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# THE PAY TRANSPARENCY DIRECTIVE IN THE NORDIC LABOUR MARKETS

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## Abstract

The present thesis aims to understand how the new Pay Transparency Directive will suit or fit the Nordic EU member states e.g., their labour markets and the tradition of collective agreements. The first section presents previous research and concludes that a research gap exists in relation to whether the Pay Transparency Directive suits the labour markets in the Nordic EU member states. The thesis will e.g., deal with similarities between and the regulation of the Nordic labour markets. It will furthermore deal with the gender pay gap and how it is constituted in Sweden, Denmark, and Finland. It will furthermore develop a typology of the different approaches to the pay gap. The legal part of the thesis will comprise a legal analysis of the Directive, its background, enforcement, and implementation. It will further present a case study from Denmark based on rulings from the Supreme Court and the High Courts. Finally, the legal part of the thesis concludes the state of the law on equal pay in Denmark followed by a conclusion.

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# Introduction

The free movement for workers enables the possibility to work in other member states. This means that the EU influences the labour markets in the EU member states. The national labour markets are consequently affected by a combination between EU law, national law, and agreements between social partners (on local, national, and EU levels). One example is equal pay where national states follow national law (influenced by the UN), agreements between social partners, and EU legislation. Further, the Treaty of the Functioning of the European Union (TFEU) Art. 157 has created a legal principle for equal pay for equal work.

In my thesis, I assume that equal pay has developed into a legal principle. However, in the EU there is still a gender pay gap of 14 % (Hearn al., 2021, p 569). In European Studies, researchers have developed political, sociological, and legal theories regarding the gender pay gap between men and women in the EU. In European policies, there have been various initiatives to reduce the gender pay gap.

Among the initiatives is the proposal made by the European Commission in 2021. The proposal has reshaped the political and legal frame for reducing the gender pay gap (European Commission, 2021). The European Commission indicated that The Pay Transparency Directive intends to improve equal pay for equal work by e.g., making information about pay levels more accessible (Directive 2023/970). The thesis will touch upon the final Directive initiated by the European Commission and negotiated by the European Parliament and the Council (Directive 2023/970).

To examine and comprehend The Pay Transparency Directive, the thesis focuses on the labour markets in Denmark, Sweden, and Finland. The reason for this is that these countries are known to have a higher degree of equality (Brunila & Edström, 2013). Further, these labour market models are characterized by a form of collective agreements which makes them different from other labour market models in the EU (Arnholtz, 2022). Examining the Pay Transparency Directive in relation to Denmark, Sweden, and Finland provides a strong understanding of equal pay in the EU. Therefore, my research question is:

How will the Pay Transparency Directive interact with the three Nordic labour market models with their tradition of collective agreements?

## Aim

In this part, I will describe and reason the aim of my thesis. As described in the introduction TFEU Art. 157 creates a fundamental right for equal pay in the EU. The article sets the legal frame that men and women in the EU should receive the same payment for the same work. Though, it is still a challenge to ensure equal pay. Kantola (2010, p. 144) describes this by enlightening that there is gender pay. This gets underlined by the Commission which reports a gender pay gap of 13% on average in the EU (European Commission, Directive 2023/970). Woodward (2014, p. 102) highlights the need for further analysis of the underlying factors of the gender pay gap. Therefore, the overall aim of the thesis is to understand how the Pay Transparency Directive interacts with the Nordic labour market models to ensure equal pay for equal work.

## Overview Of the Thesis

This section intends to give the reader an overview of the various chapters in this thesis. The purpose of the thesis is to understand Pay Transparency. Firstly, there is a chapter on previous research, background, and theory. The part on previous research contains the previous research on The Pay Transparency Directive and it is followed by a section discussing the research gap and own contribution. Afterward follows the background which describes the political intentions of the Directive, the content of the Directive, the Nordic labour markets, and finally a section outlining the gender pay gap in the three Nordic EU member states. This is followed by a theoretical section which is developed from analysing approaches to the gender pay gap included in the previous section on the gender pay gap in the Nordic EU member states. The next chapter addresses the methodology and especially the legal methods applied for the analysis of legal decisions. The following chapter includes the legal analysis. The legal analysis is based on a case study from Denmark based on rulings from the Supreme Court and the High Courts. Finally, this chapter concludes the state of the law on equal pay in Denmark followed by a conclusion. The following discussion chapter addresses The Pay Transparency Directive's influence on the Nordic labour markets and the state of the law on equal pay in Denmark. The last chapter entails the conclusion of the thesis.

## Previous Research and Theory

The following paragraph presents a literature review created to develop a field of study. A literature review in this master thesis is expected to end by outlining a research gap and one's contribution to closing this research gap. However, the following literature review is early since the Pay Transparency Directive was decided in 2023 and has still not been implemented. Consequently, there is a lack of research on e.g., a) the judiciary interpretation, b) the implementation strategies of the Nordic EU member states, c) the outcome or effect of the Directive in the context of the Nordic labour markets, etc. The present thesis is therefore a contribution to the development of a future research field. The following literature review will focus on the contemporary early-stage research on the Directive, its connection to the Nordic labour markets, and research on e.g., the gender pay gap in the context of the Nordic EU member states. Early-stage research refers here to research conducted (mainly) before the Directive was decided. After the literature review, a description of my contribution will be described.

### Literature Review

Most existing research on the Directive is conducted in or with consideration for non-Nordic countries. An example is Hooton and Pearce (2023) who outline The Pay Transparency Directive suggestion from 2022 and highlight issues the European Parliament ought to handle before deciding on the directive to ensure the success of the future Directive. The article includes a fictitious dataset on wages for ten German female and male employees. Hooton and Pearce's (2023) concerns are important but mainly relate to technical issues and connect with the Court of Justice of the European Union on the collection and reporting of data. These concerns are important, but they are mainly related to the challenges of implementing the Directive, which is considered outside the focus of the present thesis.

Bennedsen et al. (2023), Brütt and Yuan (2022) and Ceballos et al. (2022) focus on the possible effect of the future Pay Transparency Directive. Bennedsen et al. (2023) conclude that pay transparency may influence the gender pay gap, but it is not essential in the present context since the research is based on a meta-analysis of 16 previously published articles about gender wage transparency in the private sector in a variety of countries (in and outside the EU). Bennedsen et al. (2023) further exclude the important horizontal gender pay gap (cf.

Arabadjieva 2021) and this is problematic in a Nordic context (e.g., cf. Sandberg et. al, 2022). Ceballos et al. (2022) also conclude that legislation on pay transparency mechanisms has decreased the gender pay gap across OECD countries. Brütt and Yuan (2022) disagree and predict that the future Directive will have no effect, based on a combination of the 2017 German wage transparency reform and results from their laboratory experiments.

Arabadjieva and Zwysen (2022) focus on performance-related pay and state that women are less likely to receive this wage form due to the horizontal segregation in the EU labour market. Interestingly, Arabadjieva and Zwysen (2022) can point to performance-related pay as a possible contributor to the gender pay gap. Transferring Arabadjieva and Zwysen's (2022) result to Nordic labour markets may reduce the size of the unexplained reasons for the gender pay gap (see e.g., Larsen, Verner, and Mikkelsen, 2020 on unexplained reasons in the Danish Labour markets, e.g., Borgman, 2020 on unexplained reasons in the Finnish labour markets and e.g., Medlingsinstitutet, 2022 on unexplained reasons in the Swedish labour Market). Baggio and Marandola (2023) present a survey on employees' opinions about future pay transparency. These themes, performance-related pay and employees' opinions towards future pay transparency are both important but are considered outside the scope of the present thesis. Besides, it is difficult to examine employees' opinions on a Directive to be implemented. What can be learned from thesis studies is the need for studying the composition and content of the gender pay gap in the Nordic EU labour markets. However, since the existence and the scale of the gender pay gap problem is inseparable from the definition of the problem it is furthermore relevant to analyze the varying approaches to the problem (see e.g., Bacchi, 1999, Saari 2013). Understanding the varying approaches to the gender pay gap enables the development of a theory (or typology cf. Collier, 2009) that may work as a tool for evaluating the Directive in a Nordic context.

Avdul et al. (2023), Bamberger and Alterman (2023), Lahuerta (2022), and Zilli (2021) discuss either The Pay Transparency Directive or comparable legal instruments in a national (non-Scandinavian) context. Avdul et al. (2023) and Bamberger and Alterman (2023) are the only articles written at the time of or right after the decision about the Directive. Nevertheless, they focus on a US context and aim to advise US policymakers and managers trying to navigate a future with pay transparency. Avdul et al. (2023) explain pay transparency instruments, and how they can affect organizations, management, and HR departments in the USA. These

perspectives are not essential in connection with the present thesis. Bamberger and Alterman (2023) focus on suggestions for policymakers and managers in a US context to avoid the negative effects of existing and possible future instruments either identical with or developing from a transparency pay mechanism. Lahuerta (2022) discusses the future Pay Transparency Directive in an Irish context. Lahuerta (2022) pinpoints some seemingly important technical challenges connected with reporting on pay at a company level, but the content is considered outside the scope of the present thesis.

Arabadjieva and Kotsoni (2022), and Carlson (2022) focus on the legal issues of the future Directive. Arabadjieva and Kotsoni (2022) reveal what the Directive will mean for the interplay between the European Social Charter and European Law. Carlson (2022) focuses on effective remedies and possible sanctions required in the future Directive. These legal issues are important but since the Directive has not yet been implemented is it rather difficult to discuss. Arabadjieva and Kotsoni (2022), and Carlson (2022) will be used for delimiting the thesis from these legal issues. It is relevant to study the Nordic labour markets context for the Directive. However, a full-scale study of the Finnish, Swedish, and Danish rulings seem too large for the present thesis. What furthermore seems possible is to conduct a case study on e.g., the Danish ruling and legal analysis of the legal status of administrative decisions by The Board of Equal Treatment to understand the full extent of the competencies given to the equality bodies in the Pay Transparency Directive.

The only exception from the non-Nordic context is the early-stage research on the Directive produced by Carlson (2022). The article outlines the background and content of the (expected) future directive. The Directive (cf. Carlson 2022) is perceived as a tool for ending the gender pay gap which Carlsen (2022) furthermore considers to be discrimination against women. Arabadjieva (2021), and Alcidi and Ounnas (2022) also outline the gender pay gap, list the reasons for the existence of a gender pay gap in the EU, and argue why the gender pay gap should be erased. Various researchers have provided research examining the gender pay gap of 13% in the EU (European Commission, 2021). The reason why the gender pay gap is highly researched is that the EU created a fundamental right to equal pay in the EU, cf. TFEU Art. 157. Cleridou (2020, p. 227) enables a case study of how equal pay has developed in Cyprus since joining the EU. The research shows that Cyprus EU membership to some extent has changed the focus of policies. The change is clear when Cleridou (2020, p. 299) shows that the

focus on civil society has increased. It is fascinating that there has been an increased focus on how civil society has enlightened the focus on securing equal pay.

The intention is now to explore how the gender pay gap has previously been researched from a legal perspective and methodology. One of the ways in which legal development has improved equal pay between men and women in the EU is through preliminary rulings. Heide (1999, p. 382) has provided research on how EU legislation and the European Court of Justice have improved equality in the EU. In his research, I believe that the most interesting conclusion is that the European Court of Justice rulings have established case law that ensures a higher degree of equality. Heide (1999, p. 410) even concludes that case law has improved the principle of equal pay in the EU. This interpretation of the case law by the European Court of Justice can be seen concerning the development of labour law in the EU. Schmitt and Rocca (2012, p. 365) describe the development of the employment strategy in 1997. In the strategy equal pay was among the important aspects (Schmitt & Rocca, 2012, p. 365). Based on his research Heide was able to enlighten the significant shift from hard law to soft law. Schmitt and Rocca (2012) highlighted that the swift change from hard law to soft law meant that enforcing the principle of equal pay was difficult.

Alcidi and Ounnas (2022) and Carlson (2022) reveal, and this is supported by Eurofound (2019) and Eurostat (2020), that there is a great variety in industrial relations in the EU labour markets, and consequently also a great variation in the gender pay gaps (cf. Council of EU, 2023). In relation, many researchers have explored the Nordic labour market, however, there is no existing literature on how the Directive will influence and interfere with the Nordic labour market. Therefore, I can conclude that the research question and thereby my research are of relevance. Therefore, I will reason that the understanding of how the Pay Transparency Directive influences the Nordic labour market becomes of high relevance in terms of understanding how the Directive influences equal pay in Nordic countries. Nevertheless, the understanding of the gender pay gap in the Nordic Countries is not unambiguous (cf. Nordiska ministerrådet, 2019), and it is therefore important to understand the different approaches (cf. Sandberg 2021, Sørensen et al, 2020, and Nordic information on gender, 2019a & 2019b) toward the gender pay gap in the Nordic countries. Carlson (2022) parenthetically mentions the Nordic Labour Markets while explaining that the Directive forces the Nordic governments to include the unions in the implementation. Consequently, Carlson concludes that the Directive

is likely to strengthen the role and position of the Nordic unions. What can be learned from Carlson (2022) is that the historical role and position of the unions in the Nordic Labour markets are essential when trying to understand the Directive and its outcome in the Nordic EM member states. Since the role and position of the unions reflect the configuration of the Nordic labour markets it is probably more accurate to claim that understanding the directive in a Nordic context posits considering the configuration of the industrial relations in the Nordic EU labour markets. Consequently, it is relevant to produce a theoretical concept for industrial relations in the Nordic EU labour markets.

### Research gap and own contribution

The Pay Transparency Directive was agreed on politically by the Council and the European Parliament on December 15, 2022 (European Commission, 2021). Considering the political agreement, the work with adjusting different translations and ensuring the technicalities has been ongoing. On March 30, 2023, the European Parliament approved the final version of the Pay Transparency Directive at the plenary session (European Parliament, 2021). The Council will finally approve the Pay Transparency Directive on April 23, 2023 (European Council, 2023). After the final approval, the Pay Transparency Directive was published in the Official Journal of the European Union, cf. TFEU Art. 297. When the Pay Transparency Directive officially has been published the member states have two years to implement the Directive, cf. Art. 34 (European Parliament, 2023).

The following paragraph of this background will analyze the preamble to reveal the political intention of the Directive. However, the political intention is not to be mistaken for a legal interpretation based on court rulings. Furthermore, the difference between Nordic and EU legal traditions is reflected in the approach to the preamble (as part of the preparatory document). In the Nordic legal tradition, a preamble is applied in the legal interpretation of the law while they are excluded in the EU legal tradition. The reason for conducting an analysis is to understand the political intention of the Directive despite that these intentions may or may not be reflected in future EU court rulings. This means that the political intention produces a context that needs to be supplemented with a legal analysis of the Directive.

The literature review clearly showed that the research gap is substantial. Nevertheless, one of the methodological challenges is that the Directive demands the Nordic governments to call the social partners (Unions and employer representatives) for negotiation on the implementation of

the Directive. The implementation of the Directive in the Nordic EU labour markets will furthermore follow the collaborative negotiations which, at the present point, makes it even more difficult to predict the implementation strategies in Denmark, Sweden, and Finland. Besides, the court rules are also lacking at present. Consequently, it is impossible to conduct a legal analysis of the legal status from rulings based on the Directive. However, since the Directive and consequently the research is very early, the thesis will attempt to add to a research field under development. What will be presented in the following is a preliminary legal analysis of the Directive and an analysis of the legal status in one of the Nordic countries, which in the future, when more material is available, must be further developed, and finalized.

## Case-study

To understand how the Pay Transparency Directive can apply to the Nordic labour market I will conduct a case study of the legal status of equal pay in a Danish context. The case law analysis will be based on Danish rulings. Further, I will provide a legal analysis of the legal status of administrative decisions by The Board of Equal Treatment to understand the full extent of the competencies given to the equality bodies in the Pay Transparency Directive. I will explain the choice in the following.

Nordic countries are known for their high degree of gender equality. However, when examining research and statistics from, e.g., The World Economic Forum and The European Institute for Gender Equality (EIGE) Denmark is lacking behind Sweden and Finland. EIGE's 2022 index places EU member states on a scale from 1 to 100 where 100 shows that a country has reached full gender equality (European Institute for Gender Equality, 2022). On the scale, Sweden scores 83.9, Finland scores 75.4, and Denmark scores 77,8 (European Institute for Gender Equality, 2022) which underlines the high degree of gender equality. In terms of gender equality in work, Sweden scores 83, Finland scores 75.4, and Denmark scores 79.4 (European Institute for Gender Equality, 2022). In comparison, The World Economic Forum created a Global Gender Gap Index rankings by region, in 2022 (World Economic Forum, 2022, p. 24). Here Sweden is placed as no. 4 in Europe and 5 on the global scale, Finland is placed as 2 in Europe and 2 on the global scale too, and Denmark ranks no. 19 on the European scale and 32 on the global scale (World Economic Forum, 2022, p. 24). Thereby, Denmark is placed between Sweden and Finland on EIGE's scale, and it ranks lowest of the three countries in the index by the World Economic Forum.

I chose to conduct a case study on Denmark since it for the case study enables a perspective on the minimal legal status in the Nordic countries.

Consequently, I will analyze the legal status in Denmark and use this to answer the question: How will the Pay Transparency Directive interact with the three Nordic labour market models with their tradition of collective agreements?

## Background

On the 15th of December 2022, the European Parliament and the Council reached an agreement on the Directive (European Council, 2023) of the European Parliament and the Council 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 mechanisms (The Pay Transparency Directive). On the 30th of March 2023, the European Parliament adopted the Pay Transparency Directive at the plenary session (European Council, 2023).

The intention is to use elements from the speeches at the plenary session on March 30, 2023. These elements give an insight into the political understanding of the Directive. Speeches by the two rapporteurs from the European Parliament, Samira Rafela from the Netherlands represented the Renew Group, of the FEMM committee, and Kira Marie Peter-Hansen from Denmark represented the Greens and the EMPL committee (Appendix 1). Further, the Commissioner of Equality, Helena Dalli, gave her perspective on the Pay Transparency Directive at the plenary session. Examining elements from the speeches gives a broad understanding of the European Parliament and the European Commission's political perception of the Directive.

Peter-Hansen was the first to take the floor, and she highlighted: "Today we are here voting on a historical and an essential piece of legislation. We are here because we stand against pay discrimination" (Appendix, p. 1). The speech underlines the strong notion, that Peter-Hansen perceives the Pay Transparency Directive as a tool to create legislation of historical value. This aligns with her words: "Today we are here to vote on the best-known tool for closing the gender pay gap" (Appendix, p. 1). Which further indicates the importance and value she sees in this legislation. Rafaela's statement underlines this: "Today we will make history. I [am] incredibly proud to be in this house and to say to all women in Europe that we are here for you" (Appendix, p. 2). Hereby, it is emphasized that the Pay Transparency Directive politically is perceived as a

tool to ensure women, that the members of the European Parliament have been fighting to ensure equal pay. Further, it is highlighted that she also recognizes the legislation as a historical Directive.

Dalli, The Commissioner for Equality stated that: “Today’s adoption of the pay transparency Directive is a significant step in the direction to address the gender pay gap in the European Union and increasing women’s economic and financial independence” (Appendix, p. 4). This follows Rafaela’s interpretation of the legislation ensuring women’s rights, especially in terms of financial and economic independence. In relation, Peter-Hansen shows that: “With this vote, we abolish pay secrecy contract, we strengthen workers' rights and workers' individual right to information, and we ask employers to report and to fix their pay gaps” (Appendix, p. 1). This quote interferes with the notion of Pay Transparency as a Directive to improve equal pay through various legislative measures. The abolishment of pay secrecy means that citizens in the EU are more likely to get transparency of e.g., pay levels in their company, organization, etc.

Based on this interpretation of the speeches during the plenary session, it is possible to conclude that the Pay Transparency Directive is interpreted as a historical piece of legislation. Both representatives from the European Parliament and the European Commission state that the Directive is a way of standing up for women’s financial and economic independence. Correspondingly, the Directive intends to eliminate the lack of transparency regarding pay levels in the EU (Appendix 1).

### **Preamble**

In this section, the preamble will be examined. When using the preamble following European legislation it is crucial to emphasize that it highlights the evaluation and intention of European legislation. Firstly, it is important to stress that the Pay Transparency Directive is adopted corresponding to the legislative procedure. This entails a reference to Art. 11 In the United Nations Convention of Elimination of All Forms of Discrimination against Women, Art. 2 and 3, Treaty on European Union, which states the right to equality between men and women in the EU, Art. 8 and 10 TFEU, that is supposed to eliminate discrimination and Art. 157 TFEU, on equal pay for work of equal value (Directive 2023/970, p. 1). Concerning the intention of the Pay Transparency Directive no. 11 in the preamble shows that:

“[...] Directive 2006/54/EC found that the application of the principle of equal pay is hindered by a lack of transparency in pay systems, a lack of legal certainty on the concept of work of equal value [...]” (Directive 2023/970, p. 6).

The quote is essential to understand the reasoning for the new Directive. The evaluation of Directive 2006/54/EC showed that there currently are issues with ensuring equal pay as stated, cf. Art. 157, TFEU. The evaluation touches on essential aspects of equal pay related to the lack of transparency which was preventing equal pay for equal work. In preamble no. 11, it is additionally highlighted that there existed uncertainty regarding the definition of “[...] equal work or equal value” (Directive 2023/970, p. 6). Concerning the gender pay gap in the EU, no. 15 in the preamble features concepts such as: “[...] ‘glass ceiling’ and the ‘sticky floor’, horizontal segregation, including the overrepresentation of women in low-paid service jobs, and unequal sharing of care responsibilities” (Directive 2023/970, p. 7). These concepts enlighten various obstacles to ensuring the principle of equal pay. Interestingly, no. 21 and 22 ensure that the Directive intends to include all transactions such as: “[...] bonuses, overtime compensation, travel facilities, housing and food allowances, compensation for attending training, payments in the case of dismissal, statutory sick pay, statutorily required compensation and occupational pensions” (Directive 2023/970, p. 10). This is a central element since it means that all economic/financial transactions are calculated as part of the salary. Thereby, it decreases the risk of unequal salaries in a company based on e.g., bonuses.

### **The Content in The Directive**

The previous sections introduced the political intention and the intended outcome of the Directive. Following these sections, the aim is now to introduce the Directive in itself. Firstly, cf. Art. 1, the Directive is based on the principle, cf. TFEU Art. 157. Further, it states that the Directive is specifically addressing pay transparency and reinforced enforcement mechanisms (Directive 2023/970, p. 37). Another important aspect is that the article establishes that the Pay Transparency Directive is a minimum Directive. This means that member states can implement more ambitious legislation on Pay Transparency. Though, the minimum standard is corresponding with the articles in the Directive. The Pay Transparency Directive, Art. 3, contains important definitions. Among the definitions is Art. 3, litra c: “‘gender pay gap’ means the difference in average pay levels between female and male workers of an employer expressed as a percentage of the average pay level of male workers” (Directive 2023/970, p. 38). The

definition is essential since it creates a frame for the understanding of the gender pay gap in this legal context.

Another important definition highlighted is Art. 3, *litra g* which concerns the definition of work of equal value. It is defined as: “work that is determined to be of equal value by the non-discriminatory and objective gender-neutral criteria referred to in Article 4” (Directive 2023/970, p. 39). This leads to Art. 4 in the Directive regarding equal work and work of equal value. No. 1 clarifies that: “Member States shall take the necessary measures to ensure that employers have pay structures ensuring equal pay for equal work or work of equal value” (Directive 2023/970, p. 42). Further, no. 2 clarifies that member states shall enforce necessary measures as stated in the Directive. Essentially, no. 4 conations that: “Pay structures shall be such as to enable the assessment of whether workers are in a comparable situation regarding the value of work based on objective gender-neutral criteria agreed with workers’ representatives where such representatives exist” (Directive 2023/970, p. 43). This creates a legal frame that equal work should be determined based on objectives. Thereby, the Directive enables a perception of creating the possibility of understanding pay structures based on e.g.: “[...] skills, effort, responsibility, and working conditions, and, if appropriate, any other factors which are relevant to the specific job or position” (Directive 2023/970, p. 43). This creates the possibility of e.g., female employees to compare their salary with male employees based on gender-neutral objectives. The Directive’s Art. 5, entails the possibility of pay transparency before employment which is a new objective in European legislation on equal pay. In connection, Art. 6, states criteria usable for determining wage levels (Directive 2023/970, p. 44). The right to information is stated in Art. 7, which allows workers to receive information (Directive 2023/970, p. 45). Further, Art. 8 touches upon the accessibility of information (Directive 2023/970, p. 47).

Essentially, Art. 9 is the legal foundation for the reporting on the pay gap between female and male workers. No. 1, 2, and 3 in the Directive entail the requirements for companies of various sizes. No. 3 establishes that: “Employers with 250 workers or more shall, by ... [*four years after the date of entry into force of this Directive*] and every year thereafter, provide the information set out in paragraph 1 relating to the previous calendar year” (Directive 2023/970, p. 48). This is the strictest legislation for companies which probably appears based on the huge sizes of the companies in this group. The big companies are obliged to provide information every year after

implementing the Directive. No. 4, shows the requirements for companies with between 150 and 249 employees: “[...] [*four years after the date of entry into force of this Directive*] and every three years thereafter, provide the information set out in paragraph 1 relating to the previous calendar year” (Directive 2023/970, p. 48). Therefore, these companies are only obliged to provide information every three years. Lastly, is the legislation for companies with between 100 and 149 employees. These companies shall: [...] “by ... [*eight years after the date of entry into force of this Directive*] and every three years thereafter, provide the information set out in paragraph 1 relating to the previous calendar year. (Directive 2023/970, p. 48). Thereby, this group of companies has eight years to implement the provision of information. Finally, no. 5 mentions the possibility for member states to implement national legislation for companies with less than 100 workers. This is a possibility to ensure transparency to ensure equal pay for smaller companies.

Art. 13 in the Directive (Directive 2023/970, p. 54) refers to the possibility of social dialogue about national practices. This is essential in a Nordic context since it is the way to implement it in these countries. Further, Art. 30 in the Directive defines that: “This Directive shall not affect in any way the right to negotiate, conclude and enforce collective agreements [...]” (Directive 2023/970, p. 68). Thereby, the Directive functions accordingly to the way of implementing the Directive in the Nordic countries. However, Art. 35, no. 2, determines that the Commission and the European Parliament are obliged to submit a report 10 years after the implementation of the Directive (Directive 2023/970, p. 72). Therefore, the real impact of the Directive will be clear after the two institutions submit the report on the Directive.

This theory section entails the theoretical frame for the thesis. The section contains a theory on the development of EU labour law, a theory on the EU labour market, and lastly, a theory on the Nordic labour market limited to Denmark, Sweden, and Finland. The intention is to create a common theoretical conception, which is the foundation for the analysis. Further, the theory is applicable as a frame when combining the sociological and legal aspects of the thesis.

### **Development of EU Labour Law**

“Back to the Future of EU Labour Law” (Doherty, 2014) enlightens how the legal paper examines different aspects of EU labour law and the specific phenomenon and legal processes in this area of law. The review describes three elements: the relationship between labour law, the labour market and social competition, the tie between labour law and human dignity, and

the relationship between labour law, market law, and competition law. Doherty (2014, p. 465) underlines the notion that lawyers and other actors in the field are highly protective of this legal area which can be related to social dialogue and collective bargaining. Further, labour law is influenced by a combination of soft law and hard law (Doherty, 2014, p. 469). The description is that: “[...] labour law can only provide a marginal correction to the worst excesses of (labour) market liberalization; it cannot, without more, modify the ‘bases and principles of the market’ s” (Doherty, 2014, p. 469). This can to some extent explain the (past) lack of a link between the social and the economic aspects of the EU. Therefore, the reviews enlighten that the idea of EU labour law is to secure “[...] human dignity of the worker” (2014, p. 469) However, the reviews highlight that labour movements struggle to regulate the market, and therefore, the idea of labour rights as fundamental rights occur (Doherty, 2014, p. 470). The three possibilities for doing so consist of adopting it in international law, promoting it as a fundamental right, and a normative approach (Doherty, 2014, p. 470). Another challenge to incorporating labour law as a fundamental right is the shift in the EU towards more neoliberal legislation (Doherty, 2014, p. 472). This was clear with the Viking and Laval rulings which later became an argument for the European social pillar.

“The Rise and Fall of EU Labour Law” (Giubboni, 2018, p. 7) explores the development of labour law throughout Europe. Giubboni’s (2018, p. 7) perspective is specifically centered around the development of labour law in the context of the different crises that have shaped the field of labour law in European countries. Overall, I will focus on two events highly influential in the field of labour law. This entails the financial crisis and the development of the Lisbon Treaty. The financial crises influenced labour law in countries such as Greece, Portugal, Spain, and Italy (Giubboni, 2018, p. 7-8). Interestingly, Gibboni highlights the division between ablative reformism and countries that have gone through structural reforms. The ablative reformism is characterized by the fact that it: “[...] does not produce any innovation in the paradigm, either scientific or normative” (Giubboni, 2018, p. 8). This means that those countries who are willing to change their labour market does not necessarily create new dimensions in either innovation or in the scientific or normative interpretation of their systematic changes. Conversely, structural reformist countries:

“[...] simply restore, in most the cases, quite old models, dismantling 'super- -protective' systems considered incompatible with the needs of the new flexible globalized markets and thus

reinstating the employer's antique managerial prerogatives and full property rights” (Giubboni, 2018, p. 8).

The two divisions between labour markets and thereby applications of labour law significantly differ in the EU member states.

Another essential crisis appeared because of the internal market in the EU. The Lisbon Treaty created both: “[...] the launch of the monetary union, on the one hand, and the eastern enlargement [...]” (Giubboni, 2018, p. 12). Especially the monetary union created a situation where the harmonization was centered around Directives and thereby minimum standards (Giubboni, 2018, p. 12).

In “A new source for (EU) labour law” Schmitt and Rocca (2022, p. 214) examine how economic governance labour law systems in the EU member states. Schmitt and Rocca (2022) argue that economic governance and the Euro crisis indicate major changes in European integration. It gets highlighted with the statement that: “[...] the Eurozone crisis has already highlighted how the creation of the European Monetary Union has made it so that labour market policy, including interventions on labour regulations, are left as the only adjustment variable to cope with economic shocks, due to the reduction of Member States’ fiscal and monetary ‘problem-solving capacity’” (Schmitt & Rocca 2022, p. 216). The quote shows how labour law in the EU has been directly connected to economic growth and governance centered around economic governance. This aspect was further expanded during COVID-19 with emergency measures influencing labour law (Schmitt & Rocca 2022, p. 215). During this period the NEG was implemented, though, it changed the basis for labour law in the EU. Schmitt and Rocca argue that: “From the specific perspective of the potential role of the NEG to act as an enforcement mechanism for EU labour law, it suggests that such a role would ultimately lead to an uneven enforcement of EU standards” (Schmitt & Rocca 2022, p. 223). Thereby, it can be concluded that measures during the time of crisis influence labour law to the extent that it adapts uneven standards in the member states.

## EU Labour Markets

In this paragraph, will start with the EU labour markets and afterward, the characteristics of Nordic labour markets will be outlined.

Each European country is presumed to develop its own labour markets (Knudsen and Lind, 2012) because of the country's historical development. This development includes among other things e.g., the welfare system, taxation, legislation, and the interplay between the labour movement (unions), employers, politicians, etc. However, European countries do not exist as isolated islands, and consequently, EU labour markets will share some features. Nevertheless, methodologically it is very difficult to compare the European countries' labour markets since each country has developed its terminology expressed in the local language. Comparative analyses of EU labour markets based on surveys can consequently result in false conclusions (Eurofound, 2019). One of the major challenges is the collective agreements since coverage, content, and organization vary widely between European member states. Collective agreements and bargaining are here defined as “[...] the process of negotiation between unions and employers regarding the terms and conditions of employment of employees and about the rights and responsibilities of trade unions. It is a process of rulemaking, leading to joint regulation” (Eurofound, 2019, p. 3). Collective agreements can be organized at a company level, sectoral level, or as a combination of the two (Eurofound, 2019, p. 4). However, even this description is a simplification since some countries combine the mentioned methods with agreements based on occupation, agreements across sectors, and territorial agreements. Besides, some countries even have supplementary agreements which can be equal to and/or different from comparable agreements in the same country. Therefore, Eurofound (2019) changed the methodology and now combines surveys and qualitative research interviews. Despite the mentioned methodological challenges, Eurofound (2019) is consequently regarded as more reliable than Eurofound (2017).

Knudsen and Lind (2012, p. 27) state that each country develops its labour market based on the configuration of three known forms of labour markets (market-based, legislation, and collective bargaining). The regulated labour market is significantly different from the liberal or unregulated market economy which is not present in the EU member states but can be found in the UK and USA (Gooderham et al 2015). Regulation (e.g., of the minimum wage) of the labour market can either take the shape of collective bargaining or legislation. This distinction is applied by Eurofound (2019, p. 3) while determining the two common European systems for the regulation of national minimum wages. One system is based on collective agreements and another system consists of a minimum wage set by law. However, as noted by Eurofound (2019) is this division another simplification since some European countries combine the two systems

e.g., when they by law extend the content and/or coverage of collective bargaining (on minimum wage) to areas without agreements. One example is e.g., SMEs without bargaining between representatives from employers and employees while another example could be sectors or areas not covered by negotiations and agreements.

According to Eurofound (2019, p. 3), 2/3 of all European workers employed in a company with more than 10 employees are included in some kind or other of collective agreement. However, the existence of e.g., a collective wage agreement does not necessarily mean that the agreements are regularly adjusted or updated. Besides, a wage agreement on e.g., the minimum wage does not necessarily mean that all workers receive an equivalent wage. Some may receive overpay and, probably more likely, others may receive a wage below the wage floor established by the agreement (Eurofound, 2019, p. 7). While comparing larger European companies (above 250 employed) with European SMEs the latter is more likely not to have collective agreements (Eurofound, 2019, p. 7). This conclusion is based on Eurofound (2019) findings stating that 44-45% of European SMEs are not covered by collective agreements while the comparable figure for larger companies is 28%. Larger companies are 37% more often covered by company- or sector-based collective agreements while only 16-20 % of the European SMEs are covered by comparable agreements. It is also important to note the difference between European sectors in terms of the coverage of collective agreements. One extreme is e.g., commerce with a coverage of 43% compared to a coverage of 57% in the construction sector.

Eurofound (2019, p. 5) divides European labour markets into 4 categories based on the way collective agreements are produced in companies with more than 10 employees. The first category has very low coverage and consists of countries (Estonia, Lithuania, Poland, Hungary, Malta, Czechia, and Romania) with decentralized company-based agreements. The second category consists of countries (Slovakia, Latvia, Bulgaria, Cyprus, Ireland, Croatia, Greece, and Luxemburg) combining company- and sector-based agreements. It is important to note, that the interaction between the company- and sectoral level is only partial and is consequently not a strong linkage. The coverage of the agreements varies between countries (Slovakia, Latvia, and Bulgaria) with low coverage (from 14%) and a group of countries (e.g., Greece and Luxemburg) with middle coverage. The third category consists of countries (Germany, Portugal, Netherlands, Belgium, Finland, Austria, Spain, and Italy) with sector or higher-level agreements. Here the coverage varies from the middle (Germany 45%) to high (Italy 98%). The

fourth and final category consists of countries (Denmark, Slovenia, Sweden, and France) with articulated bargaining. The mentioned final category consists of countries with negotiations based on the interaction between companies and sector level. Here the bargaining coverage is very high from 70% in Denmark to 94% in France. Since the focus here is the Nordic labour markets it is worth mentioning the difference between Finland located in group 3 (combining company and sectoral level agreements) and on the other side Denmark, Sweden (articulated bargaining). This underlines our arguments about diversity between labour markets - even some diversity within the Nordic EU member states.

### **The Nordic Labour Markets**

One of the differences between the Nordic EU labour markets is that collective bargaining in Finland differs from Denmark and Sweden. In Finland, collective bargaining is organized mainly as sector- or higher-level bargaining, while both Sweden and Denmark rely on an interplay between company- and sector-level bargaining (Eurofound, 2019, p. 5).

Nevertheless, there are (cf. Arnholtz, 2022) several similarities between the Nordic EU member states' labour market in terms of regulation, strong unions, and a high degree of equality. Common for Denmark (Gooderham et al 2015, Borchorst et al. 2012), Sweden (Jansson and Ottosson, 2021, Bengtsson and Karlsson, 2017), and Finland (IMF, p. 23-24, 2015, IMF, p. 18, 2023) is the existence of collective bargaining between employers and employee representatives. This requires a high degree of organization from both employers and employees. According to Knudsen and Lind (2012), the high degree of organization (in Denmark) is rather a result of how the unemployment fund was constructed. Since this was produced in collaboration with changing (often Social democratic) governments one could probably also claim that the collaboration in the labour movement (between unions and political parties) enables the union to influence the lives of working people. The Nordic labour market is mainly regulated by collective bargaining and to a minor degree by legislation.

However, the regulated labour market can furthermore be divided between regulation based on collective bargaining in e.g., the Nordic countries and legislation in e.g., France and Spain (Gooderham et al 2015). Collective bargaining tends to increase equality while market-based (unregulated) labour markets favour employers both because of unequal power relations and since employees with individual agreements seldom benefit from supply and demand (Knudsen

and Lind, 2012). However, Nordic labour markets based on collective bargaining are not completely free of legislation. The so-called flexicurity system in Denmark is e.g., based on an unemployment fund paid partly by actors in the labour market and partly by the state. So, the proper way of describing the Nordic model is collective bargaining backed by supportive legislation.

## **Summary**

The Nordic EU member states have developed similar labour markets because of their historical development. This development includes a regulated labour market mainly based on collective agreements, a high degree of organization, a welfare system, taxation systems, etc. Despite similarities, one of the differences between the Nordic EU member states is that collective bargaining in Finland is organized mainly as sector- or higher-level bargaining, while both Sweden and Denmark rely on an interplay between company- and sector-level bargaining. However, the Nordic labour markets are rightly described as based on collective bargaining but backed by supportive legislation e.g., the Work Environment Act, unemployment law, labour laws, etc.

## **The Gender Pay Gap**

The following section aims to understand the gender pay gap in the three Nordic EU member states. Afterwards, follows a section analyzing the different approaches to the gender pay gap presented in the three previous sections. The analysis aims at the approaches to the gender pay gap required for understanding the EU Directive in a Nordic labour market context.

## **The Gender Pay Gap in Denmark**

Larsen, Verner, and Mikkelsen (2020, p. 3) explain the gender pay gap as the result of women receiving a lower hourly wage. Research from SFI/Vive distinguishes between explained and unexplained reasons for the gender pay gap. The explained reasons include differences in e.g., qualifications, job experiences, and industry-specific reasons (Verner and Mikkelsen, 2023). The unexplained reasons, among other things, reflect a knowledge gap since the gender pay gap contains under-researched areas. Larsen, Verner, and Mikkelsen (2020, p. 6) state that discrimination can be found in both explained and unexplained reasons for the gender pay gap.

Research has concentrated on limiting the unexplained reasons. Larsen, Verner, and Mikkelsen (2020) claim that their research explains 85% of the gender pay gap which leaves 15% unexplained. However, the question raised by e.g., Sandberg (2018) is whether the distinction between explained and unexplained reasons implicitly normalizes and thereby legalizes a systematic underpayment of female labour. An alternative approach is introduced by Sørensen et al. (2020), and Sørensen et al. (2022) pointing at the re-evaluation of the Civil Servant Act in 1969 as an event producing a significant devaluation of wages in female-dominated sectors. This approach questions the traditional Vive research, and the mainstream understanding of the gender pay gap and how it was installed in Denmark.

Nevertheless, one explanation distinguishes between three main explanations of the gender pay gap between men and women (Pedersen, and Deding 2000, p. 7-8).

- Human capital: Refer to differences in educational qualifications, job experience, and absence (maternity leave, leave, unemployment, illness, etc.).
- Industries: Refer to the difference between wage levels in the private (targeting profit) and public sectors (health care, nurturance, education, etc.).
- Discrimination: e.g., a consequence of a presumption of lower production among females, the Huey, Dewey, Louie effect (men tend to recruit men), low dynamic (women have a lower tendency of changing positions – both geography and professionally).

Pedersen and Deding (2000, p. 16) state that qualifications and competencies (experiences) affect the individual employee's wage while leave and absence (e.g., maternity leave, unemployment, illness, etc.) tend to affect the group of employees (women). Human capital is, cf. Sandberg (2018, p. 38), is a problematic concept since it presupposes those wages as determined by market forces and that it reflect productivity and the investment of individuals in their “human capital”. Furthermore, Sandberg (2018, p. 41) convincingly shows that gender segregation in Nordic countries is socially constructed and far more complex than recognized by the macroeconomic concept of human capital. Sandberg (2021, p. 980) uses a Finnish wage cartel to exemplify the social construction of wages in the public sector. However, the human capital and comparable approaches to the gender pay gap can, furthermore, be considered

problematic since they repeat and thereby legitimize the socially constructed valuation of sectors, occupations, qualifications, job types, etc.

Larsen, and Larsen (2018, p. 7) conclude that, from 2012 to 2016, the hourly gross wage difference between men and women is 10-15% (depending on methodology). The gender pay gap in the private sector is larger than the gap in the public sector (Verner and Mikkelsen, 2023, p. 24). Verner and Mikkelsen (2023) conclude that the gender pay gap in the period from 1997 to 2019 decreased for a period but then seemed to stagnate. The gender pay gap remains at 14.4% in 2017 (Larsen, Verner, and Mikkelsen, 2020) but Pedersen, and Deding (2000) find it increased to 15.5%. Pedersen, and Deding (2000), Verner, and Mikkelsen (2023) state that the difference increases with the wage level. The gender pay gap is at its highest (17-25%) among the highest-paid and lowest (4%) among low-paid (cf. Pedersen and Deding, 2000). Verner and Mikkelsen (2023, p. 23) conclude that men have the highest average wages because the highest wages of men are higher than the highest wages of women. This is interesting since it means that decreasing the male leader's wages will automatically decrease the gender pay gap. Further, the hourly gross wage difference is highest in the private sector (12,3%) and is relatively lower mobility on the job market among women, possibly affecting women's assembled wage level (Pedersen and Deding (2000), Verner and Mikkelsen (2023)).

According to research (Larsen, and Larsen, 2018, Larsen, Verner, and Mikkelsen, 2020, Verner, and Mikkelsen, 2023, Pedersen and Deding, 2000) is the main single reason for the gender pay gap the difference in men's and women's characteristics. The highly gender-divided labour market means that the more women employed in a sector the more likely is it that employees receive a lower gross wage. It is important to notice the significant difference between the private and public sectors (Larsen, Verner, and Mikkelsen, 2020). Pedersen and Deding (2000) notice that the difference in gross wage between men and women in the public sector is explained by educational level, position in the hierarchy, and (to a minor extent) difference in the absence. Larsen, Verner, and Mikkelsen (2020) state that the position in the hierarchy previously figured among the unexplained reasons for the difference in gross wage pay.

Larsen and Larsen (2018) and Larsen, Verner, and Mikkelsen (2020) conclude that the increase in women's level of education has helped reduce the gender pay gap. The gross wage difference would have been even higher without the continually increasing level of women's education.

Larsen, Verner, and Mikkelsen (2020) also conclude that job experience is an important reason for the difference in gross wages. Men have in general, perhaps because of less maternity leave, and more job experiences. Women have a greater extent of part-time jobs, absences, etc. which may influence bonuses, promotions, wage increases, etc. The gross wage level is affected by the fact that women (43%) tend to work part-time more than men (25%). Pedersen and Deding (2000) conclude that absence will not affect the wage of the individual employee but will affect whole the group of employees (here women) on a collective level.

Larsen and Larsen (2018) conclude that the remaining part (4-7%) of the explanation for the difference in gross wage pay is either a result of unexplained reasons or caused by men and women with the same characteristics being paid differently.

Larsen and Larsen (2018) conclude that the gross wage gap is falling (5%) because of women gaining higher positions and increasing their average educational level. However, Larsen, Verner, and Mikkelsen (2020, p. 8) nevertheless conclude that women gain less from a higher educational level. This is probably a consequence of differences between male- and female-dominated sectors.

## The Gender Pay Gap in Sweden

Stanfors (2018) shows that gender inequality and the gender pay gap are historical facts, at least since the 1970s, and that gender inequality was larger in the larger cities and minor in the small cities.

The Swedish National Mediation Office (Medlingsinstitutet, 2022) concluded that the average gender pay gap in 2022 was 9.9% which means that women's wage is 9.9% less than men's wages. It is important to notice that the figures have remained unchanged because a decrease in some sectors has been equalized by an increase in others. However, when including women and men working in different professions, sectors, different educational levels, work hours, and ages the unexplained pay gap ends at 4.7%. After including the just mentioned differences the largest unexplained gender pay gap exists among civil servants in the public sector (7.2%) and the lowest among civil servants in local authorities (Medlingsinstitutet 2022). The Swedish regions' have an unexplained gender pay gap of 2.9%. While comparing the private and public

sectors the blue-coloured workers in the private sector have an unexplained gender pay gap of 4.9% against 3.2% in the public sector (Medlingsinstitutet 2022).

Boschini (2017), Albrecht et al (2018, p. 3), and The Swedish Gender Equality Agency (Jämställdhetsmyndigheten 2023, p. 26) state that the gender pay gap increases with an increase in wages and consequently reaches maximum among the best paid. Interestingly, men and women in the same company over the years have highly different wage development (Albrecht et al. 2018, p. 3). Albrecht et al (2018) conclude that parenthood explains the main part of the gender pay gap and that the differences relate to the birth of the first child. Wikström (2023, p. 6) draws a comparable conclusion since the gender pay gap is at its lowest during the first years after graduation but then increases because of maternity leave, parental leave, and part-time jobs. Jämställdhetsmyndigheten (2023a) states that parental leave is probably the most discussed issue in the Swedish gender equality debate. This is probably a consequence of leave being a vehicle for producing the gender pay gap.

Among the best paid one finds more men than women. Women are paid less in female-dominated professions than men in male-dominated professions (Boschini, 2017). Nevertheless, women in male-dominated sectors are also paid less than their male colleagues. The continual increase in women's average educational level, and the fact that female leaders are also lower-paid leads Boschini (2017, p. 4) to conclude that Swedish women must be victims of discrimination. However, the traditional perception of discrimination cannot fully explain the gender pay gap. Boschini (2017) states that among the known reasons for the pay gap, are educational backgrounds, varying working hours, differences in parental leave, differences between sectors, and differences in occupations.

The Employers' Association (arbetsgivarverket, 2023) uses data from the Swedish National Mediation Office (Medlingsinstitutet) and concludes that the gender pay gap in the public sector was 4.0% in 2022. Emtinger & Stråth (2020) and The Employers' Association (arbetsgivarverket, 2023) state that for a longer period, the gender pay gap in the state has slightly decreased (0.4%). The decrease can be questioned because of methodological problems, e.g., women's part-time jobs are calculated into full-time positions.

Sweden has a pay gap between the private and public sectors. Consequently, women working in the state are paid less than colleagues with comparable occupations in the private sector.

When comparing the public and private sectors, the Swedish National Mediation Office (Medlingsinstitutet, 2021) concludes that the gender pay gap decreases among the white worker segment in both private sectors. However, they identify an increase in the pay gap during 2020-2021 among the blue colour segments.

Further, the Swedish National Mediation Office (Medlingsinstitutet 2022) identifies the unexplained gender gap to be 4.7% when using standard weighing, and available explanations. For comparison, Wikström (2023) concludes that the gender pay gap in gross wage is 4.5% among engineers. According to Boschini (2017, p. 19-26), part of the unexplained pay gap is a result of discrimination against women caused by preferential, statically, and implied discrimination. The categories seem slightly inseparable or interconnected, but Boschini (2017, p. 19) uses the level of consciousness to divide the three categories. Preferential discrimination is conscious, implied discrimination is unconscious, and statistical discrimination is located between the two other categories. This offers an interval between e.g., employers who consciously avoid employing women and employers who unconsciously rely on an assumed statistical difference between men and women. Preferential discrimination is a conscious choice and a matter of employers preferring to employ men. During recruitment, some employers may even offer a young and less experienced man better pay or be ready to accept a less productive applicant if they can ensure to recruit a male applicant. Statistical discrimination is based on employers lacking information about a specific male and female applicant and consequently tends to rely on a presumed generalization. It can be assumptions about parental leave, willingness to accept full- or overtime work, strength, or workability. An employer searching for a full-time employee may consequently prefer hiring a man since men are assumed to work more often full-time. Implied discrimination is located between the two others, and it refers to employers influenced by the common norms and typologies in society. Consequently, while employers appoint leaders, they can unconsciously tend to reproduce the assumption that men are more often leaders. Furthermore, the internalization of these and comparable expectations may also play an important role for women. Wikström (2023, p. 16) shows that female students in engineering have significantly lower expectations toward their graduate wage. This can lead to the gender pay gap at the beginning of the career. Wikström (2023) argues that this is not a matter of female students in engineering downgrading their competencies and knowledge. They argue that female students in engineering lower their expectations because of awareness about the gender pay gap among engineers. This could point to a certain female (engineer) habitus

(Bourdieu 2002, p. 118) reflecting the internalization of the social seen from a specific position (as a female and as a female studying engineering). The following increase in the gender pay gap can be explained by maternity leave, parental leave, and part-time employment.

### **The gender pay gap in Sweden is explained by a few factors**

The labour market is according to The Swedish Gender Equality Agency (Jämställdhetsmyndigheten 2023) highly segregated. Female-dominated professions have a lower average wage than comparable male-dominated professions (Jämställdhetsmyndigheten 2023, p. 24). When trying to find explanations for the pay gap, one needs to include the fact that 60% of the employed in the private sector are men, and 73% of the employed in local authorities are women. Wikström (2023, p. 6) identifies a larger gender pay gap among engineers employed in the public sector. The Swedish Gender Equality Agency (Jämställdhetsmyndigheten 2023, p. 6) concludes that men are underrepresented in welfare professions and that this is a consequence of lower wages, career directions, and organizational conditions. This points to a gender-segregated labour market (Medlingsinstitutet 2022). While wages in the private sector may increase when a company gains a better market position, wages in the public sector are more stable. The Swedish Gender Equality Agency (Jämställdhetsmyndigheten 2023, p. 7) directly states that female-dominated professions have difficulty getting substantial raises even in times of high demands and low supply of labour. Further, there is a part-time culture within female-dominated professions, making it highly difficult for male and female employees to find full-time positions (Jämställdhetsmyndigheten 2023, p. 27, Jämställdhetsmyndigheten 2023a, p. 27).

The public sector mainly offers welfare (childcare, education, health care, eldercare, etc.) financed through taxes, and consequently, wages can be regarded as a political decision and less a matter of negotiations between the involved actors. The Swedish Gender Equality Agency (Jämställdhetsmyndigheten) (2023, p. 6) describes varying values and statuses between male- and female-dominated professions. Medlingsinstitutet (2022, p. 25) further raises the question of discrimination based on values and describes how welfare workers are paid significantly less. The Swedish Gender Equality Agency (Jämställdhetsmyndigheten 2023, p.7) describes major differences between male- and female-dominated professions even within the same organizations.

Interestingly, Albrecht et al (2018, p. 3) find that men and women have an identical tendency to change positions, but women are less able to increase their wages because of job changes.

- Fewer female leaders. More men than women take leading positions (Medlingsinstitutet 2022, p. 22, SCB 2022, p. 128). The private sector has significantly more male leaders and the public sector has comparable significantly more female leaders (SCB 2022, p. 128). Sveriges Ingenjörer (2023, p. 9) states that more women than men are front-line leaders and that more men than women are top managers. It is also important to notice that organizations based on female-dominated professions tend to have low(er) hierarchies.
- Working hours. Women have a lower average salary because more women work part-time jobs. This affects women twice since part-time jobs offer lower payments per unit of time (Arbetsgivarverket 2023, Albrecht et al. 2018, and Jämställdhetsmyndigheten 2023).
- Gender-segregated labour market. This is a consequence of a combination of a division between male and female-dominated professions and a significant wage difference between the professions (Medlingsinstitutet 2022, Jämställdhetsmyndigheten 2023).
- The level of work. This does not refer to leaders but to different levels of work within the same work area (Medlingsinstitutet 2022). Since men more often work at a higher strategic level than women, they gain a higher average salary.
- Education. On average, men tend to have an education leading to higher salaries (Arbetsgivarverket 2023, Medlingsinstitutet 2022).

It is furthermore important to notice, that the Swedish Work Environment agency (Arbetsmiljöverket) points to a significant difference between work conditions in male- and female-dominated professions (Jämställdhetsmyndigheten 2023, p. 27). According to Jämställdhetsmyndigheten (2023, p. 28), such differences can be explained by the significantly higher sick leave in female-dominated professions, which somehow affects the wage.

## The Gender Pay Gap in Finland

As already mentioned, several times, methodological challenges relate to precisely defining the Finnish gender pay gap, and Borgman (2020) mentions e.g., that the Finnish wage system favours full-time employees. More Finnish women are working part-time, and this means that

the measured gender pay gap is affected by the decision about in- or excluding part-time employees in the calculations. Borgman (2020) shows that the gender pay gap is 24,7% when measured by the occupational pension system, 20,2% when using median wages, and 16,6% when only based on full-time employees. What is important here is, that Finland has a gender pay gap independent of the applied quantitative method.

Finland has had a tradition of being among the latest of the five Nordic countries to adopt the milestone for gender equality. This goes e.g., women's right to commerce, to obtain academic degrees, and ratification of the ILO's convention on non-discrimination (Nordic information on Gender 2019b, p. 14). This could indicate a more traditional culture where advocates of female rights must push harder to gain gender equality (Sihto and Mustosmäki 2021, p. 110). Sandberg (2021, p. 976 and p. 978) argues that the existing Finnish wage system is simply unfair and discriminating.

The Finnish gender pay gap is larger than the comparable gap in other Nordic countries (Nordic Statistics, 2022). It is a historical result of a national recommendation on wages from 1945 (Saari, Kantola, and Sandberg 2021, p. 271, Nordic Information on Gender 2019a, p 13). The 1954 national recommendation covered the entire labour market and suggested lower wages for women. The essential challenge of the Finnish gender pay gap is consequently the continued devaluation of women's work (Sandberg 2018, p. 38). Saari, Kantola, and Sandberg (2021, p. 272) argue that the modern Finnish collective bargaining system is constructed in a way that maintains the established gendered hierarchies of the labour market. Sandberg (2021) shows convincingly the existence of patriarchal wage politics which can only be changed by contesting the justification of e.g., wage formation, wage levels, and the gender pay gap and offering alternative explanations for the wage practices. Borgman (2020) states that when measured by the average hourly wage the Finnish gender pay gap is 15,6%. This is despite Finnish law demanding employers with 30 employees every second year to produce a gender equality plan and produce a paid survey to reveal the possible gender pay gap (Nordic Information on Gender 2019a, p. 2). Wessman (2022, 39) produces a distinction between formal and actual gender equality to show the limited if any, effect of the Finnish equality plans on gender inequality in Finland.

The Finnish welfare state relies on inexpensive female labour (Saari, Kantola, and Sandberg 2021, p. 270, Sandberg 2018, p. 36, Sandberg, Elomäki, Mustosmäki, and Kantola 2022, p. 126) and therefore is the gender pay gap, not a surprise. Finnish collective bargaining has apparently maintained a gendered hierarchy between male- and female-dominated sectors and consequently legitimated gender-based wage disparities (Sandberg, Elomäki, Mustosmäki, and Kantola 2022, p. 127). The gender pay gap increases with wages as a direct consequence of men more often being leaders and thereby having a higher salary. Parenthood can be one of the explanations for a significantly lower share of Finnish leaders being women. When it comes to leaders (employees with managerial duties) more men (60%) than women (40%) are leaders (Statistics Finland, 2021, p.49). The opposite is the case when it comes to the share of women (75%) being part of the lower salaried staff (Statistics Finland, 2021) and when it comes to temporary employment (17.4% women versus 9% men) (Statistics Finland 2021, p. 62). The share of women with temporary employment decreases with age but it is nevertheless significantly larger for all age groups (Statistics Finland 2021, p. 65). The gender pay gap is also visible in pensions. Men have a significantly larger share of the highest pensions and women have a significantly larger share of the lower-level pensions (Statistics Finland 2021, p. 98).

Reasons for the gender pay gap in Finland are traditionally divided into explained and unexplained reasons Borgman (2020). This commonly used model to outline the gender pay gap is as previously argued problematic (cf. Sandberg 2018, Wessman 2022, p. 39). However, Borgman (2020) states that the type of employment, the job complexity, occupation, and supplement salary affect the gender pay gap. This is also named the explained reasons for the gender pay gap. Among the explained reasons, we find that the Finnish labour market is highly gender-segregated (Sandberg, Elomäki, Mustosmäki, and Kantola 2022, p. 126). More women than men work e.g., in health care, education, and public administration while more men than women work e.g., in construction and transport (Statistics Finland 2021, p. 57). This is also seen in the share of women in the public sector (72% versus 28% of men) and the share of men in the private sector (60% versus 40% of women) (Statistics Finland, 2021, p.49). Sandberg, Elomäki, Mustosmäki, and Kantola (2022, p. 126) argue that the state previously played a significant role in creating positions for women and thereby became a vehicle for gender equality. Kylä-Laaso, Sandberg, and Hokkanen (2021, p. 1508) argue that the tripartite Finnish labour market reform, the so-called competitiveness pact, signed in June 2016 introduced

among other things a serious cutback in wages in the public sector. Sandberg, Elomäki, Mustosmäki, and Kantola (2022, p.131) call ‘the competitiveness pact’ a neoliberal reform targeting the public sector to cut wages and lowering labour conditions. Consequently, the reform e.g., adding 24 unpaid working hours, reducing the holiday pay by 30%, and transferring 1,2% of the social insurance costs to the employees in the female-dominated public sector, and the reform thereby increased the gender pay gap and the Finish gender equality (Kylä-Laaso, Sandberg, and Hokkanen 2021, p. 1512). The right-wing government, supported by the employers, furthermore, tried to exchange the tradition of central-based collective agreements with a law-regulated labour market. However, this failed, but central bargaining was displaced by more local, sectoral bargaining (Sandberg, Elomäki, Mustosmäki, and Kantola 2022, p. 124). However, Finnish sectoral bargaining dominated, like the Swedish and Danish systems, by the export sector is combined with a strong underlying employer coordination (Sandberg, Elomäki, Mustosmäki, and Kantola, 2022, p. 125).

Women’s pay is also affected by parenthood and especially by parental, parenthood leave, etc. Sandberg, Elomäki, Mustosmäki, and Kantola (2022, p. 127) state that the details of parental leave are negotiated during sectoral collective bargaining. Statistics Finland (2021, p. 26) shows that mothers receive a lower average parenthood day allowance (64.93€) for more days (11.8 Mio. days) than fathers (82.96€ for 1.4 Mio. days). Sandberg, Elomäki, Mustosmäki, and Kantola (2022, p. 129) state that during collective bargaining the negotiations of quotas for parental leave for fathers were rejected by employers complaining about extra costs. The gender pay gap is significantly larger among parents than among non-parents (Borgman 2020, p. 9). Furthermore, the wages of Finnish women are significantly and long-time affected by parenthood (Borgman, 2020, p. 10).

Finland’s equality suffers from uneven distribution of care (Kylä-Laaso, Sandberg, and Hokkanen, 2021, p.1509). Finnish Women conduct a significantly larger share of domestic work in households with children (Sihto and Mustosmäki, 2021, p. 110, Statistics Finland, 2021, p. 176). One indication of how women are affected by having children is that significantly more women (61%) than men (39%) work part-time (Statistics Finland, 2021, p. 49). Women’s wages are also indirectly affected by their larger responsibility for raising the children making them less able to accept challenging work tasks. These disadvantages are accelerated by employers consciously or unconsciously acting in correspondence with the traditional

understanding of women. This is not only affecting mothers but lowering the wages of all Finnish women (Borgman, 2020). A possible setback for the reduction of the Finnish gender pay gap is the family policy offering one of the parents the opportunity to stay home with the child until it reaches 3 years (Sihto and Mustosmäki, 2021, Nordic Information on Gender, 2019b, p. 20). Compared with Danish, Swedish, Norwegian, and Icelandic are fewer Finnish children between 1-2 years and between 3-5 years enrolled in child services (Nordic Information on Gender 2019b, p. 21). Statistics Finland (2021, p. 25) show that 62,9% of children under 3 years are in early childhood education while 54,1% of the children over 3 years are in Municipal daycare. 90% of Finnish families use the opportunity of staying home with the child and in 97% of cases, is it the women who stay back home (Borgman, 2020, p. 12). Nevertheless, *Jämställdhetens ekonomi*. (2019, p. 16) indicates that Finnish women with a raising age turn to full-time employment.

Discrimination against women is difficult to measure with quantitative methods but it can nevertheless be one of the unexplained reasons for the gender pay gap. Statistics Finland (2021, p. 75) clearly shows that women are the main victims of discrimination and unequal treatment.

## Summary

The Nordic welfare states have been recognized for creating positions for women and the states have consequently been regarded as a vehicle for gender equality. Feminist researchers question this argument and claim that the states have simply relied on underpaying e.g., care, education, and health workers. All three Nordic EU member states have a gender pay gap and gender equality plans have shown unable to close this the gap. The Finnish gender pay gap is significantly larger than the Swedish and Danish. Reforms, and especially initiatives to increase productivity, in the public sector, have a tendency of increasing the pay gap and decreasing the quality of the work environment.

Among the explained reasons for the pay gap is the horizontal and vertical segregation of the Nordic labour markets. This includes e.g. education, occupation, experience, Private/public sector, and job complexity (explained as different levels of work within the same work area), etc. Vertical segregation points to more men than women being leaders, and this results in higher wages.

Other reasons for the pay gap are varying working hours (more women being part-timers), parenthood, and absence (maternity leave, leave, unemployment, illness, etc.).

Unexplained reasons, among other things, reflect a knowledge gap since the gender pay gap contains under-researched areas.

### **Discrimination**

Among the examples of discrimination is a presumed lower production among women, the Huey, Dewey, Louie effect (men tend to recruit men) and low dynamic (a lower tendency of changing positions – both geography and professionally). Discrimination based on values refers to e.g., welfare workers are paid significantly less. Furthermore, the wage system is considered a social construction (resulting in a devaluation of female work and wages). The collective bargaining system is perceived by feminist researchers as maintaining the gendered hierarchies of the labour market. Discrimination can be explained because of preferential, statically, and implied discrimination. Finally, women are the main providers of unpaid care and domestic work which affects their ability to increase the workload on the job, their flexibility and to increase wages through e.g., bonuses.

### **Rule of thumb**

The gender pay gap is larger in the private sector. The pay gap increases with the wage level (lowest among the low-paid). The more women in a sector the more likely a lower gross wage. Women get relatively lower economic outcomes from education. Organizations based on female-dominated professions tend to have low(er) hierarchies. More women have temporary employment (Finland). The gender pay gap is larger among parents than non-parents. Motherhood is lowering the wages of both mothers and non-mothers.

### **Reasons for the decrease in the gender pay gap**

Among the reasons for the recent decrease in the pay gap is the increase in women's level of education. Besides, women are slowly gaining slightly higher positions.

## **National differences**

Finnish research indicates a tendency for poorer work conditions in female-dominated organizations which is outlined as an explanation of the higher sick leave which somehow affects the wage.

Finland has a wage system favouring full-time employees.

Finland might be more conservative since they are among the latest of the five Nordic countries to adopt the milestone for gender equality.

Finland offers families the opportunity for parents (mainly women) to stay home with the child until it reaches 3 years. Consequently, fewer Finnish children between 1-2 years and between 3-5 years are enrolled in child services.

## **Theory**

This section will analyze the different approaches to the gender pay gap to produce a model for evaluating the EU Pay Transparency Directive in a Nordic context. Gender inequality problems, in this thesis the gender pay gap, depend on how one defines the problem (Bacchi, 1999, Saari 2013). Consequently, understanding and closing the gender pay gap deeply depends on how unequal pay is outlined and how the gender pay gap is defined. An illustration of this is the divergence between gender mainstreaming (Kantola, 2010, p. 127) perceived as a tool for ensuring that gender considerations are included in the legislation processes versus considering the gender pay gap because of a patriarchal society with wage discrimination based on gender (cf. Saari 2013). Looking back on the previous three sections, thinking in oppositions or contradictions seems to be a way to explain the varying formulations of and approaches to the gender pay gap. It can shortly be expressed as:

One position experiences reality as gendered while its opposition describes aspects of reality as gendered. If reality is gendered, society is either experienced as gendered or under the influence of one or more gendering events. Aspects of reality being gendered refer to a society where aspects of gender inequality can exist to a varying degree (either more or less).

## **Reality as gendered**

The first position contains e.g., what Arabadjieva (2021, p. 2) describes as undervaluation and Magnusson (2009) describes as the devaluation theory. It is an approach perceiving the gender pay gap as an outcome of the consequent and systematic devaluation of female occupation, labour, competencies, etc. It is ontologically founded since reality is considered gendered and constructed by a single event, symbolically expressed, experienced (almost) as the Fall. One example is Sandberg (2018, p. 38) rejecting market mechanisms, the investments in human capital by individuals, variables explaining the gender pay gap, and any (so-called) progressive approaches to gender issues since none of these handles the core problem: the institutionalized and systematic devaluation of feminized reproductive work (Sandberg 2021, p.976). A similar approach can be found in Sørensen, Jørgensen, Hansen (2022), and Sørensen, Jørgensen, Hansen, and Taxhjelm (2020) arguing that the civil service reform in 1969 was the event producing a systematic devaluation of Danish women's labour, occupation, competencies, etc. Saari, Kantola, and Sandberg (2021, p. 271) point to a comparable event, the 1945 governmental wage regulation, as an event producing a comparable systematic devaluation of women's work in Finland. The similarity between the Finnish and the Danish examples is that they express the devaluation theory and consequently point to a specific (catastrophic) event producing the undervaluation of female labour and work. They furthermore share a critique of the collective bargaining processes as unable to solve the essential problem. Saari, Kantola, and Sandberg (2021) show how attempts to raise female wages, to solve or at least decrease the underpayment, were followed by efforts to maintain the status quo for the gender pay gap.

The challenge of the devaluation theory is its lack of theoretical foundation. An alternative could be to consider the gender pay gap neither as an isolated phenomenon nor a standalone catastrophic event but as an indication of a much more substantial and overwhelming societal problem. This approach appears in literature (cf. Saari 2013) but a minor extension of the material helps outline the perspective. An example is e.g., Fraser's (2009, p. 102) critique of unwaged care and social reproductive processes. Unwaged care produces a significant gender inequality problem in the Nordic EU member states (e.g., Kylä-Laaso, Sandberg, and Hokkanen 2021). Exchanging unwaged care work with underpaid reproductive labour, which includes care work, outlines the critique of the treatment of (mainly) female labour in the modern Nordic

welfare states (cf. Sandberg 2021). This also relates to Fraser's (2022) critique of how capitalism cannibalizes the reproductive processes.

Reproductive processes consist of unpaid care in the private sphere and of underpaid care in the public sphere e.g., in care work, health, social work, education, etc. e.g., in the modern Nordic welfare states. Fraser (2022) uses Marx's (1982) opposition between productive labour, creating surplus value in private companies, and unproductive (or reproductive) labour reproducing the individual, families, and society. Reproductive labour is required to enable productive labour to produce surplus value in private companies (Fraser 2022, p. 53). Nevertheless, reproductive labour is expropriated, underpaid, and consequently disregarded despite its importance to production in the modern Nordic welfare states (cf. Sandberg 2021). So, the Nordic welfare states, apply gender mainstreaming and promote themselves as feminist- or women-friendly states, but this enchanted reality (Saari 2013) is only made possible because of the cannibalization of female reproductive work, paid and unpaid.

Now, based on Marx's (1982) capital volume 1, Fraser (2022) develops a description of a contemporary universal social crisis where resources (e.g., female work – unpaid and paid) are expropriated to enable the exploitation of others (the productive labour producing the surplus value in privately owned companies). It is a patriarchal system of domination, a social hierarchy, where women (along with other groups) are positioned at the bottom. Fraser (2022) is in the thesis applied this as an example of the critique of a gendered (patriarchal) reality. See Cicerchia (2022) for a critique of Fraser's theoretical construct and especially her very precise critique of Fraser's rejection of Marx's work on market competition, class struggle, and their influence on social movements.

The two approaches, the devaluation theory, and patriarchy, share a hermeneutic or interpretive epistemology. This also means the argumentative core is qualitative and thereby a sharp contrast to the quantitative methodology of the contrasting position which only considers aspects of reality as gendered. Nevertheless, it is not bound to qualitative methods, but can just as well use quantitative methods for supporting the arguments.

## **Gender issues**

The gender pay gap turns into an issue when it is objectified as a phenomenon existing alongside others. Sandberg (2018) shows that this approach exists in macroeconomic studies, and Saari

(2013) reveals that it furthermore exists among shop stewards when they explain the gender pay gap.

Objectification can (cf. Sandberg, 2018) function as a legitimization of the gender pay gap. It nevertheless enables the development of a toolbox for measuring gender equality in society. One example is the OECD (2018) which considers the five Nordic countries to have the highest level of gender equality and argues that the lasting gender gap ought to be considered a final persistent mile to pass. Grönlund, Halldén, and Magnusson (2017) share the tradition, but they also clarify a difference between the Nordic labour markets which means that the Nordic countries have used varying means to gain gender equality. However, the implicit and underlying ontology (e.g., in OECD, 2018) is that certain aspects of reality are gendered and probably could need some fixing.

When the gender pay gap is handled as an issue it may be regarded as a simple problem e.g., connected with one's inability to unlock one's potential and consequently, an individual problem (Sandberg 2018). This perception can reflect a neoliberal approach that objects to regulations and tends to reduce gender inequality to a matter of individualism (Harvey, 2007). Nevertheless, it can also be considered a larger societal problem experienced by a larger part of the (female) population. It can be part of traditional, objective, and macroeconomic rationality. One example of the former is found in Foss and Reichstein (2023) who (simply explained) argue that female wages in private Danish companies are behind because of a low job turnover among women. In other words, if a woman more often changes jobs, she will in time obtain better (fair) pay. What seriously puzzles Foss and Reichstein (2023) is why women maintain positions.

Seeing the gender pay gap as an issue existing to a major degree means trying to figure out what constitutes a pay gap and how it easily can be fixed. One strategy is the macroeconomic attempt to divide between explained and unexplained reasons for the gender pay gap (cf. Larsen, Verner, and Mikkelsen 2020). The expression 'explained reason's can connote 'reasonable' and consequently 'acceptable' reasons. If reasons e.g., for the gender pay gap are considered reasonable, and consequently acceptable, it automatically connotes unexplained, unreasonable, and unacceptable reasons for the gender pay gap. This process can, as mentioned, be perceived as contributing to legitimizing the explained reasons for gender inequality.

The unexplained reasons cover a combination of unknown reasons and discrimination against women (Pedersen, and Deding 2000) which here is understood as unequal (unfair) pay for equal work. The expression discrimination connotes not only unfairness but possibly also abuse, illegal, misogyny, and even violence. Unequal pay for equal work is discrimination but the use of the expression (discrimination) has a direct influence on the discourse. The use simply restricts and interconnects the expression with a highly specific situation and, consciously or not, excludes aspects of the gender pay gap that can be regarded just as discriminating. Examples can be the underpayment of female-dominated sectors, varieties in wages for employees with the same level of education, etc.

# Methodology

## Case Study on the Legal Status of Gender Pay

To explore the legal aspect of TFEU art. 157 in Denmark, case law in the field of unequal pay to examine the development within this legal area. As previously described, I will use the legal status of equal pay in Denmark to set a frame for equality in the Nordic labour market. Therefore, I will analyze the status of equal pay in Denmark based on rulings from the Supreme Court and the High Courts in Denmark.

Studying the case of equal pay by analyzing and interpreting rulings from the Danish Supreme Court and the Danish High Court On equal pay enables the possibility to create a legal frame of the current state of equal pay in Denmark. Usually, when examining a topic based on legal methodology the idea is to interpret rulings by courts that show the legal status of the legal area. Thus, examining equal pay in Denmark based on the legal method creates the extension of understanding how it is possible to improve equal pay in Denmark, Sweden, and Finland.

The analysis sets the legal status in Denmark there might be some differences when applied to Sweden and Finland. The differences can mainly be explained by legal methodology. When raising a question at a court a specific situation is being explored. The legal status in Denmark is an outcome of the cases the Danish Courts have handled. Hence, the state of the law of equal pay in Denmark is directly connected to the rulings processed. This means that in another member state, such as Sweden or Finland, the state of the law of equal pay would be determined by the legal rulings in these countries. Moreover, it would be comparable with the equations that arise in the rulings that would be handled by respectively the Swedish and Finish courts. However, with this main difference in mind, it is reasonable to understand the legal status in Denmark because of Directive 2006/54/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Official Journal of the European Union, 2006). In Denmark Directive 2006/54/EC led to Bekendtgørelse af lov om lige løn til mænd og kvinder which will be referred to as the Law of Equal Pay (Retsinformationen, 2019). The Law of Equal Pay is the outcome of the implementation of Directive 2006/54/EC. With the foundation in Directive 2006/54/EC it is possible to establish that Sweden and Finland have implemented similar legislation. When accessing the Law of

Equal Pay it is crucial to highlight that it was implemented in 2008 following the Directive from 2006. However, the law has been updated in 2014 and 2016 (Retsinformationen, 2019). To get the current legal status of equal pay in Denmark the Law of Equal Pay\_with all changes will be used.

To establish the legal status of equal pay in Denmark particular rulings have been chosen. The rulings that will be analyzed are UfR.1990.871, UfR.2012.2627, UfR.2009.2993, UfR.2006.2471, and UfR.2002.886/1. It is essential to highlight that the rulings have been chosen based on a search on Karnov. Karnov collects relevant legal information and has the biggest overview of over 150 years of Danish, legal history (Karnov). However, when researching rulings on Karnov there are not many cases to be found. Hence, if the Danish Supreme Court had a high number of rulings that would have been enough to clarify the legal status. Therefore, the analysis contains rulings from the High Courts too. However, the reason for choosing the 5 rulings is that they all question compliance with the Law of Equal Pay. § 1, cf. The Law of Equal Pay\_states that: “Der må ikke på grund af køn finde lønmæssig forskelsbehandling sted i strid med denne lov (There shall be no pay discrimination on grounds of gender in contravention of this law” (The Law of Equal Pay, 2019).

## Legal Analysis

In the introduction to the thesis, it was reasoned that equal pay for equal work is a fundamental right within the EU. Though to fully understand the legislation ensuring the fundamental right of equal pay, this paragraph highlights the development of equal pay in the EU. Zilli (2021, p. 176) describes how the gender pay gap was originally a concept created by ILO. Further, she enlightens how ILO's focus on equal pay was the foundation for the right of equal pay in TFEU. EU's concept of equal pay was changed during the process of the Amsterdam Treaty where equal pay was expanded to include: "[...] Each Member State ensures the application of the principle of equal pay for male and female workers for equal work or work of equal value" (Zilli, 2021, p. 176). The quote underlines the development of the phenomena of equal pay to include work of equal value. The Amsterdam Treaty led to Directive 2006/54/EC which is in 2023 and has developed into the Pay Transparency Directive. However, to fully understand the current legal status, I will conduct a case study. The case study will be reasoned in the next section. Followed by the reasoning for the case study this section contains a legal analysis of Supreme Court rulings and High Court rulings. Concluding, the section establishes the state of the law of equal pay.

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status. Therefore, the analysis contains rulings from the High Courts too. However, the reason for choosing the 5 rulings is that they all question compliance with the Law of Equal pay. § 1 in Law of Equal pay states that: “Der må ikke på grund af køn finde lønmæssig forskelsbehandling sted i strid med denne lov (There shall be no pay discrimination on grounds of sex contrary to this Act)” (The Law of Equal pay, 2019).

### **Danish Supreme Court rulings**

HK trade union in Denmark against KODA UfR.1990.871

In the case, the applicant, Lilly Margrethe Nielsen, represented by Hansels- og Kontorfunktionærernes Forbund I Danmark (K), reasoned that the defendant, KODA (L), had violated § 1, cf. the Law of Equal Pay, K contested that L should pay the difference between two male colleagues' salaries and her own (UfR.1990.871, p. 870). K presented the argument that the work provided by the two, new male colleagues significantly differed from L's work (UfR.1990.871, p. 872).

During the case, K reasoned that according to the circumstances, the applicant had received lower pay for equal work compared to the two new, male consultants. It was claimed that this unequal pay was 33%, and thereby K argued for a 66,244 DKK compensation (UfR.1990.871, p. 873). L claimed that the tasks performed, and the competencies and qualifications between the two consultants and K were so significant, that it reasoned the differences in pay (UfR.1990.871, p. 874-875).

The case was first decided by the Danish Maritime and Commercial High Court. The Danish Maritime and Commercial High Court stated that: “ [...] lægges der vægt på, at arbejdet kun i begrænset tidsrum har været næsten identisk, og at der var tillagt de to andre konsulenter flere selvstændige funktioner (emphasis is placed on the fact that the work has only been almost identical for a limited period of time and that the other two consultants were assigned several independent functions)” (UfR.1990.871, p. 876-877). Thereby, the Danish Maritime and Commercial High Court emphasized two conclusive aspects. One of the aspects was that K and the two colleagues only for a limited period performed identical work. The other aspect was that the two other consultants had more independent functions.

When the case was presented to the Danish Supreme Court four judges interpreted that the two new colleagues were not hired to perform the tasks that K performed. Further, the four judges

reasoned that the new colleagues were hired to perform tasks in other fields than K. However, one judge reasoned that K, and the two colleagues had the same job title. This judge reasoned that the tasks performed by the three colleagues did not have huge differences in terms of quality (UfR.1990.871, p. 878). Hence, the Supreme Court found that the Law of Equal pay § 1, had not been violated (UfR.1990.871, p. 878).

The Danish Association of Professional Technicians (union) against A/S UfR.2009.2993

In this situation, a female employee K worked in a company that created concrete U. In 1995 K was employed, and in 1999 two male employees were moved to K's department (UfR.2009.2993, p, 2993). The two new employees remained with higher pay than K. K was not offered a higher salary when the two new employees joined her department (UfR.2009.2993, p, 2993).

Throughout the years K got increases in her salary which reduced some of the pay gap, however, K never received equal pay compared with the two male employees. In 2003 the department was sold off. When this happened, A stopped working in the company, but the new company F, continued with the male employees. K's trade union started a case of violation of equal pay against F in 2003 (UfR.2009.2993, p, 2993).

The case is of principal value since it was handled in both a Danish city court, a Danish high court, and the Danish Supreme Court. The Danish city Court in Roskilde stated that: "Herefter må det anses for at være godtgjort, at der var saglig grund til at give de øvrige konsulenter i afløbsafdelingen højere løn end den løn, der var fastsat for sagsøgeren (hereafter, it must be regarded as established that there were factual grounds for giving the other consultants in the drainage department higher salaries than those fixed for the applicant)" (UfR.2009.2993, p, 2997). Thereby, Roskilde city court stated that the salary in the company was established based on solid ground. This meant that the ruling in the city court was, that K had not received unequal pay.

On the contrary, the High Court found that: "[...] appellantten har påvist faktiske omstændigheder, der giver anledning til at formode, at der er udøvet lønmæssig forskelsbehandling (the appellant has established circumstances which gives reason to be presumed that there has been pay discrimination)" (UfR.2009.2993, p, 3000). This means that the High Court ruled differently, stating that K proved that it was a case of unequal pay.

However, an interesting aspect of this is that the ruling was highly based on testimonies from the employees. Lastly, the case was appealed to the Danish Supreme Court. In the Supreme Court, there was a dissenting opinion among the judges. Three judges stated that K had received unequal pay compared to her male colleagues (UfR.2009.2993, p, 3006). The outcome of the ruling stated that a majority of judges were of the believe that:

“Som følge af det anførte finder vi, at F har ført det fornødne bevis for, at lønforskellen mellem K og hendes to mandlige kolleger A og B har været sagligt begrundet i forhold, der ikke er kønsrelateret, og at ligebehandlingsprincippet derfor ikke er krænket (as a consequences of the stated we consider that F has adduced sufficient evidence that the difference in pay between K and her two male colleagues A and B was objectively justified by non-gender related factors and that the principle of equal treatment has therefore not been violated)” (UfR.2009.2993, p, 3006).

Thereby, the outcome was that the company has reasonable reasons for paying different salaries to K and the two male employees. The differences in pay were not related to gender or the principle of equal treatment (UfR.2009.2993, p, 3006).

HK trade union in Denmark against Danish Chamber of Commerce UfR.2012.2627

In this case, HK (Denmark’s second largest trade union) represented A against the company A/S Th. Wessel & Vett represented Dansk Erhverv (DE) B. A was working as a purchasing assistant in a department store. From August 2006 to August 2007, A was on maternity leave. During this period, A was not invited to a meeting to discuss a potential raise with B, unlike the other employees. This happened thus most of the employees received a salary increase. HK representing A, claimed that it violated, cf. the Law of Equal Pay\_§ 2.

When A was not allowed to discuss her salary. Further, they based this argument on the fact that most of the employees had received an increase in salary between 700 and 1000 DKK.

The missing possibility to have a meeting regarding the possibility of an increased salary was a violation of the Law of Equal Pay § 4. Thereby, following the Law of Equal Pay § 14, A claimed compensation.

The Danish Supreme Court asserted that:

“Det følger af den dagældende ligelønslov (lovbekendtgørelse nr. 906 af 27. august 2006 om lige løn til mænd og kvinder), at der ikke på grund af køn må finde lønmæssig forskelsbehandling sted. Dette gælder både direkte og indirekte forskelsbehandling, jf. lovens § 1, stk. 1 (it follows from the then applicable Equal Pay Law (Legislative Order no. 906 of 27 August 2006 on equal pay for men and women) that there may be no pay discrimination on grounds of gender. This applies to both direct and indirect discrimination, cf. the Law of Equal Pay § 1, no. 1)” (UfR.2012.2627, p. 2636).

This means that A had not been exposed to unequal treatment in terms of direct or indirect discrimination. The claim that A did not receive the salary she should was clear. Interestingly, the Supreme Court highlighted the fact that a woman’s salary is lower than men’s in comparable situations. Further, the ruling stated, that her dismissal could not be seen as a violation of Law of Equal pay (UfR.2012.2627, p. 2637).

### **Danish High Court’s rulings**

HK trade union in Denmark against DF Info A/S UfR.2002.886/1

The case examines whether the defendant (D) should be acquitted paying compensation after justification based on ligebehandlingsloven. This ruling touches upon whether D had violated an employee with grounds in ligebehandlingsloven. However, Århus district court ruled that the defendant got: “[...] blev indkærende frifundet for kravet om betaling af godtgørelse i medfør af ligebehandlingsloven og ligelønsloven, men dømt til at betale en § 2 b-godtgørelse på 65.938,29 kr. svarende til 1 1/2 måneds løn (was dismissed from the claim for compensation under the Equal Treatment Act and the Equal Pay Act, but ordered to pay a section 2b compensation of DKK 65,938.29, corresponding to 1 1/2 months' salary)” (UfR.2002.886/1, p. 886). This means that the defendant was restrictive acquitted. This means that defendant did not have to pay compensation according to the Law of Equal Pay. However, the defendant was imposed compensation based on Funktionærlovens (Act on Salaried Employee) § 2 b.

Thereby, the defendant was convicted based on Act on Salaried Employee UfR.2002.886/1, p. 886). This ruling enlightens that there are examples, where the outcome of a question related to equal pay is ruled based on Act on Salaried Employees and not Law of equal pay.

Vagn Godthaab ApS against The Gender Equality Board UfR.2006.2471

This ruling is based on employee (K) who worked in an arcade (S). K earned 60 DKK per hour. Though, she had three colleagues M1, M2, and M3. M1 earned 105 DKK, M2 105 DKK, and M3 95 DKK (UfR.2006.2471, p. 2471). Therefore, Kristlig Fagbevægelsen started a case at The Board of Equal Treatment representing K. The Board of Equal Treatment established that:

“[...] der forelå en overtrædelse af ligestillingslovens § 1, stk. 3. Da S ikke efterlevede Ligestillingsnævnets afgørelse, anlagde nævnet som mandatar for K sag mod S med påstand om betaling af 88.891,25 kr., svarende til løndifferencen på 35 kr. i timen for den tid, K havde været beskæftiget hos S (There was a violation of the Equal Pay Law, cf. § 1, no. 3. S did not comply with the Equality Board's decision, the Board, acting as agent for K, brought an action against S for payment of DKK 88,891.25, corresponding to the difference in pay of DKK 35 per hour for the time K had been employed by S)” (UfR.2006.2471, p. 2471).

This means that The Board of Equal Treatment ruled that there was a violation, cf. Law of Equal Pay § 1, stk. 3, and thereby S had to pay compensation. The district court confirmed the decision made by The Board of Equal Treatment. The District Court emphasized that K, M1, M2, and M3 and identical contracts, their qualifications, and the performed work were significantly even (UfR.2006.2471, p. 2471). The Western High Court affirmed the judgment of The District Court (UfR.2006.2471, p. 2477). Thereby, S had to pay compensation.

### State of the Law on Equal Pay

This paragraph intends to compare the various rulings on equal pay in Denmark. Firstly, the idea is to investigate the legal status of the rulings by the Danish Supreme Court followed by the legal status of the Danish High Court rulings. Before conducting the legal status of equal pay, it is crucial to emphasize that the rulings by the Danish Supreme Court are of a higher significant value since it creates a significant frame for rulings related to unequal pay. This appears because the Danish Supreme Court is the highest legal court in Denmark. Thus, their rulings enable an understanding of how to perceive and interpret questions of equal pay in Denmark. Though legal rulings from the Danish Supreme Court are of a higher value, the rulings from the Danish High Courts underline the legal status of equal pay in Denmark. The reason for including the five rulings (UfR.1990.871, UfR.2012.2627, UfR.2009.2993, UfR.2006.2471, and UfR.2002.886/1) is that it gives a perspective on the use of Law of Equal

Pay (Retsinformationen, 2019). Secondly, before examining the outcome of the legal analysis another aspect is crucial to highlight. This aspect contains the year in which the rulings happened. From the Danish Supreme Court, there were three rulings (UfR.1990.871, UfR.2009.2993, and UfR.2012.2627), while two rulings appeared from the Danish High Courts (UfR.2002.886/1 and UfR.2006.2471). Generally, when accessing the analysis, it is influential when the rulings happened. This means that the ruling UfR.2012.2627 and UfR.2006.2471 gives an insight into the latest status on equal pay. The following sections will clarify the legal status of equal pay first in the rulings from the Danish Supreme Court followed by the Danish High Courts.

### **The Danish Supreme Court**

In the UfR.1990.871, the Danish Supreme Court found that Law of Equal Pay § 1 had not been violated (UfR.1990.871, p. 878). This was based on the reasoning that the new colleagues in the company were hired to perform different tasks than the ones K performed. Similarly, UfR.2009.2993 showed that Law of Equal Pay had not been violated. This was argued based on the interpretation that there were reasonable differences between the two male employees and K (UfR.2009.2993, p. 3006). Similarly, in UfR.2012.2627 the Danish Supreme Court ruled that A had not experienced either direct or indirect discrimination (UfR.2012.2627, p. 2637). The fact that the outcome of the rulings all shows that none of the employees shows that the precedence of the rulings by the Danish Supreme Court remains the same. This is based on the notion that the latest ruling by the Supreme Court when 2012 convicted a company of discrimination.

### **The Danish High Courts**

The ruling UfR.2002.886/1 shows a case where the defendant was convicted according to Act on Salaried Employees not but according to the Law of Equal Pay (UfR.2002.886/1, p. 886). In contrast to all the other rulings, U.2006.2471 showed that there had been discrimination. This was reasoned by the identical contracts, qualifications, and the work performed (UfR.2006.2471, p. 2477)

### **Conclusion on the legal analysis**

When examining the Pay Transparency Directive one of the interesting aspects is the different levels of ensuring equal pay in companies, cf. Art. 9 (Directive 2023/970, p. 47-48). This means that there is a difference in how access to information on equal pay in a company is provided.

Another interesting aspect is the inclusion of all genders in statistics on equal pay, cf. xx. Traditionally, the differences in pay levels between men and women have been relatively easy to provide. However, potentially, there is a risk that it could be extremely complicated for companies to provide the necessary information on equal pay. Following the process of inclusion of all genders is an interesting and new dimension to secure the fundamental right of equal pay in the EU, cf. TFEU Art. 157.

However, as previously examined, the Nordic labour market model has a similar way of implementing Directives in the Nordic labour market. Though, this new distinction between access to information in different sizes of companies could cause huge differences. The Danish labour market is categorized by a huge number of mid-sized companies. This means that these companies have a certain requirement in terms of providing information on equal pay. On the contrary, the Swedish labour market tradition is influenced by a culture of bigger companies.

## Discussion

In this section, the idea is to address and examine the potential influence of equal pay based on the Pay Transparency Directive. The intention is to enlighten the consequences and potential improvements that the Directives can have on equal pay in Denmark, Sweden, and Finland. Firstly, it is important to stress that the chapter addressing the labour markets shows that there are some differences. Therefore, this section will focus on the legal influence of the Directive on the Danish labour market. This is seen because of the five rulings (UfR.1990.871, UfR.2012.2627, UfR.2009.2993, UfR.2006.2471, and UfR.2002.886/1) that state the legal status of rulings regarding equal pay in Denmark.

When examining the rulings in relation to the Pay Transparency Directive, it is crucial to highlight, that it all originates, cf. TFEU, Art. 157. This article sets the frame for ensuring equal pay which Samira Rafela and Kira Marie Peter-Hansen Helena Dalli addressed during the plenary session (Appendix 1). This further aligns with the intentions of the Directive, cf. Art. 1 (Directive 2023/970, p. 37).

The conclusion on the legal status in Denmark was quite clear. It shows that in almost all the cases 4 out of 5 (UfR.1990.871, UfR.2012.2627, UfR.2009.2993, and UfR.2002.886/1) there is no legal basis for ruling that there is unequal pay. However, UfR.2006.2471 was the only case where the company was obliged to compensate for discrimination based on unequal pay.

In all the cases, there was an examination of whether the situations complied with the Law of Equal Pay. However, in some cases, the Act on Salaried Employee was used to determine whether it was a situation with discrimination based on salary. Therefore, it is substantial to connect the legal status of equal pay in Denmark with the new aspects introduced in the Pay Transparency Directive.

In the case study from Denmark, it becomes clear that the current state of law contains an element of clarification e.g., the actual work, competencies, work tasks, education, experience, etc. The Pay Transparency Directive, cf. Art. 4 offers the possibility to: “[...] ensuring equal pay for equal work or work of equal value” (Directive 2023/970, p. 42). Art. 4 further contains the criteria for examining equal pay that must be gender neutral. This can provide a stronger legal frame when judges examine whether there is compliance with the Directive in the future.

In the Pay Transparency Directive, Art. 9 is significant for the effect of the Directive. This Art. introduces different requirements based on the size of a company. The most extensive element is for the biggest companies. The biggest companies are defined as companies with 250 or more employees. The companies are obliged to make a report every year after the implementation (Directive 2023/970, p. 48). Potentially, the requirements of the different companies could influence equality in the companies covered by this. With the preparation of the reports the companies automatically become aware of potential risks related to equal pay in their company. However, the result of this could be minimal.

It can be demanding trying to predict the outcome of future rulings when the Directive is implemented, cf. Art. 33 on Implementation (Directive 2023/970, p. 70). This interacts with the Nordic way of implementation through social partners, which in the Nordic labour market is through collective agreements.

However, a crucial element in the Directive is the report that the Council and the European Commission must produce 10 years after the implementation of the Directive, cf. Art. 35 (Directive 2023/970, p. 72). Based on the legal frame of the Directive combined with the sociological part of the thesis, one must assume that even 10 years after the implementation there is a need to create legislation that ensures the principle of equal pay, cf. TFEU Art. 157. The potential need for a revised or new Directive can seem a bit contradicting with the Preamble. The preamble enlightened that the lack of transparency was an obstacle to securing equal pay in the EU (Directive 2023/970, p. 6). However, an essential element was highlighted in the preamble no. 15. This entails the missing definition of equal work or equal value (Directive 2023/970, p. 6).

The previous sections of the legal aspects of the Pay Transparency Directive show that the political intentions might comply with the need for ensuring equal pay. Further, the Directive contains important elements to improve the principle, cf. TFEU Art. 157. However, it is possible to predict that the legal instruments in the Directive lack aspects to improve equal pay in the Nordic Countries. When making this conclusion it is, though, reasonable to highlight that getting an actual understanding of the consequences of the Pay Transparency Directive requires

a legal analysis. To enable the legal analysis rulings from Danish and/or Nordic rulings combined with potential rulings from the European Court of Justice are needed.

## Conclusion

The three Nordic EU labour markets are quite similar, even though the Finnish labour markets organize collective agreements as sector- or higher-level bargaining whereas both the Swedish and Danish rely on the interplay between company- and sector-level bargaining. The Pay Transparency Directive enforces a strong involvement of the social partners and is consequently expected to strengthen these partners' position in the Nordic labour markets. The Directive is furthermore designed in a way enabling the interplay with the collective agreements regulating the Nordic labour markets. However, the analysis of the state of law in Denmark showed that in 4 out of 5 cases, the Courts ruled that there was no pay discrimination. The Directive provides an inclusion of a definition of e.g., equal pay for equal work, and it includes all financial transactions when examining pay levels. Therefore, there might be a possibility of a new state of law when the Directive is implemented. However, it is unlikely that it will strongly interact with the Nordic labour markets since the current state of law already includes elements regarding pay levels, competencies, experiences etc.

The Directive enforces transparency in organizations, and it relates to the 'aspects of reality being gendered' approach to the gender pay gap. Transparent information on pay gaps will be helpful in cases of obvious discrimination e.g., the underpayment of employees of one gender working in organizations dominated by another gender. However, the directive will leave the preferential, statistical, and implied discrimination unsolved. The Directive will neither affect gender pay gaps caused by horizontal segregation – e.g., the systematic devaluation and underpayment of care work in the Nordic welfare states. It will furthermore leave the uneven distribution of unpaid care work unsolved. Finally, it will not help close pay gaps produced as a consequence of the vertical segregation in the Nordic labour markets.

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*HK trade union in Denmark against DF Info A/S* (2002). the [Danish] Western High Court. UfR.2002.886/1. (legal decision).

# Appendix

## Transcription of Plenary Session 2023-03-30

[The Chair gives the floor to the speaker]

Kira Marie Peter-Hansen (SF, Green Group):

Thank you chair, our dear Commissioner, dear Council, and dear colleagues. Today we are here voting on a historical and essential piece of legislation. We are here because we stand against pay discrimination. We stand against power abuses, and because equal pay for equal work should not only be a founding principle in our Treaties but also a fact on the ground. We are here because we care. We want to make a change, we want to push for gender equality, workers' rights, and social progress. We want a future where there is inclusion and diversity.

Today we are here to vote on the best-known tool for closing the gender pay gap. To combat gender pay and inequalities and pay discrimination. The Pay Transparency Directive is a huge achievement for gender equality, and it will help close the current persistent gender pay gap in the European Union on 14%. Pay transparency has the value of work at its center. Because employees should be valued for their work regardless of their gender.

With this vote, we abolish pay secrecy contract, we strengthen workers' rights, and workers' individual right to information, and we ask employers to report and to fix their pay gaps. Furthermore, we ensure that all employers have pay structures in place ensuring that the treaty-based concept of equal pay for equal work is actually enforced. With this vote, we empower workers and restrengthen the role of social partners. This vote also marks the first time in history that our non-binary friends are recognised in legislation, and the first time that we take into account intersectional discrimination is an acquainting factor. And this is a historical moment not only because having these tools and mechanisms are a huge achievement but also because this sends a message to the world. It shows that this is what legislation can look like when you have two young feminists leading the policies.

And for that, I would like to deeply thank my colleague Samira for the hard work and incredible cooperation in the past two years. You are truly an inspiring politician, and it has been amazing working alongside you and your team.

And on behalf on Samira and I, I would also like to give a big thanks to all the shadow rapporteurs and all the teams for your constant fight for gender equality.

I would like to thank the Commissioner as well for putting forward this legislation, and supporting us in getting it over the finish line.

Lastly, a special thanks goes to the Chez Presidency. Without you and without this Presidency we would not have been able to vote on this important file today. And I cannot fully express my gratitude towards the Chez Presidency. But I would like to underline that I am extremely grateful that your Presidency and your team choose to take on this file and really walk the extra mile to make this a reality. And coming from Denmark it is also very nice to see that it is once again proven that smaller countries can have a huge impact on the European law-making.

Lastly, I would also like to thank my amazing team as the Julia, Clair [unclear], Bianca. And the contribution and expertise of NGO's, social partners and organisations that worked on this file. Your work was and is extremely essential and valuable.

With today's vote, we will move one step closer in ensuring that there are no more glass ceilings and no more pay discrimination. Today we give more rights for workers, and we ensure the concept of equal work for equal pay. Thank you.

[The Chair gives the floor to the speaker]

Samira Rafaela (Democraten 66, Renew):

Thank you very much. And good morning, dear colleagues, good morning, Commissioner. Today we will make history. I am incredibly proud to stand in this house and to say to all women in Europe that we are here for you. In fact, we can say this to all workers in Europe.

This Directive says that you deserve to be treated equally, and you deserve to be paid fairly regardless of your gender, your background, or your physical characteristics.

With the Directive we have secure the right to information in Europe for all our citizens, and we will finally have the binding legislation we need to tackle pay discrimination in all of our member states. If we had left it up to the markets the gender pay gap would only correct itself by 2086. How can we justify this to women? How can we explain this to ourselves? We cannot [unclear]. For far too long the economy has been organised with men in mind. Women were

not the norm, and you can see this in the representation of women in leadership positions, in the pay gap, and the pension gap, there is a structural problem here. We can't just smash the glass ceiling. We need to rebuild the entire house, and today we are doing exactly that.

[The speaker changes from speaking in English to speaking in Dutch].

[Change from English to Dutch with a two-second lacking interpretation]

[The following sentences are based on the translator's translation]

Women in Europe need to be paid in the same manner. It should not be in a situation where you find that a man who is receiving more is pay for a similar post for the same post. This is a legal framework to fight against the pay gap in a clear and relentless manner. We would achieve this paradigm shift, and we will achieve a quality in the workplace.

Women who are not paid at the same level by the businesses. These businesses will not move forward. Businesses need to prove that there is no pay discrimination. The burden of proof is being put on businesses now, and I am extremely proud of the fact that we have this modern, European legislation.

For the first time, non-binary people are explicitly quoted as, we also recognised intersectional discrimination, and case law will take it into account as a serious factor in pay discrimination. It was.

[Lacking translation]

It was a very important point for me, and I am here in politics to change the rules. And this is a rule we have changed. We are in politics to ensure that emancipation is a reality. [unclear] are those in the [unclear] chamber that needs to vote against the Directive. I know they will hide behind a certain words as an administrative burden, and the reality is that the women in Europe are looking at us now. And they will remember this vote. And they will [unclear] remember that you put interests of business for the press of women. So you need to take that into account. I am extremely proud of my colleague Kira. We have been leading this negotiation with. Thank you very much for your support. Together we have shown that this inclusive, modern legislation.

[The speaker switches from Dutch to English]

[The following is based on the speaker's own words]

[Unclear mentioning of names]

And I think our excellent negotiation team from all political groups. Because today we will make history together. And I am glad that we could constructively work together with the French Presidency, with the Czech Presidency, with the Commission. And we have showed, that if we want to reach true equality for all people living in Europe we need to work together. Thank you.

[The Chair gives the floor to the speaker]

Helena Dalli (Commissioner for Equality):

Thank you, President. Honourable members, good morning. Today's adoption of the Pay Transparency Directive is a significant step towards addressing the gender pay gap in the European Union, and increasing women's economic and financial independence. Equal pay between women and men for equal work or work of equal value is a right and [unclear] in the treaty. And contributes towards the fundamental principle of the gender equality in the European Union. Despite the EU's right and our efforts, the gender pay gap has for decades remained a persistent problem. With women in the EU earning an average of 13% less than men. While the gender pay gap has many causes a large part of it is due to pay discrimination and gender bias. We cannot allow women to be paid less for doing the same work or work of equal value as men. We cannot allow women to be discriminated against in the workplace because of our gender. We cannot continue undervaluing women's contribution on the labour market compared to men. Pay discrimination is often the result of an under evaluation of work done by women or of unconscious bias and deeply rooted gender stereotypes. They will continue to persist in our society and because of the current lack of pay transparency they often go unnoticed. The Pay Transparency Directive is a crucial tool in our fight for gender equality. This new, legal framework will trigger a culture change in the workplace across the union. To require employers to provide information on average pay levels broken down by gender for all workers performing the same job or work of equal value. And this will enable workers to identify and challenge any pay discrimination based on sex. The Directive will also require

employers with more than 100 workers to publish information on the gender pay gap in their organisation. It will increase transparency and accountability and encourage employers to take action to close the pay gap. Having the information on pay or gender pay gaps is not enough of course. Workers must also have the possibility to enforce their rights to equal pay if they believe that they are being discriminated. This is why the Directive provides for stronger enforcement mechanisms. For instance, the Directive will ensure that victims of pay discrimination can be represented in court by the relevant associations and bodies such as equality bodies. It will also ensure better compensation, shift the burden of proof, and set minimum standards for limitation periods. I draw your attention to a transposition period of three years for the entry of application of the new tools on pay transparency. During the negotiations, the Commission underlined that such longer period and deviation from a standard transposition period should not be seen as a precedent. It only aims at ensuring that employers will have non-discriminatory pay structures in place. So as to ensure full application of the new rules at the time of transposition. Such Commission statement was included in its meeting with the member states, deputy permanent representatives when the political agreement was endorsed on the 21th of December of last year. I thank the European Parliament, especially Samira, Kira, and the others who you mentioned for the continued support and determination of combat gender pay, and gender-based pay discrimination. Your commitment to gender equality has been invaluable. The development and negotiation and legislation. The adoption of the pay transparency Directive will be a significant achievement in our fight for gender equality to step towards a Europe where women in all their diversity can thrive equally. Thank you.