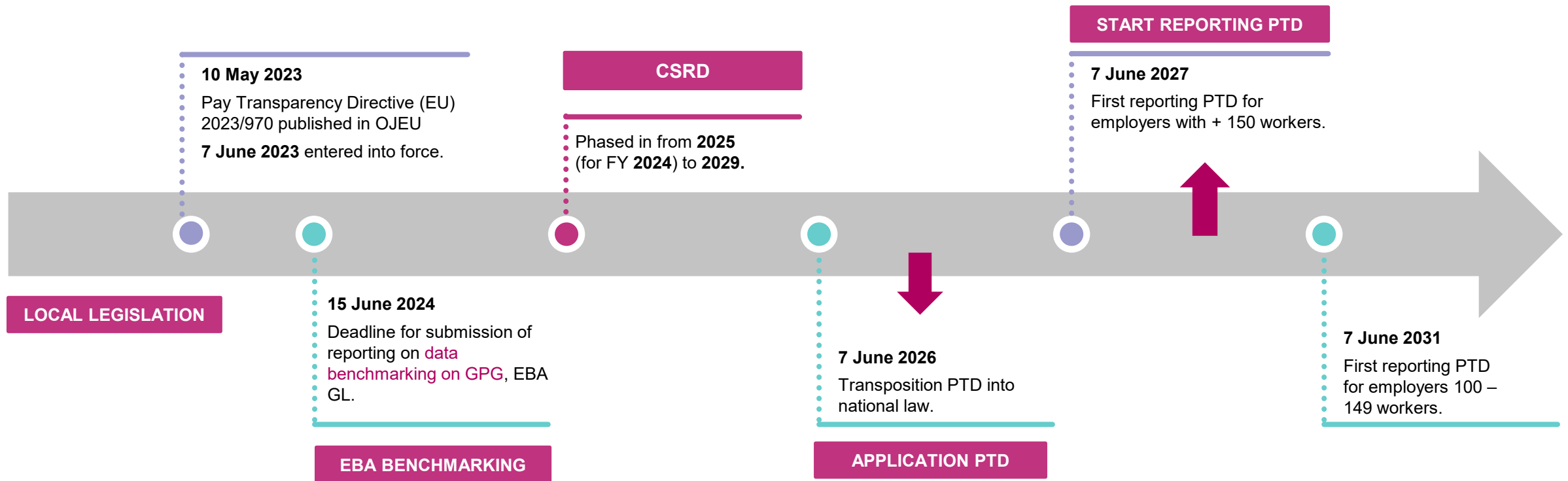
- > Reporting of pay gaps by entity and worker category (companies > 100 employees).
- > Pay assessment and action for unexplained (and unaddressed) pay gaps of 5% (per worker category).

Enforcement

New enforcement powers

- > Collective actions.
- > Strengthening the role of equality bodies.
- > Employer may be subject to fines and penalties.
- > Employer may be subject to order to disclose.

Timeline: who will be impacted and when?



Preparations should start now.

Zoom-in and impact in practice



Impact on the whole employment lifecycle



Pay transparency at the recruitment

Current status	Directive (Article 5(1))	Unanswered questions
<ul style="list-style-type: none">> Common practice: “what is your current salary” – “what are your salary expectations”.	<ul style="list-style-type: none">> Information to employment candidates about the initial pay or its range before the interview.> Purpose is to promote transparent negotiations.	<ul style="list-style-type: none">> Salary or total comp?> Promotions?> Timing?> Buyouts?> How to correctly determine pay range?



Review recruitment process:

- > Deciding timing and format.
- > Setting negotiation margin.
- > Documenting objective reasons for agreements deviating from the range with the candidate.



Audit existing tools:

- > Audit and leverage existing tools (e.g. US tools) to support recruitment.



Tracking:

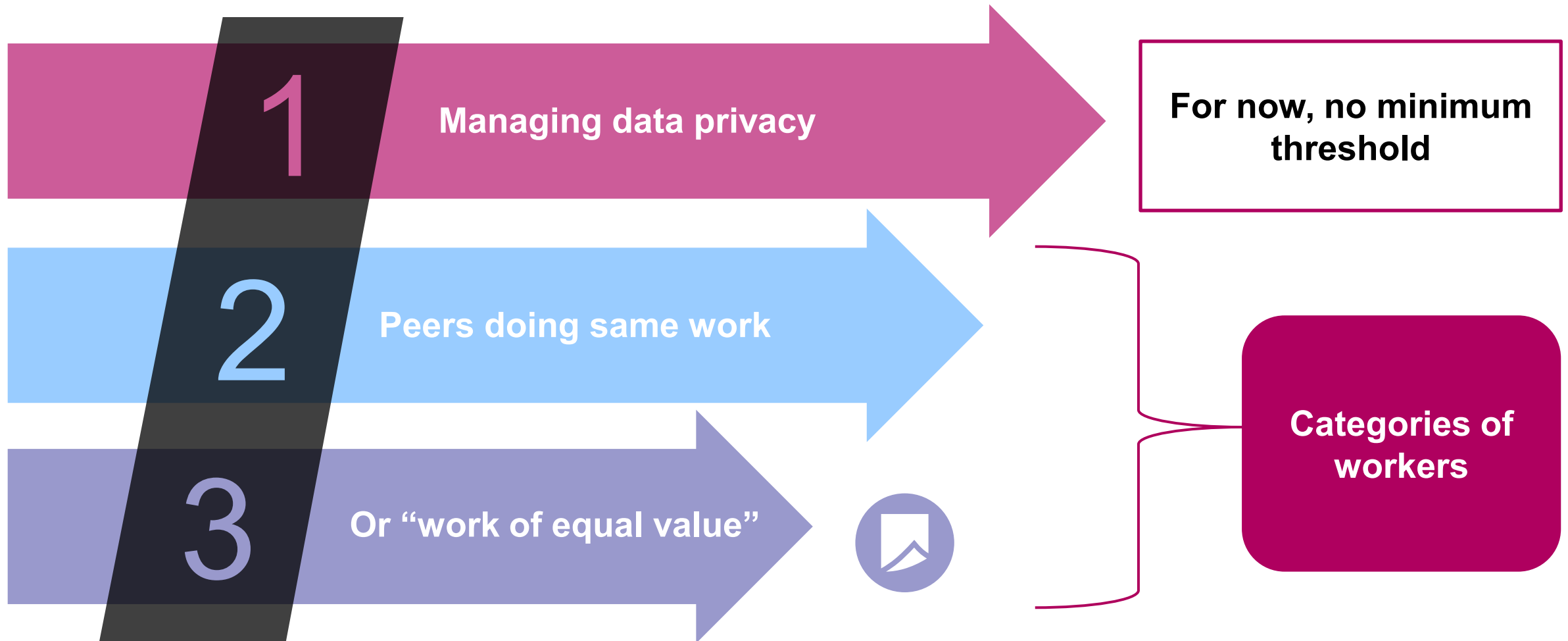
- > Track implementation, market practice, and guidelines.



Training recruitment team:

- > Establish or review existing recruitment procedures with externals (head-hunters) and potentially staff suppliers (outsourcers, employment agencies).

Transparency during employment: right to request pay, level of peers



In practice

- > Determine communications' approach, on request or proactively? E.g. , in profit share bonus communications and benefit statements.
- > When on request: escalations protocol?
- > Establish procedure for annual reminder to employees of their rights.
- > Ban on confidentiality clauses: review employment contracts.
- > Train managers & HR.
- > Track national implementation.

- > (Article 6 Directive) → Additionally, obligation to provide employees with easy access to the **criteria for determining employee pay, pay levels and pay progression** (employers with <50 employees may be exempt from this – however, see Poland); criteria must be objective and gender-neutral.
 - > Audit pay practices; determine policy and potential adjustments; communicate.



Pay gap reporting and audit big firms (+100 employees)

Data to be reported	(a)	The mean pay gap between male and female workers.
	(b)	The mean bonus and other variable pay gap between male and female workers \neq
	(c)	The median pay gap between male and female workers.
	(d)	The median bonus and other variable pay gap between male and female workers.
	(e)	The proportion of male and female workers receiving a bonus or other variable pay.
	(f)	The proportion of male and female workers in each quartile pay band.
	(g)	The pay gap between male and female workers by category of worker, broken down by ordinary basic salary and bonus and other variable pay.
Submission of reports	>	Submit all data to the designated national body which will make the information public.
	>	Employers must also provide category (g) information to workers and their representatives. Employers must also if requested provide the information to the equality body and labour inspectorate.
Publication by the employer	>	Employers may publish their reports annually on their website or otherwise make them publicly available.

Trigger pay audit if +5% GPG, not justified & remedied in 6 months from reporting



What needs to be reported under CSRD?

- Mandatory disclosure of **mean pay gap** between male and female workers

Use the following methodology: (a) include all **employees'** gross hourly pay level; and

(b) apply the following **formula** to calculate the gender pay gap:

*(Average gross **hourly** pay level of male employees – average gross hourly pay level of female employees)*

$$\frac{\text{Average gross hourly pay level of female employees} - \text{Average gross hourly pay level of male employees}}{\text{Average gross hourly pay level of male employees}} \times 100$$

- **Optional** to disclose breakdown by **employee category** and/or country/segment
- **Optional** to disclose breakdown by **basic and variable components**
- **Optional** to include narrative

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

Compared to EU Pay Transparency Directive

Data to be reported

≠ CSRD

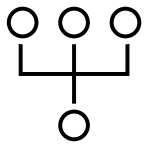
(a)	The mean pay gap between male and female workers = CSRD
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(c)	The median pay gap between male and female workers
(d)	The median bonus and other variable pay gap between male and female workers
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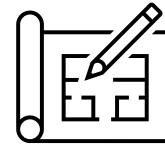
Publication by the employer

Employers **may** publish their reports annually on their website or otherwise make them publicly available.



Prepare to report:

- > Prepare for reporting in locations with headcount of +100 employees
- > Collect total compensation data.
- > Assess in-scope population.



Process decision and trial:

- > Decide on process: in-house or provider.



Trial:

- > Run trial (under legal privilege?).



Audit:

- > Audit and document objective reasons for pay differentiations – statistical regression analysis can help; however legal overlay required.
- > For outliers/pay gap +5%: risk-assessment / adjustments.

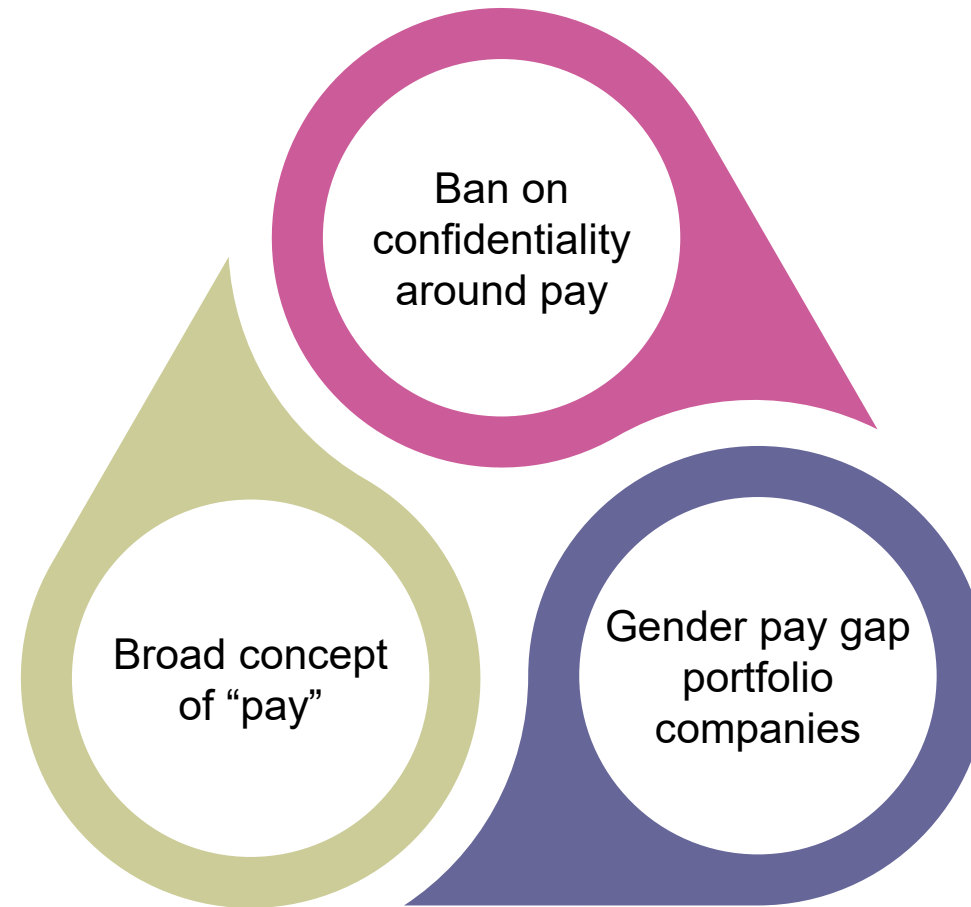
Reporting on pay gap between female and male employees

Deadlines for providing information

250 employees or more	150 to 249 employees	100 to 149 employees
> Reporting every year (for the first time: by 7 June 2027).	> Reporting every 3 years (for the first time: by 7 June 2027).	> Reporting every 3 years (for the first time: by 7 June 2031).

Member States may, as a matter of national law, require employers with fewer than 100 employees to report on pay (e.g. Sweden – pay gap surveys as of 10 employees).

Key topics for PE firms

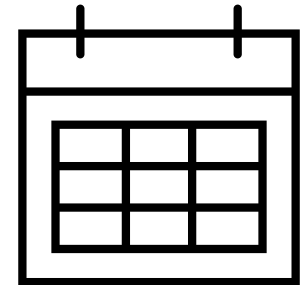


The European landscape: progress towards implementation



Progress towards implementation

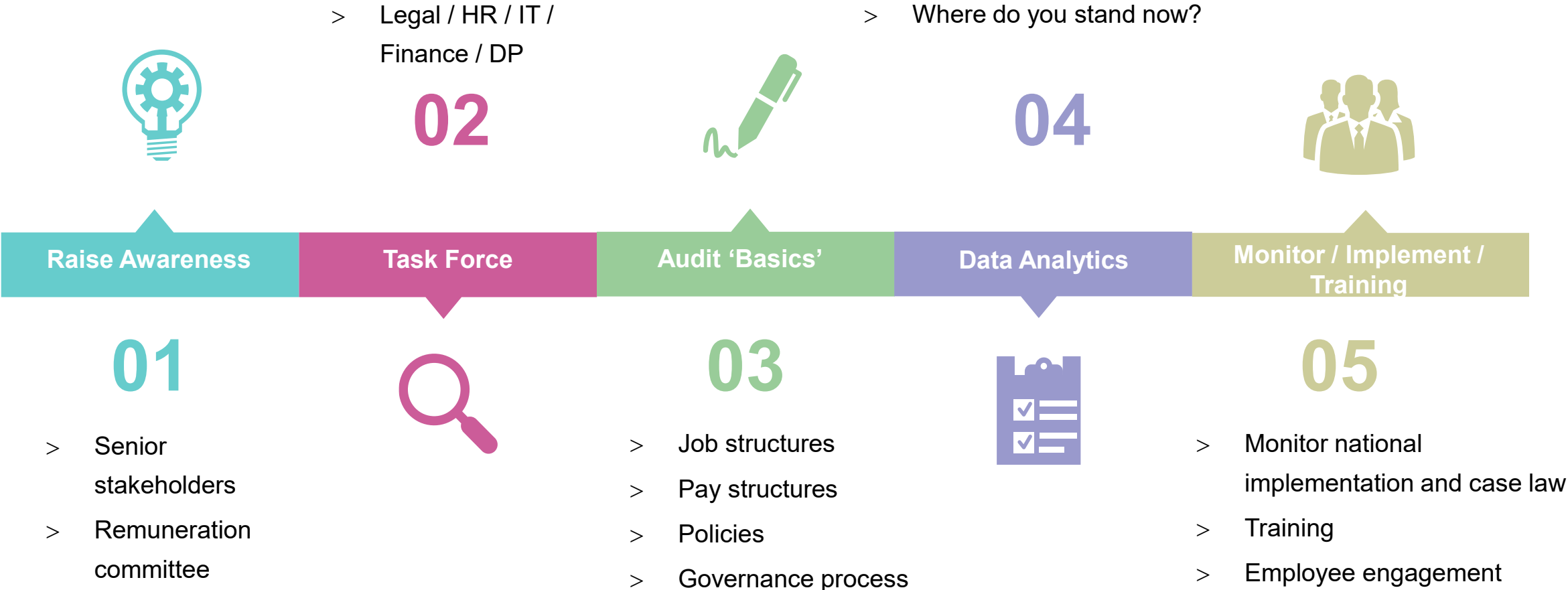
- > **Swedish legislative process initiated – building further on existing pay gap laws.**
- > Working groups EU Commission.
- > Informal intel German government progress and cooperation harmonised implementation.
- > France has announced timeline.



Roadmap to compliance and how we can help

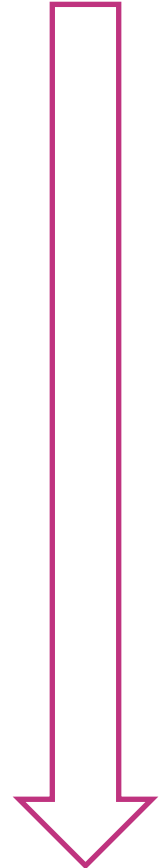


Roadmap towards compliance: next steps



Detailed roadmap to compliance

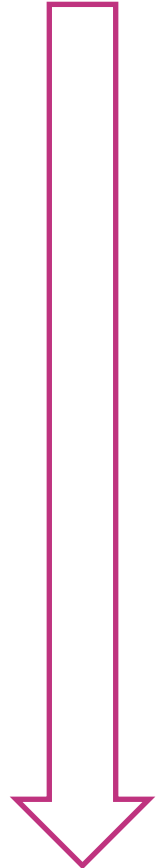
No.	Step	Timing
1	Prepare	
1.1	Raise awareness	2023/2024
1.2	Appoint a task force in charge of project and define action plan with deadlines	
1.3	Audit job and pay structures, pay policies / practices	2024/2025
1.4	Data gathering	
1.5	Where do you stand now? Run and interpret data / analytics and identify risk of equal pay claims	
1.6	Identify and implement adjustments	2025 (or earlier)
1.7	Check governance processes	
1.8	Phased approach to greater transparency (option)	
1.9	Monitor implementation and interpretation of PTD across Member States	Ongoing basis



Roadmap to compliance

No.	Step	Timing
2	Implement	
2.1	Obligations coming into force	7 June 2026 Reporting: as of 7 June 2027
2.2	Educate stakeholders and managers involved in hiring process and pay setting Engage with third party providers e.g. outsourced recruiters and firms providing pay benchmarking data	2026/2027
2.3	Employee and stakeholder engagement	

No.	Step	Timing
3	Long term impact	
3.1	Test pay equality and respond to requests for information	Ongoing
3.2	Joint pay assessments	
3.3	Dealing with concerns / implementing changes	
3.4	Employee claims / labour inspections	



Questions?

Thank you

Upcoming for Level 20

Research

European data interviews are being held between June to August. We are particularly looking for HR and DE&I leads to participate, across from any of the following countries: ***Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Norway, Poland, Spain, Sweden, and Switzerland.***

Sponsor events online

SLP Roundtable 12th September

- > (Online) 10:00-11:00 (BST)
- > (Online) 13:30-14:30 (BST)

HR Roundtable 17th October

- > (Online) 14:00-15:00 (BST)
- > (Online) 14:00-15:00 (BST)

EU sponsor events

Supporting Parents Breakfast

- > (Brussels) 09:00-10:30 (CEST)

EU Research Launch 9th October

- > (Paris) 8:30-10:00 (CEST)

Supporting Parents

- > (Munich) 18:00 – 19:30 (CEST)