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# EU Strategy against gender pay gap through wage transparency: the best is yet to come.

Anna Zilli\*

1. Pay gaps: the data, the causes. 2. Equal pay for "work of equal value": from theoretical equality to equality in practice. 3. Wage transparency as a tool for gender equality in the labour market. 4. A (not modest) proposal: EU Proposal of Directive 2021/93 for "Binding transparency measures". 5. Transparency *vs* privacy? Technology at the service of equality.

## Abstract

The proposal for a Directive on transparency and wage equality presented by the Commission on 4 March 2021 confirms the saying that "knowledge is power": the gender pay gap can be faced and solved if workers and, especially, female workers are enabled to know the salaries of their peers. Technology helps overcome privacy issues on a sensitive aspect of the employment relationship.

**Keyword:** Wages; Transparency; Gender pay gap.

## 1. Pay gaps: the data, the causes.

When dealing with inequalities in the labour market, i.e. the different conditions of those seeking an employment or in employment, *gender* pay differentials are among the most discussed topics. This certainly does not happen because there is a lack of other discriminatory treatment, determined by ethnic origin, migrant status, sexual orientation, or the presence of more than one of them: on the contrary, "while some of the most obvious forms of discrimination at work have subsided, many others still persist and others new or less visible have taken hold. The combined effects of global migration, the redefinition of national borders, growing economic problems and rising inequalities have, for example, exacerbated problems of xenophobia and racial and religious discrimination"<sup>1</sup>.

But the question of gender is fundamental if we want to study inequalities. The intersectional approach between the causes of discrimination, i.e. their combination in such a way as to aggravate the condition of the discriminated person, passes through gender. If the discrimination suffered by African American women in the United States is the prototypical case of intersectionality, the same can be said by observing the events related to

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<sup>1</sup> ILO, *Time for equality at work. Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*. Report of the Director-General, 2003.

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the use of the Islamic headscarf at work in Europe<sup>2</sup> where the religious element concerns exclusively women.<sup>3</sup>

Assuming that gender is the theme from which to address the causes of the hateful discrimination that people suffer in the world of work, talking about *gender pay gap* means studying the causes and the appropriate tools to remove these disparities in relation to the condition of women.

If we consider the gender pay gap as the difference in gross hourly earnings between men and women, it, while existing, is modest in Italy (5%) and, apparently incredibly, far below the European average (14.1%) and really far, for example, compared to Austria (19.9%) and Germany (19.2%) which instead occupy better positions in the European Index on Gender Equality.<sup>4</sup>

The small gap found in Italy in terms of the hourly pay differential, that is explored in these statistics, is almost eliminated by the *de facto* application of the collective agreement, at least at the first level, by almost all employers. In other words, with the same classification and level, women and men are *almost* equally paid and the gender pay *gap* thus detected can be explained in terms of so-called individual personal wages. It is the result of the negotiation of better treatments compared to the 'basic' treatment of the collective agreement, which occurs mostly in top positions, where women are less present and, therefore, also less "strong" in haggling over salary and *benefits*, which constitute a significant slice.

The low differential between the hourly compensation of men and women can be explained through the understanding of the concept and reasons that determine the *overall* gender pay gap, understood as the difference between the average annual salary received by women and men. The gap in Italy is 43.7% and in the EU 39.3%. This is a very significant inequality, albeit with enormous differences between the Mediterranean countries and the Nordic countries.<sup>5</sup>

This *gap* stems, in the first place, from the low participation of women in the labour market, in which the female component is employed for 49%. compared to 67.4% of men.<sup>6</sup>

Furthermore, the phenomena of the so-call horizontal segregation (for production sectors) and vertical (for access to top roles) of female workers insist in the labor market, who are more employed in sectors with lower average wages and perform less prestigious tasks, with consequent further salary differential in a pejorative sense.

In addition, women work fewer hours than their male colleagues: it is common experience and confirmed by all statistical studies that part-time work concerns much more female workers than workers and in any case for different reasons.<sup>7</sup>

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<sup>2</sup> ECJ C-157/15 *Achbita* and ECJ C-188/15 *Bongnaoui*.

<sup>3</sup> Crenshaw K., *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, in *The University of Chicago Legal Forum*, 1989, 139-167; *ante litteram* Davis A., *Women, Race & Class*, Random House, New York, 1981.

<sup>4</sup> <https://eige.europa.eu/gender-equality-index/2020/compare-countries>.

<sup>5</sup> [https://ec.europa.eu/eurostat/statistics-explained/index.php/Gender\\_statistics#Labour\\_market](https://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_statistics#Labour_market).

<sup>6</sup> Istat, September 2020:

[https://www.istat.it/it/files//2020/10/CS\\_Occupati-e-disoccupati\\_SETTEMBRE\\_2020.pdf](https://www.istat.it/it/files//2020/10/CS_Occupati-e-disoccupati_SETTEMBRE_2020.pdf).

<sup>7</sup> <https://www.istat.it/donne-uomini/bloc-2b.html>.

While *female* part-timers fill their “free” time by carrying out care activities (for children, the elderly and/or family members with disabilities);<sup>8</sup> *male* part-time workers opt for the reduction in hours to cultivate a second professional life (typically, a freelance profession or a business activity).<sup>9</sup>

In addition, absences related to parental functions lead to a further reduction in hours worked. Out of 100 parents who requested an expectation, 97% were women in the years 2015-2016; in the two-year period 2017-2018, 90%. In addition, mothers also benefited from longer expectations (in addition to the mandatory 20 weeks related to maternity, they represented 76% of parental leave users in the two-year period 2015 - 2016; 64% in the following one).

It has been considered that women work fewer hours also because they are employed in more precarious jobs:<sup>10</sup> in the EU of 27 countries, 27% of women and only 15% of men are inserted into the labor market with "part time and fixed term " contracts. This is a gap that increases for women with a low level of education (50% precarious).

Job instability is in itself one of the causes of the constant professional and economic gap between men and women, both during working life and in retirement age.<sup>11</sup>

It is a harmful condition for female workers and, overall, for European society, compressed between the very low fertility and the aging of the population, respectively minimum and maximum in Italy. The most recent analysis of the professional status of Italian mothers, for example, shows that two-thirds of children are born to women who worked before giving birth; while only one in ten born is the child of dis/unemployed mothers. It is striking, however, that only half of mothers then maintain a working occupation (55.4%)<sup>12</sup>: children, in short, are born to women who work but who then often abandon work: partially, with involuntary hourly reduction, or, dramatically, involuntarily withdrawing from the professional scene, especially when the children are more than one and the availability of caring family members is lacking.

Certainly, the choice of girls' training paths, when they are there, has a weight. On the other hand, the role of re-orientation and support for study and, consequently, for work in the so-called STEM (scientific-technological-mathematical) sectors, suitable for strengthening women's employment quantitatively and qualitatively, in sectors where well-paid employment is more easily found, has been explored.

But it cannot be silenced how the persistence of gender stereotypes in family education and early childhood, which is the main reason for the lack of affection of girls for technical-scientific studies, cannot be eliminated in a short time.<sup>13</sup> In fact, the generality of educators

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<sup>8</sup> <https://www.istat.it/it/files/2019/11/Report-Conciliazione-lavoro-e-famiglia.pdf>.

<sup>9</sup> [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Labour\\_market\\_slack\\_%E2%80%93\\_annual\\_statistics\\_on\\_unmet\\_needs\\_for\\_employment](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Labour_market_slack_%E2%80%93_annual_statistics_on_unmet_needs_for_employment).

<sup>10</sup> Zilli A., *Di genere precario*, in *Argomenti di diritto del lavoro*, 6, 2020, 1345 ff.

<sup>11</sup> EIGE, *Work in the EU: women and men at opposite ends*, in <http://eige.europa.eu/rdc/eige-publications/work-eu-women-and-men-opposite-ends>, 2017.

<sup>12</sup> Cedap, *Analysis of the Birth event*, 2018.

<sup>13</sup> Kersey A.J., Csumitta K.D., Cantlon J.F., *Gender similarities in the brain during mathematics development*, in *npj Science of Learning*, 4, 19, 2019.

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(parental or professional) lacks awareness of the mechanisms of functioning of the mind and the ability of childhood play to shape them and orient them or not, towards mathematical thinking.<sup>14</sup>

In the absence of a radical change in the availability and stimulus towards logical-spatial games towards girls, girls will be less performing in scientific subjects and, consequently, will be oriented towards humanistic studies, in which they "better succeed", but which, at present, have less *appeal* in the labor market (both for employment and for salaries).

If the objective is therefore equal pay, it needs suitable instruments. The best reconciliation between personal life and family needs is to help the female condition, given that the parental function is those that often determine the improvement of the male position (hourly increase, career advancement) to the detriment of the female one (characterized by contraction and less flexibility of hours, absences from work, increase in time dedicated to care).<sup>15</sup>

But it has been observed that, even in cases where motherhood does not come into play, women do not enjoy the same or comparable economic treatment and career prospects as those of their male colleagues. In fact, all the data show that, for the same employment, women are still paid less, even in the best sectors.

Ultimately, the labor market is worse for women even when they do not have children and even in cases where they are in possession of the best and most expendable titles: the reasons for this *gap* remain in some part obscure even to the largest and most accurate surveys, but which could well be indicated as the "net" weight of gender prejudice.<sup>16</sup>

## 2. Equal pay for "work of equal value": from theoretical equality to equality in practice.

The issue of gender pay equality is one of the founding principles of labour law: "equality of work" was then declined as the right to equal pay between "male and female labour for work of equal value" (ILO, Convention No. 100 and Resolution No. 90 of 1951).

The same principle was accepted in the European Treaties: first in the Treaty of Rome on the EEC, where art. Article 119 established an obligation on Member States to respect the principle of equal pay for workers for equal work. The regulation was then modified with art. 141 of the Treaty of Amsterdam of 1997, in the sense that "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. For the purposes of this Article, 'remuneration' means the normal basic or minimum wage or salary and all other benefits paid directly or indirectly, in cash or in kind, by the employer to the worker by reason of his/ her employment...".

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<sup>14</sup> Zilli A., *Con gli occhi (e il cervello) delle bambine*, in <https://www.dirittoantidiscriminatorio.it/con-gli-occhi-e-il-cervello-delle-bambine>.

<sup>15</sup> <https://www.istat.it/it/files/2019/11/Report-Conciliazione-lavoro-e-famiglia.pdf>.

<sup>16</sup> ILO, *Understanding the gender pay gap*, 2020:

[https://www.ilo.org/actemp/publications/WCMS\\_735949/lang--in/index.htm](https://www.ilo.org/actemp/publications/WCMS_735949/lang--in/index.htm).

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Dir. CE 75/117 and Dir. 2006/54/EC provided that "with regard to the same work or work to which an equal value is attributed, direct and indirect discrimination based on sex and concerning any aspect or condition of remuneration must be eliminated. Where a job classification system is used to determine wages, it must be based on common principles for male and female workers and be designed in such a way as to eliminate discrimination on grounds of sex".

However, these are formulas that are difficult to implement: on the one hand, it is well known the difficulty of access to justice by individual workers discriminated against: although Dir. 78/2000/EC emphasizes the role of civil society organizations that deal with the protection and affirmation of minority rights in the fight against discrimination, giving these collective subjects the legitimacy to sue, both in the name of an applicant natural person and independently.

The fundamental intersection is then not represented by what "there is" but by what "is missing": in private employment there is no technical possibility of comparing treatments, because the total salary of the comparable worker is not known; in the civil service, where wages are also relatively transparent (and in fact the<sup>17</sup> hourly gender *pay gap* almost does not exist) there is still no comparison test that concerns the assignments and weighing of managerial functions. In the liberal professions, gender is not considered in claiming the right to fair compensation.

When the level of classification is not identical, any comparison is almost impossible; but even when it is, the worker is precluded from accessing information relating to the salary of others, which - indeed - turns out to be among the most intimate secrets between employer and worker, sometimes assisted by an *ad hoc* confidentiality pact but often only by the conviction on the part of workers that it is forbidden to share data<sup>18</sup> relating to their salary.<sup>19</sup>

### 3. Wage transparency as a tool for gender equality in the labour market.

If "knowledge is power", the tool that seems to be most effective in combating inequalities is represented by wage transparency. Through the knowledge of the contractual conditions due to other workers, one can therefore well compare one's own with the performance of others, thus finding that work "equal or of equal value" so long sought.

The decrease of information asymmetries is a fundamental junction for equal opportunities in employment relationships is nothing new.

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<sup>17</sup> ECJ C-256/01, *Allonby*.

<sup>18</sup> Neale N., *The trouble with secrets: pay secrecy, satisfaction and climate*, in *International Journal of Organization Theory & Behavior*, 2020; Morand D., Merriman K., Deckop J., *Making sense of egalitarian pay: Reconceptualising its treatment in organisations*, in *Human Resource Management Journal*, 2019, 2, 180 ff.; Belogolovsky E., Bamberger P.A., *Signaling in Secret: Pay for Performance and the Incentive and Sorting Effects of Pay Secrecy*, in *Academy of Management Journal*, 2014, 6, 1706 ff.

<sup>19</sup> Fawcett Society, *Report 2018*, in <https://www.fawcettsociety.org.uk/right-to-know>: 53% of women and 47% of men are reluctant to share information about their salary, but more than 30% believe that disclosing such information is prohibited.

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Wage transparency, at whatever level one stands, is therefore a necessary condition for combating inequalities. It has been at the heart of the European strategy to combat the *gender pay gap* at least since 2008, when, after the Dir. 54/2006/EC on equal treatment of men and women in matters of employment, the European Parliament adopted the first resolution on equal pay for women and men, indicating wage transparency and gender-neutral systems for assessing and classifying work as the means of applying the principle of equal pay.

Similarly, in its Conclusions of 6 December 2010 on "strengthening efforts and stepping up action to close the gender pay gap and on reviewing the implementation of the Beijing Platform for Action" the Council urged Member States to implement appropriate measures to promote pay transparency, as well as for evaluation and evaluation. neutral classification of professions.

These stresses were repeated in the (second) res. of Parliament of 24 May 2012 and commission communication COM(2013) 83 calling on Member States to "close the pay gap between women and men, remove other barriers to women's participation in the labour market and encourage employers to end discrimination in the workplace as part of their efforts to pursue an active inclusion strategy".

Clearly, it was represented that the implementation of the principle of equal pay was hampered by the lack of transparency of pay systems, the lack of legal certainty on the concept of work of equal value and procedural obstacles, such as "the unavailability of the information that workers need to bring a lawsuit that has a good chance of success, in particular information on the remuneration of staff doing the same work or work of equal value" [Report from the Commission to the European Parliament and the Council COM(2013) 861].

The adoption of Commission Recommendation No 124 of 2014 on strengthening the principle of equal pay for women and men through transparency has certainly been an advance on this instrument, which is based on four lines of action.

First, it was considered that transparency could be ensured through the preparation of "pay reports", suggesting that Member States implement "measures to ensure that employers in enterprises and organizations with at least 50 staff regularly inform employees, workers' representatives and social partners about the average pay per category of employee or position, broken down by gender" (point 4) to be read together with salary audits, i.e. independent assessments conducted by third parties "in companies and organizations with at least 250 employees.

These *audits* should include analysis of the proportion of women and men in each category of employees or position and the job evaluation and classification systems used, and provide detailed information on remuneration and gender pay differentials. Such independent analyses should be made available to workers' representatives and social partners upon request" (point 5). Furthermore, the 2014 Recommendation suggested collective bargaining on pay *disclosure* (point 6) that would also be based on "updated data on the gender pay gap" that would allow Eurostat to provide annual surveys "broken down by sex, economic sector, working time (full-time/part-time), economic control (public/private) and age" (point 7).

Finally, states were recommended to provide the Commission with "data on the type and number of cases of pay discrimination" (point 8) for the purpose of the report on the implementation of the Recommendation, published in 2017.<sup>20</sup>

Collective bargaining has been used to encourage or oblige the social partners to address the issue of equal pay in collective bargaining, considering this forum the ideal place to combat the *gender pay gap*.<sup>21</sup>

Employers are required to undergo independent *audits* if they employ, respectively, more than 25 (Sweden), 50 (France) or 500 employees (Germany), while in the United Kingdom such investigations may be requested by the court.<sup>22</sup>

In other contexts, attempts have been made to achieve wage transparency through the voluntary adhesion of organizations to forms of *disclosure*, up to the full availability for all employees to know the salary and *bonuses* of colleagues for the previous year or to make them known in real time.<sup>23</sup>

The possibility of showing salary fairness and the absence of discriminatory remuneration policies, even for the purpose of obtaining an ethical label, is certainly interesting for the productive giants, especially Overseas. This utility, however, struggles to impose itself in the narrative of the Old Continent, where certifications are not taking off, because not mandatory.

#### 4. A (not modest) proposal: EU Proposal of Directive 2021/93 for "Binding transparency measures".

If, therefore, the lack of pay transparency is one of the main obstacles to equal treatment, all that remains is to remedy it. In the knowledge that European countries would hardly have taken further paths than those accepted in the 2014 Resolution, the promotion of wage transparency<sup>24</sup> at EU level was entrusted to dir.'s proposal of European Parliament and

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<sup>20</sup> See <https://ec.europa.eu/transparency/regdoc/rep/1/2017/IT/COM-2017-671-F1-IT-MAIN-PART-1.PDF>.

<sup>21</sup> ETUC, *Negotiate parity. How collective bargaining helps to eliminate the pay gap between men and women doing the same work or work of equal value*, in [www.etuc.org](http://www.etuc.org). See also Carchio C., Roiatti M., *Closing the gender pay gap*, *ADAPT Bulletin* 8 March 2021, n. 9, in <http://www.bollettinoadapt.it/wp-content/uploads/2021/03/GPGreport.pdf>.

<sup>22</sup> The provision of independent investigations requested by the court could be assimilated to the technical advice of office. On this point, see Italian Supreme Court (Cassazione Civile) 6 December 2019, n. 31886, in *Foro italiano*, 2020, 6, I, 2099, has recently specified how the technical advice cannot investigate facts never ritually offered by the parties; nor acquire on its own initiative proof of the facts constituting the application or the exception, nor acquire from the parties or from third parties documents providing that evidence; this principle may be waived only where proof of the fact constituting the application or an exception cannot objectively be provided by traditional means of proof, under penalty of nullity of the advice.

<sup>23</sup> The list includes, for example: AT&T, eBay, The Estée Lauder Companies, InterContinental Hotels Group, Mastercard, Yahoo, Square, Zillow Group.

<sup>24</sup> See the assessment of the relevant legal provisions of the EU on equal pay, 2020, in <https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:52020DC0152&from=EN>.

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Council 2021/93 "to strengthen the application of the principle of equal pay for men and women for equal work or work of equal value through pay transparency and enforcement mechanisms".<sup>25</sup>

Firstly, the proposal seeks to clarify what is meant by 'work of equal value' by calling for the comparison between posts and wages to be made according to objective and gender-neutral standards, such as education, professional and training requirements, skills, commitment and responsibilities, the work done and the nature of the tasks to be performed.

It is noted that the proposal does not prevent employers from remunerating workers who do the same work or work of equal value differently but calls for these differences to be based on objective, gender-neutral and not biased criteria. This would make it possible, at national level, to facilitate the proof of discrimination, even going beyond the jurisprudential orientation that has so far allowed differentiated disbursements and premiums at their discretion.

The proposal composes a broad concept of remuneration, which includes not only the basic pay, but also the ancillary components, in cash or in kind, that workers receive directly or indirectly from the employer. The reference is to bonuses, overtime allowances, transport services (including cars provided by the employer and season tickets), accommodation allowances, allowances for participation in training courses, sums paid in the event of dismissal, overtime increases, *one-off* discretionary allowances, statutory sickness allowances, statutory allowances and supplementary pension benefits.

With regard to the scope, the proposal covers all workers, including part-time, fixed-term and agency workers. Domestic workers, on call, occasional and employed via digital platform, as well as trainees and apprentices, fall within the scope of the (proposed) directive, if they meet the criteria established by the Court of Justice to identify who a worker is.

On the employers' side, the proposal covers both the public and private sectors, stipulating that, as from the job offer, they must be transparent, offering candidates objective information on the remuneration linked to the position offered, to be communicated through a public offer, or on the occasion of selections. In addition, employers will be prohibited from investigating the candidate's previous salary conditions.

In the report, organizations will have to answer to workers' demands within a reasonable timeframe. Only for employers over 250 workers, there are annual information obligations and preparation of reports relating to the total gender pay *gap* (a) with respect to ancillary and variable components; (b) indicating the average salaries of men and women in total and (c) in the ancillary and variable component parts and (d) showing the ratio of men and women to additional remuneration. In addition, (e) the distribution of staff by gender in each quartile of pay and (f) the pay gap between female and male workers by categories of workers, broken down by ordinary basic salary and complementary or variable components (Article 8, proposal for Directive 2021/93).

The estimated costs for the planned activity would be very modest (from EUR 20 for the single request to EUR 900 for the preparation of the prospectuses required of large

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<sup>25</sup> <https://ec.europa.eu/transparency/regdoc/rep/1/2021/IT/COM-2021-93-F1-IT-MAIN-PART-1.PDF>.



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employers): these are small efforts, capable of generating enormous benefits for the community.<sup>26</sup>

Above all, should the remuneration report reveal a gender pay gap of 5% or more, which the employer is unable to justify on the basis of objective and gender-neutral factors, the situation will have to be "remedied", including in cooperation with workers' representatives, the Labour Inspectorate and/or equality bodies (Article 9, proposal for Directive 2021/93). A simple look at the statistics proposed so far immediately makes it clear that, in Italy, there is no sector free from salary discrimination.

As regards the procedural aspects, the proposed directive stipulates that, if the employer has not complied with his obligations of transparency, anyone who considers herself / himself discriminated against will not even have to submit evidence of discrimination.

As litigation costs are known to be a procedural obstacle that creates a serious disincentive for victims of gender pay discrimination to claim the right to equal pay, in order to ensure greater access to justice and to encourage workers to assert their rights in the in cases where the workers are unsuccessful, the costs must be compensated, unless the case has been brought in bad faith, for spurious reasons or in cases where the non-recovery is considered unreasonable in relation to the specific case (for example, in the case of micro-enterprises in difficulty, Art. 19 , proposal for Directive 2021/93). This is a welcome reading of the principle that the cancellation of expenditure is also allowed for "serious and exceptional reasons", hopefully to be extended to all events in which there is an imbalance of power (economic and not only) between the parties.

As regards the sanctioning aspects, Member States are asked to put in place effective, proportionate, and dissuasive sanctioning mechanisms, which consider the gravity and duration of the infringement, any intention or gross negligence on the part of the employer or any other circumstance of the case (Article 15, proposal for Directive 2021/93).

Furthermore, the discriminated subjects will be entitled to full compensation for any damage suffered, including the loss of *chances* and damage to the person who works: on them the legislator will have to express himself "avoiding providing for a ceiling for compensation (art. 14, proposal for Directive 2021/93) but also to perpetuate the discretions related to the very thorny issue, relating to the exercise of the equitable power of the judge when it comes to injuries to the moral personality of the provider".

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<sup>26</sup> According to the European Added Value Unit (AVA), *European added value assessment on the application of the principle of equal pay for men and women for equal work of equal value*, please refer to: <https://op.europa.eu/it/publication-detail/-/publication/98a2b7d9-eb87-490b-81cb-987deea0d078> a reduction of one percentage point in the gender pay gap would lead to an increase in GDP of 0.1%; according to estimates joint research centre of the Commission (in <https://op.europa.eu/it/publication-detail/-/publication/4320dc0c-7cd4-11eb-9ac9-01aa75ed71a1/language-it/format-PDF/source-200724836>). The socio-economic consequences of reducing the gender pay gap by 3 percentage points reduces the risk of poverty (in particular for single-parent families, which mostly affect women) and leads to an increase in public tax revenues.

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## 5. Transparency vs privacy? Technology at the service of equality.

The apprehension that is the background to the initiatives about wage transparency is the protection of the confidentiality of the workers involved. Already the Recommendation 2014 was concerned that the disclosure of information, which contained personal data, respected the discipline on data protection, now governed by Reg. EU no. 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the Reg. EU No. 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the institutions, bodies, offices and agencies of the Union and on the free movement of such data.

The personal data contained in the salary slip of employees, as they are connected to identified or identifiable natural persons, certainly fall within the notion of "personal data" already contained in art. 1, Law no. 675/1996.

With respect to them, the Guarantor Authority considered it necessary to "adopt the appropriate measures aimed at protecting the confidentiality of the interested parties (e.g.: bending and tapping the slip, enveloping it, affixing a cover of the most significant parts, or introducing a 'courtesy distance' at the counters), so that such data are not immediately accessible to third parties, but remain knowable only by the persons in charge of processing who must necessarily use them for the management of the employment relationship". In<sup>27</sup> order to guarantee the confidentiality of the worker, the employer has been asked to process the personal data contained in the payslips (both in the processing and delivery phases) with all the necessary precautions.<sup>28</sup>

Technological evolution has then dematerialized the paycheck and, finally, automated the activities related to its training, allowing a meticulous breakdown of all the elements that define the worker. The result is the "production of new knowledge" about the working person, which is also achieved through the extraction of information from the available data and the consequent re-elaboration.<sup>29</sup>

But *big data* thus produced, and which today represent, as far as we are concerned, incredible human resource *management* tools, could finally also be used *pro-labour*: in a sort of *reverse* profiling, they allow to position the individual worker, with personal characteristics, in the ranking of company salary treatments.

If the company or plant is too small (in an absolute or comparable sense) and there is the danger that disclosure could lead to the identification, directly or indirectly, of the remuneration of an identifiable employee, Article 10 of the proposal entitles Member States to ensure the accessibility of information only to workers' representatives or equality bodies, which will be able to make workers aware of the situation, without revealing the actual wage levels of individual workers who perform the same work or work of equal value.

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<sup>27</sup> 31 December 1998, in *Bulletin*, 6, 100 [doc. web n. 39324].

<sup>28</sup> 16 July 2003 [Doc. web n. 1080576].

<sup>29</sup> Dagnino E., *People Analytics*, in *Labour & Law Issues*, 2017, 3, 1 ff.

If, therefore, access to data concerning salary classes, wages, allowances and other emoluments paid to civil servants has already been accepted because the requirements of transparency and clarity of administrative action prevail, technology helps workers in the private sector in the search for justice, through transparency, allowing, as never before, now, to access the data of the sector and of the individual work context, adequately anonymized and reworked and, finally, usable in court. Not only that: the perception of living in a fair work environment increases the levels of satisfaction and commitment, which represent fundamental levers for the well-being of the working person, which also translates into greater productivity

It is true that today there are no detailed economic analyses concerning the specific effects of the introduction of measures in favour of wage transparency, but the link between the adoption of these measures, the achievement of equal pay and equal opportunities for men and women in the world of work and in society in general can certainly be noticed. The road of the directive is under way and, if everything goes as planned, the results will be seen within a decade. It is therefore a question of seizing the opportunities that new technologies offer, to ensure in practice the respect of a fundamental right and to support cultural change towards gender equality.

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