

EALCJ questionnaire 2026 – Pay Transparency and EU Variations

Pay

Thank you for taking the time to participate in this questionnaire on pay. The purpose of this questionnaire is to gain:

- (i) insight into the current rules each country has in relation to gender pay and how this differs from the requirements of the EU Pay Transparency Directive (2023/970).
- (ii) Whether it is anticipated that your member state will be in a position to implement the requirements of the EU Pay Transparency Directive by the implementation date.
- (iii) An understanding of any equal pay litigation each member state currently faces.

The status quo of these topics may differ between various European countries. Therefore, we encourage you to share your country's experience on the topics. We have provided background information concerning the EU Pay Transparency Directive.

This questionnaire also contains questions and background information about the employment rights of transgender people.

This information is intended to serve as a helpful resource as you work through answering the questions.

1. EU Pay Transparency Directive

Background

Here you will find a link that leads to the directive: [Directive - 2023/970 - EN - EUR-Lex](#)

On 24 April 2023 the EU Council formally adopted the Pay Transparency Directive (PTD) aimed at strengthening the application of the principle of equal pay for equal work of equal value between men and women through pay transparency and enforcement mechanisms. Member states have until 7 June 2026 to implement its provisions. The main provisions of the PTD are:

- **Right to information:** With the aim of helping to eliminate information asymmetry:
 - employers will need to inform candidates about the initial pay level or pay range of any role in the job vacancy notice or otherwise before the job interview;
 - employers will be prohibited from asking questions about a candidate's pay history with their current and former employers;
 - workers will have a right to information during employment on their individual pay level and on the average pay levels, broken down by sex, for the category of workers doing the same work or work of equal value. Employers must inform all workers, on an annual basis, of the right to receive this information, as well as the steps to be taken to exercise the right.
- **Gender-neutral job evaluation and classification systems:** Employers must make available to workers, in an easily accessible manner and within two months of the request, a description of the criteria used to determine pay levels and career progression (i.e. how a worker moves to a higher pay level).
- **Pay reporting obligations:** A framework of obligations is introduced, including requiring employers with 100 or more workers who have an employment contract or employment relationship (as defined by the local law of the Member State) to prepare and publish gender pay gap reports. The accuracy of the report must be confirmed by management. Companies must provide the pay gap information to the national authorities designated for that purpose and may also publish it themselves on their website or otherwise make it publicly available.
- **Equality and monitoring bodies:** Equality bodies must be established with functions including tracking compliance and enabling the aggregation of data to allow comparisons to be made of the data across different employers, sectors and regions.
- **Access to justice:** Member States will be required to ensure that any worker who has suffered harm as a result of any infringement of the requirements to have

What current provisions do you have in place in relation to the transparency of pay systems and enforcement of the right to equal pay? *Please answer the following questions below:*

- 1.1) To what extent does the PTD involve the expansion of an existing regime or involve introducing a new regime in your country?**
- 1.2) Will the PTD be transposed into your country's national legislation by 7 June 2026 and if not, are there any legal consequences?**
- 1.3) Do you have an existing equality and monitoring body in place to track compliance with the PTD and if so, what is its reach? If not, will there be in the future?**
- 1.4) Within the framework of the PTD, is there a role for works councils in your country?**
- 1.5) How will your country ensure access to justice for workers as a result of any infringement of the PTD's requirements?**
- 1.6) If collective agreements are the/a primary source of regulation in your country**
 - a) are they required to achieve equal pay;**
 - b) do they achieve equal pay; and**
 - c) how are they monitored.**
- 1.7) To what extent does your jurisdiction currently have equal pay litigation and what are the current time limits for such claims?**

Recital 5 of the preamble to the PTD states the following:

(5) The Court of Justice of the European Union (the 'Court of Justice') has held that the scope of the principle of equal treatment of men and women cannot be confined to discrimination based on the fact that a person is of one or other sex. In view of its purpose and the nature of the rights which it seeks to safeguard, that principle also applies to discrimination arising from gender reassignment.

- 1.8) Is this Recital 5 implemented/transposed or recognised in the Pay Transparency legislation in your country?**

2. Equal treatment and the rights of transgender persons

Background

The protection of transgender persons against discrimination forms part of the broader international human rights framework on equality, dignity and respect for private life. Several international human rights instruments provide protection for transgender persons. For example:

- **Non-discrimination:** the principle of non-discrimination is laid down in Article 26 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees equal protection of the law without discrimination. The United Nations Human Rights Committee has clarified that this protection may also cover discrimination based on gender identity.
- **Right to respect for private life:** Article 17 ICCPR protects the right to respect for private life, which includes aspects of a person's personal identity such as gender identity. Comparable protection exists in regional human rights instruments, including Article 8 (right to respect for private life) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights.

Recent developments in the United Kingdom

Two recent cases illustrate ongoing legal debate about the interaction between gender identity protections and sex-based rights.

In [**For Woman Scotland Ltd v The Scottish Ministers**](#), the Supreme Court ruled in April 2025 on the interpretation of the term 'woman' in the Equality Act 2010. The decision confirms that the legal term 'woman' refers to *biological sex* and not gender identity, even when an individual holds a Gender Recognition Certificate (GRC).

A second case, [**Hutchisons and Others v County Durham and Darlington NHS Foundation Trust**](#) (January 2026), was an employment tribunal case involving eight female nurses and the NHS trust. The dispute concerned a policy at Darlington Memorial Hospital that permitted transgender woman to access woman's facilities. The employment tribunal held that the NHS trust had harassed and indirectly discriminated the nurses by requiring them to share a changing room with a trans woman and by not taking the nurses concerns seriously. The NHS trust had breached health and safety regulations and "had infringed the claimants' right to respect for private life under Article 8 of the European convention on human rights".

- 2.1) Are transgender rights recognised in your country? Is there a legal prohibition on discrimination based on gender identity?**
- 2.2) To what extent do trans-women, that is to say women who are not biological women, enjoy the full range of women's employment rights in your country?**

3. Case Study Incapacity for Work

Michael, born on February 28, 1984, joined 'Energy Succes' on June 1, 2016, on the basis of an open-ended employment contract for 40 hours per week, in the position of all-round technician. Energy Succes is a private company.

During the first years of his employment, Michael is happy with his work and receives excellent performance reviews. In 2023, Michael's basic salary is € 2,400 gross per month. Because he works many hours outside of regular working hours, he also receives overtime pay of € 600 gross per month. This totals € 3,000 gross per month.

In 2023, Michael develops back problems. The work is physically demanding for his back, as Michael often has to carry heavy materials and tools, and he also has to connect heating appliances.

Michael reports sick on March 1, 2023. He is examined by a physician. The physician advises 4 weeks of rest, followed by a gradual return to work: 8 hours in the first week, 16 hours in the second week, 24 hours in the third week, 32 hours in the fourth week, and thereafter – starting from April 26, 2023 – back to 40 hours. Michael follows this advice, and things go well at first, but on June 1, 2023, the symptoms return and Michael reports sick again. The same physician assesses the situation once more and advises Michael to again take rest first and then partially resume work. Michael does this again, and it initially goes well, but Michael suffers a relapse on October 1, 2023.

Michael consults a medical specialist, who determines that Michael's back has significant issues ('worn out'). The specialist tells him that this problem cannot be easily resolved and that he is no longer fit to perform the physically demanding work of all-round technician. The medical specialist advises Michael to start performing work that is light on the back. Michael takes this information to the same occupational physician who has assessed him several times before, and that physician agrees with the advice.

Question 1:

During the period Michael attempted to resume his own work (from March 1, 2023, to April 26, 2023, and from June 1, 2023, to the end of July 2023), is he entitled to his full salary of €

2,400 per month or a portion thereof? And is he also entitled to the € 600 per month overtime pay? Who is responsible for payment: his employer or another authority?

In October 2023, Michael has a meeting with his employer, Energy Succes, about the situation. Michael states that he would like to perform a different, less physically demanding position. He mentions the position of Inspector. Michael is aware that the corresponding salary for this role is € 2,200 per month.

Question 2:

If Energy Succes does indeed has a vacancy for the position of Inspector, is Energie Succes obliged to offer Michael that position?

Question 3

Suppose that Energy Succes offers Michael the position of Inspector: can Energie Succes reduce Michael's salary to € 2,200 gross per month, or is Michael entitled to more (for a certain period)?

Things do not go as smoothly as questions 2 and 3 suggest: Michael states in October 2023 that he wants to perform the Inspector position, but Energy Succes says that legal regulations require an Inspector Certificate. The training to obtain the Inspector Certificate takes three months and costs € 4,000.

Question 4

Is Energy Succes obliged to enable Michael to obtain that certificate and also to pay the costs of the training?

Michael starts the training but it turns out that his theoretical background is insufficient. He discusses with Energy Succes whether there are any other alternative positions for him, but none appear to be available. Energy Succes informs him that there is then no other solution but to dismiss Michael.

Question 5

Is it possible for Energy Succes to dismiss Michael in this situation (Michael is unfit for his original position for medical reasons, and there are no alternative positions for him within the company)?

Question 6

Can Michael challenge his dismissal in court or for a special tribunal?

Question 7

In this case (questions 5 and 6), is Michael entitled to a (severance) payment? If so, how much, and what is this compensation based on?

Question 8

If Michael is dismissed, is he entitled to social security benefits (for example, an unemployment benefit or a disability benefit)? If so, approximately how much do these amount to, and for how long?

Question 9

Does it make a difference for all the preceding questions whether Michael became unable to perform his role as an all-round technician due to (i) hereditary back problems or (ii) due to the heavy labor, combined with the fact that Energy Succes had not complied with all safety regulations (for instance, Michael had to lift materials without assistance that were heavier than legally permitted)?