

The Transposition of EU Directive 2023/970 on pay Transparency in the Comparative Scenario and in Italy

The authoress examines the transposition of Directive (EU) 2023/970 on pay transparency across European Union Member States, with a specific focus on the Italian legal framework introduced by Legislative Decree No. 96/2026. The study explores the transition from a traditional reactive non-discrimination policy to a proactive, procedural framework centered on transparency, managerial accountability, and information rights. By analyzing the legal approaches across the EU, the research highlights a fragmented landscape. While a minority of countries—such as Italy and Slovakia—achieved timely transposition, major economies including Germany, France, and Spain face legislative delays. Additionally, opposition from Member States like Sweden and Estonia underscores institutional resistance regarding collective bargaining autonomy and administrative burdens. Focusing on the Italian context, the paper evaluates key substantive and procedural innovations, such as pre-employment transparency obligations, workers' rights to pay level information, and gender pay gap reporting requirements. However, several critical issues emerge. The Italian legislator adopted a restrictive definition of "pay level" that excludes non-structural variable components, where gender disparities frequently persist. Furthermore, the framework relies heavily on national collective agreements through a presumption of conformity, potentially shifting the burden of proof back to the employee. The paper also addresses the delicate intersection between pay transparency and data protection under GDPR (Regulation EU 2016/679), examining risks such as indirect re-identification in Small and Medium-Sized Enterprises (SMEs) and algorithmic bias in automated payroll systems. Ultimately, the study concludes that while Legislative Decree No. 96/2026 represents a significant step forward, its practical efficacy risks being undermined by "tick-box compliance" and financial non-invariance clauses unless accompanied by effective enforcement mechanisms, neutral job evaluation criteria, and robust remedies.

Keywords: *equality policies, gender pay gap, transparency privacy discrimination*

Introduction

Premise and Statement of the Problem

This paper aims to investigate the different operational aspects of Legislative Decree No. 96/2026 (which entered into force on 7 June 2026) and to compare the solutions adopted by various countries during the process of adapting to and transposing Directive (EU) 2023/970 on pay transparency. This in-depth analysis will be useful for understanding the regulatory changes affecting the national and European landscape, which represent a significant legal milestone aimed at introducing a new framework of obligations, rights, and remedies for both workers and employers.

1 Indeed, the Italian legislative intervention takes place within a European
2 context characterised by persistent difficulties in ensuring the effective
3 implementation of the equal pay principle enshrined in Article 157 TFEU, a
4 principle progressively developed through Gender Equality Strategies and the case
5 law of the European Court of Justice.

6 From this perspective, the new legislation serves as a testing ground to assess
7 how, and to what extent, the Italian Legislature has managed to transpose the
8 objectives of the Directive, while balancing them with the specific features of the
9 Italian domestic legal system and existing legal remedies. Therefore, this paper
10 seeks to determine whether the Italian transposition has been limited to a mere
11 formal incorporation of European requirements, or whether it has made policy
12 choices designed to have a genuine impact on employment relationships and
13 integrate seamlessly into the national regulatory framework.

14 15 *The "Common Provisions" of the Directive for Implementing Pay Transparency* 16 *into National Legislations*

17
18 Directive 2023/970 introduces, for the first time in Europe, a core set of
19 common rules aimed at eradicating structural gender inequality in the workplace
20 and implementing the principle of pay transparency, while respecting national
21 regulatory traditions - consistent with the Directive's nature as establishing
22 minimum requirements¹.

23 The new EU regulatory framework also introduces revolutionary pillars to
24 combat intersectional discrimination - which receives formal recognition under
25 Union law for the first time - offering protection to disadvantaged groups and
26 addressing the combination of potentially discriminatory factors, such as gender
27 and religion².

28 A further crucial safeguard introduced by the directive was the total and
29 automatic reversal of the burden of proof under Article 18, exempting the worker
30 from the obligation to produce *prima facie* evidence³.

31 32 *An Overview of the Transposition of the Directive in the Member States*

33
34 By the transposition deadline for Directive 2023/970 - set for June 7, 2026 -
35 the European regulatory landscape remained highly fragmented, revealing a trend
36 that appears to indicate a form of structural non-compliance with EU law.

37 Only a small minority of Member States - including Italy (via Legislative
38 Decree No. 96 of May 7, 2026) and Slovakia⁴ - have carried out a complete and
39 timely transposition, whereas Belgium, Malta, and Poland have implemented the
40 directive only partially.

¹Rotondi, Rotondi (2026).

²Chopin, Germaine (2025); Militello, Strazzari (2019); De Piccoli, Rollero (2024); Lange, J.Lux (2026).

³Ferradini (2026); Lamberti (2024); Cerullo (2026); Biasi (2026); Aa.Vv (2026).

⁴On April 15, 2026, the Slovak Parliament approved the law on equal pay, which entered into force on June 7, 2026, as in Italy.

1 Conversely, major economies such as Germany ⁵, Spain, and France continue
2 to experience delays in the legislative transposition process; meanwhile, the
3 European Commission has ruled out any further extensions, raising the prospect of
4 infringement proceedings and substantial financial penalties for non-compliant
5 states.

6 The overall picture is also marked by instances of political or institutional
7 resistance; the most emblematic case is undoubtedly that of Sweden, a country
8 historically characterized by strong trade union autonomy and an existing system
9 of periodic wage mapping.

10 Sweden has adopted a critical stance at the European level, voting against the
11 directive and calling for its renegotiation and a postponement of implementation,
12 viewing the EU regulation as an unwelcome interference in its collective
13 bargaining system.

14 Similarly, Estonia has opposed the new European directive, citing its
15 excessive administrative and bureaucratic burden. Finally, countries such as the
16 Netherlands are still drafting legislation aimed at faithfully transposing the
17 directive, with the final legislation scheduled for implementation by January 1,
18 2027 ⁶.

21 **Findings/Results**

23 *Comparative Analysis of Transposition Models*

24 The push for pay transparency is neither a phenomenon confined to the
25 European Union nor a concept foreign to many national legal systems, which have
26 long adopted the principle of equal pay. However, the transposition of Directive
27 2023/970 has taken on different forms and timelines across Member States, where
28 four broad models can be identified.

29 First, the judicial model adopted by Germany is characterized by relatively
30 cautious legislation alongside particularly progressive case law. The existing
31 framework is based on the *Entgelttransparenzgesetz* (2017) and the *Allgemeines*
32 *Gleichbehandlungsgesetz* (2017); these laws recognize an individual right to
33 information regarding pay and remuneration criteria, as well as reporting
34 obligations for large companies, yet they lack a robust enforcement or sanctions
35 mechanism. The system favors a "light-touch" approach to information disclosure,
36 leaving specific details to be addressed in potential litigation. The German legal
37 system features an established mechanism for shifting the burden of proof and
38 places significant weight on the presumption of discrimination. Nevertheless, the
39

⁵In Germany - known for a participatory model of industrial relations and the active presence of workers and their representatives on works councils - the absence of national implementing legislation can create discrepancies between the national framework yet to be defined and the decisions made by courts, workers, and works councils, which instead focus on strict compliance with the directive's provisions.

⁶Rotondi, Rotondi (2026).

framework for pay data reporting remains weak, and no draft legislation transposing the Directive has yet been published.

Although it has not yet formally transposed the directive, the Spanish model features a regulatory framework already aligned with European rules, based on Article 28 of the Workers' Statute, Organic Law 3/2007, and Royal Decrees 901 and 902 of 2020. The existing national legal system already includes a job evaluation system based on objective and neutral criteria, worker representation involvement, and strict penalties. Nevertheless, the principle of transparency still needs to be integrated into the pre-contractual phase through the transposition of the European provisions.

The Dutch transposition model, by contrast, appears to be one of the most faithful to European regulations, following the directive almost to the letter. The legislative proposal, which has been under consultation since March 2025, is primarily based on the law regarding equal treatment between men and women. However, the Dutch case has drawn criticism—particularly from the European Commission—due to the delay in implementation.

The French model, centered on the **index de l'égalité professionnelle** (professional equality index), relies on an annual pay-equity measurement tool that is mandatory for companies with more than 50 employees and entails corrective measures and potential sanctions. Unlike in Germany, the transposition process has resulted in a bill scheduled for a vote by the end of 2026. Under this bill, the current index will be replaced by a system of indicators established by decree, while the threshold for applying transparency obligations remains set at 50 employees. Moving closer to the Italian model in some respects, France has decided to prioritize social dialogue and trade union traditions, entrusting the classification of job categories of "equal value" primarily to company-level collective bargaining, and resorting to sectoral collective agreements only in the absence of such an agreement. The draft legislation also provides for a strengthening of the reversal of the burden of proof and a toughening of the sanctions regime.

Similarly, Ireland missed the June 7, 2026 deadline. However, the Gender Pay Gap Act (2021) already covers many of the transparency and reporting obligations that must be implemented in accordance with the directive.

National Peculiarities

Despite sharing common features, the Italian transposition presents certain significant national peculiarities and critical divergences from the European regulatory framework.

Firstly, there is the absence of an express provision codifying the automatic reversal of the burden of proof an issue previously analyzed.

Secondly, legal scholars have expressed skepticism regarding the definition of "pay level" adopted in Article 3(b) of Legislative Decree No. 96/2026; by including only fixed and continuous base pay, the definition risks being structurally restrictive and undermining the effectiveness of the right to information, as it explicitly excludes non-structural forms of remuneration - such

1 as individual pay supplements (*superminimi*) and *ad personam* bonuses - where
2 the gender pay gap ⁷ has historically been rooted.

3 Similarly, legal scholars have noted certain inconsistencies in the definitions
4 adopted by the Italian legislature under Article 4 of the legislative decree, which
5 lists the criteria to be considered when assessing "the same work or work of equal
6 value." Italian legislation diverges somewhat from the Directive's provisions by
7 entirely excluding the criterion of "effort," thereby undermining the recognition of
8 merit and the transversal skills characteristic of certain sectors with high female
9 employment. Furthermore, the legislative decree refers to the job classification
10 levels established by the national collective labour agreement applied by the
11 employer - concluded by the most representative trade unions - which is presumed
12 to comply with the principle of gender ⁸.

13 While legal scholarship has recognized in this legislative choice the central
14 role of collective autonomy - a distinctive feature of the Italian system - it has also
15 been highlighted that this solution goes well beyond the need to involve the social
16 partners in assessing the value of the work performed⁹.

17 Critics have pointed out that the Italian legislator's approach effectively limits
18 worker protections, leaving the employee with only the residual option of proving
19 the existence of discriminatory individual pay practices ¹⁰. The regime's strong
20 bias in favor of collective agreements - based on a presumption of compliance
21 with the principle of equality - assumes that the job classification level is the
22 appropriate basis for comparison; this limits the effectiveness of European
23 regulations and shifts the burden of proof onto the worker, who must demonstrate
24 the detrimental nature of specific clauses within the national collective labor
25 agreement.

26 On the other hand, it is worth noting that the guidelines issued by the Court of
27 Justice, EIGE, and the European Commission concur that, in cases of pay
28 discrimination stemming from a national collective labor agreement, the employer
29 is responsible for going beyond the agreement's minimum terms to restore pay
30 equality.

31 32 33 **Discussion**

34 35 *The new legislation in the context of European gender equality policies*

36
37 The challenges associated with entering and remaining in the labor market
38 differ between men and women. Women are frequently hindered by social
39 stereotypes and face job insecurity and the gender wage gap. Occupational
40 segregation and pay disparities negatively affect not only women's individual
41 freedoms but also the labor market as a whole and the overall well-being of
42 society and the Union. Indeed, the vision of a single market and an economic

⁷Cerullo (2026); Biasi (2026).

⁸Treu (2026).

⁹Aa.Vv (2026).

¹⁰Tiraboschi (2026).

union - foundational to the European Union - has increasingly been accompanied over the years by the vision of a "social" Europe¹¹.

The need to combat gender-based discrimination lies at the very origin of Directive (EU) 2023/970 on pay transparency; this Directive introduces a new paradigm rooted in transparency and based on employer information obligations, tools for monitoring pay disparities, and procedural safeguards for workers. Indeed, Directive (EU) 2023/970 aims to strengthen and effectively implement the principle of equal pay between men and women for the same work, seeking to combat gender discrimination in its various forms - ranging from gender stereotypes and the "glass ceiling" to vertical and horizontal segregation - thereby aligning fully with the Gender Equality Strategy 2020–2025¹². The principle of "equal value" lies at the heart of this European legislation, aiming to ensure pay equity for equivalent roles and permitting pay differentials only when justified by objective criteria. Collective bargaining and job classification systems serve to guarantee this neutrality, while the use of artificial intelligence systems is subject to analytical scrutiny designed to ensure that algorithmic training does not replicate or exacerbate gender discrimination¹³.

The directive thus serves as a further operational strategy adopted by European institutions to address the persistent pay gap and the structural undervaluation of women's work, both of which were highlighted by the pandemic¹⁴. Consequently, it represents the outcome of a complex political and legislative process aimed at rectifying the inadequacy of existing regulatory instruments.

Within the framework of EU law, the 1957 Treaty of Rome had already enshrined the principle of equal pay in Article 119 of the EEC Treaty; today, Article 2 of the TEU (indirectly) and Articles 157 and 3 of the TFEU (directly) recognize equality as a foundational value of the European Union and guarantee equal pay for men and women for the same work or work of equal value. A prohibition on gender discrimination in the broad sense is set out in Article 21 of the Charter of Fundamental Rights of the European Union¹⁵.

Nevertheless, wage disparities between men and women - the so-called gender pay gap - persist today, representing one of the main obstacles to fully realizing the principle of equity in the labor market and achieving the European Union's full economic development. According to the latest EIGE¹⁶ statistics and OECD¹⁷ reports, the pay gap is narrowing far too slowly. Data show that for every dollar a man earns, a woman receives only 90 cents. Furthermore, women would need to work approximately 15 and a half months to match a man's annual earnings; in this context, Italy ranks last in the EIGE score for pay equality, particularly among couples with children.

Empirical evidence from statistical data calls for a substantial shift in direction. While encouraging women's entry into the labor market fosters

¹¹Erne, Hauptmeier, Pulignano, Turnbull. (2024).

¹²Biasi (2026); Vallauri (2023).

¹³Caragnano (2025); Corazza (2024).

¹⁴Ghedini (2020); Arabadjieva (2021).

¹⁵Cerullo (2026); S.B. Lahuerta (2025).

¹⁶Eige (2025).

¹⁷Oecd (2026).

1 economic growth and improves the quality of life for European citizens - of whom
 2 women make up roughly half - ensuring female representation in the workforce
 3 and in leadership roles also helps build more stable and resilient democracies
 4 capable of reflecting the diverse interests characterizing society within their
 5 decision-making processes¹⁸.

6 The Union's objective, reaffirmed by President von der Leyen's new
 7 mandate, is to implement gender equality policies aimed at creating a Union
 8 founded on equality and free from the gender biases often embedded in
 9 professional classification and wage systems.

10 Despite Directive 2023/970, various studies highlight significant ongoing
 11 challenges in promoting gender equality¹⁹, noting that women remain overrepresented
 12 in jobs with low pay and limited social recognition, and underrepresented in top-level
 13 positions - partly due to the heavier burden of domestic work²⁰.

14 Without targeted and decisive action, gender parity will be achieved in 134
 15 years - according to data from the World Economic Forum's *Global Gender Gap*
 16 *Report 2024* - or in 50 years, based on the *EIGE Report 2025*²¹.

17 To avert this outcome, the European Union's roadmap for gender equality,
 18 aligned with the 2020–2025 Strategy, has set specific goals regarding women,
 19 such as equal pay and economic empowerment, improved work-life balance, equal
 20 employment opportunities, and adequate working conditions.

21 22 *Legislative Decree No. 96/2026: structure and substantive innovations*

23
24 Legislative Decree No. 96/2026 marks the culmination of a long process of
 25 enshrining the principle of equality in law; despite certain critical issues within the
 26 text, it represents a paradigm shift in Italian anti-discrimination labor law. Through
 27 the transposition of Directive 2023/970, the national legal system transforms the
 28 negative obligation to refrain from discrimination into a binding operational
 29 requirement for employers, thereby giving the principle of pay transparency direct
 30 effect both vertically (for public sector employers) and horizontally (in private-
 31 sector employment relationships)²². Consequently, the decree does not merely
 32 formally reaffirm gender equality principles already codified at the national level
 33 and in European Treaties; rather, this Italian legislative measure aims to reshape
 34 employment relationships through the concrete and active implementation of the
 35 principle of pay transparency. From a systemic perspective, it should be noted that
 36 the measure is not an independent *lex specialis* but a set of rules designed to be
 37 integrated into the framework already established by Legislative Decree No.
 38 198/2006, known as the Equal Opportunities Code²³. Legal scholars have described
 39 this approach as a shift toward a European "common grammar" of transparency,

¹⁸European Commission (2025a); European Commission (2025b).

¹⁹For an overview of this point, see Calvellini (2026).

²⁰Marotta (2026); Zilli (2021).

²¹Eige (2025).

²²Calafà, Peruzzi (2026).

²³Ferradini (2026).

moving the focus of anti-discrimination protection toward a preventive and procedural logic²⁴.

However, the paradigm shift introduced by Directive 2023/970 has drawn criticism highlighting the risk that the numerous information-related obligations imposed on employers might devolve into mere formalism - so-called "tick-box compliance" - thereby merely stirring up the bureaucracy of remuneration systems rather than bringing about substantive changes to the gender pay gap²⁵. Closely mirroring the structure of the EU Directive, the decree in question comprises sixteen articles, organized into five chapters. Chapter I defines the subject matter and scope of application, extending the new obligations to all public and private sector employers and to all employment relationships, including those involving executives and part-time workers. Apprenticeship contracts fall within the decree's scope, whereas domestic work and intermittent work are excluded, thereby depriving two labor market segments with a very high concentration of women of such protections²⁶. Specifically, the decree aims to combat pay discrimination by providing a more precise definition of the concept of "work of equal value"; to this end, the legislation considers criteria such as skills, responsibilities, and working conditions when assessing the equal value of work²⁷.

However, the failure to account for the physical, mental, and emotional effort required by a specific job - factors expressly included in the Directive - means that sectors with a high female workforce, such as the care and assistance sector, also risk being left without protection. Furthermore, Article 4 introduces a presumption of compliance for employers who apply a National Collective Labor Agreement (CCNL) concluded by the most representative trade unions and employers' organizations—a topic that will be analyzed further below.

Information Obligations during the Pre-hiring Phase and the Employment Relationship, and Obligations regarding reporting and the Assessment of Pay Disparities

Chapter II of Legislative Decree No. 96/2026 governs the core transparency obligations, distinguishing between pre-hiring requirements, protections during the employment relationship, and obligations regarding reporting and joint assessment.

The decree in question incorporates the pay transparency paradigm as early as the pre-contractual stage; under Article 5, employers are now required to state the initial salary in job advertisements²⁸. At the same time, an absolute ban is introduced on asking candidates for information regarding their current pay or remuneration from previous employment. In doing so, the legislator aims to prevent any past pay gap from carrying over into current employment²⁹.

Article 6 (of the legislative decree) establishes the obligation for companies - during the employment relationship - to make accessible the criteria used to

²⁴Rotondi, Rotondi (2026); Lamberti (2024); Barbieri, Dani (2026).

²⁵Treu (2026); Vallauri (2023); Ferradini (2026).

²⁶Biasi (2026); Ferradini (2026); Treu (2026).

²⁷Calvellini (2026).

²⁸Brütt K. and Yuan (2026).

²⁹Lamberti (2024).

1 determine wages and employee pay progression; these criteria must be non-
 2 discriminatory, objective, and gender-neutral. Only employers with fewer than
 3 fifty employees are exempt from disclosing their pay progression criteria.

4 Despite the significance of the preceding articles, the most disruptive
 5 innovation at the individual level is undoubtedly that introduced by Article 7 of the
 6 decree. This article establishes a right to information whereby any worker may
 7 request and receive - in writing - details regarding their own pay level and the
 8 average pay levels for categories of workers performing the same job or work of
 9 equal value, as defined in Article 3³⁰. Given the potential issues associated with
 10 this article, some clarifications are in order. First, the right to information
 11 introduced by Article 7 should not be confused with blanket authorization to
 12 access colleagues' payslips; rather, the right is limited to ascertaining average pay
 13 levels. The legislation clearly stipulates that workers' individual financial terms
 14 remain protected and confidential. Article 3, paragraph 1, letter b), specifies that
 15 the pay level encompasses all fixed and recurring elements, while excluding non-
 16 structural individual components, one-off bonuses, and individual pay
 17 supplements based on objective criteria. Furthermore, this right may be exercised
 18 only once a year, and the employer has two months to respond. In practice, the
 19 Italian approach could lead to potential non-compliance with Directive 2023/970
 20 and render the individual right to information ineffective, as wage disparities often
 21 lie precisely within these variable and ancillary components³¹.

22 Legislative Decree No. 96/2026 follows the European directive's model by
 23 establishing specific obligations to report on and assess potential pay gaps; the
 24 technical procedures for data collection and processing will be defined through
 25 one or more decrees issued by the Minister of Labour and Social Policies. Article
 26 9 forms the cornerstone of the transparency requirement, mandating that
 27 employers with at least one hundred employees submit periodic reports on seven
 28 gender pay gap indicators—including mean and median pay gaps, the distribution
 29 of pay quartiles, and differences in variable pay components.

30 Administrative reporting burdens become more rigorous and frequent
 31 depending on the size of the company. Furthermore, to identify and address the
 32 structural and systemic causes of the gender pay gap, the decree mandates a joint
 33 pay assessment under Article 10; this procedure is triggered if employer reporting
 34 reveals an average pay gap exceeding 5% that is neither justified by objective
 35 criteria nor rectified within six months. The aim is to ensure cyclical, precise
 36 monitoring of professional assessment systems via a monitoring body—
 37 established under Article 14—tasked with promoting and ensuring the
 38 implementation of the measures set out in the decree.

39 A further critical issue concerns the regulation of intersectional discrimination-
 40 understood as discrimination based on the convergence of multiple, interconnected
 41 risk factors within the same individual, such as gender, ethnicity, and disability. This
 42 approach moves beyond the "single-axis approach," under which distinct
 43 discrimination factors were regulated separately - often leading to the dismissal of

³⁰Faioli (2025).

³¹Biasi (2026); Ferradini (2026); Rausei P. (2026).

many claims due to the inability to prove discrimination based on a single, isolated factor. Although Article 3, paragraph 1(m) of the decree incorporates the reference to intersectional discrimination introduced by the directive, the Italian legislator adopted a more cautious approach; Article 3, paragraph 2 specifies that, for reporting purposes, employers are not required to collect data beyond that relating to gender, thereby potentially limiting the protection afforded against intersectional discrimination.

Chapter II concludes with Article 11 - which will be discussed in detail later - defining the scope of personal data processing in compliance with EU Regulation 2016/679.

Remedies, the Sanctions System, and Final Provisions

Chapter III, meanwhile, governs the system of remedies and sanctions. Regarding the remedies for workers provided for by Legislative Decree no. 96/2026, Article 12 introduces no new measures; instead, it establishes a comprehensive cross-reference to the procedural protections set out in the Equal Opportunities Code. However, the legal protections provided for by the referenced provisions may also be invoked by trade unions and relevant associations. The sanctions regime thus mirrors the framework of the Equal Opportunities Code (referring to Book III, Title I, Chapter III), providing for worker compensation in cases of unjustified disparities—covering both the recovery of back pay and compensation for non-pecuniary damage and lost opportunities. Article 13 of the decree therefore confirms administrative fines ranging from five thousand to ten thousand euros. Nevertheless, given the requirement for effective and proportionate sanctions under Article 23 of the EU Directive, the Italian sanctions regime appears to lack a sufficient deterrent effect—a sign of a certain "regulatory timidity," particularly regarding large enterprises—which could expose Italy to future infringement proceedings by the Court of Justice of the European Union.

Finally, Chapter IV establishes—in Article 14—the aforementioned monitoring body within the Ministry of Labour and Social Policies and regulates the systematic transmission of statistical data to Eurostat. A critical issue highlighted by legal scholars concerns the lack of coordination between the activities of this new body and the functions historically assigned to the Unified Guarantee Committees within Italian public administration bodies. Lastly, within Chapter V, the financial neutrality clause in Article 16 effectively renders this Italian legislative measure a "law without a budget" - one lacking adequate public funding for its implementation - thereby risking a slide into sterile bureaucratic formalism.

The Relationship between Pay Transparency and Privacy Protection

The principle of pay transparency promoted by Directive (EU) 2023/970 must be implemented in a manner compatible with the fundamental right to the protection of personal data, as guaranteed by Article 8 of the Charter of Fundamental Rights of

the EU and governed by Regulation (EU) 2016/679 (General Data Protection Regulation – GDPR)³².

Although employee pay data do not fall *stricto sensu* within the categories of "special categories of data" referred to in Article 9 of the GDPR, they possess economic and reputational significance that requires their processing to be based on a valid legal ground. In this regard, the processing of pay data in compliance with the Directive in question is legitimized under Article 6(1)(c) and (e) of the GDPR, as it is necessary for compliance with a legal obligation to which the controller is subject and for the performance of a task carried out in the public interest vested in the controller³³. At the same time, processing pay data pursuant to the pay transparency principle must not result in the public disclosure of individual income levels; instead, it must prioritize forms of aggregation and anonymization regarding corporate information flows. Indeed, the Directive requires employers to disaggregate and publish average pay data broken down by gender, job level, and category of workers performing the same work or work of equal value. Only in this way does the data processing comply with the principle of "data minimization" set out in Article 5(1)(c) of the GDPR and the principles of privacy by design and by default (Article 25 of the GDPR).

Privacy Protection Obligations: Navigating Regulation (EU) 2016/679, Directive (EU) 2023/970, and Legislative Decree No. 96/2026

The regulatory link between personal data protection and the principle of pay transparency is evident primarily in Article 12 of Directive 2023/970 and Article 11 of Decree No. 96/2026; the latter mandates that workers' remuneration data remain anonymous, rendering it impossible to identify - or trace the identity of - the individuals to whom the data refers³⁴. Furthermore, the European provision stipulates that if aggregated reporting risks revealing an individual employee's pay, employers are obliged to restrict data access solely to workers' representatives and equality bodies³⁵. In the Italian legal system, the transposition of these requirements via Legislative Decree No. 96/2026 aligns with the worker safeguards already established by Article 114 of Legislative Decree No. 196/2003 (the so-called "Privacy Code"). Additionally, the prohibition against asking candidates about pay received in current or past employment - as set out in Article 5 of the Directive and Legislative Decree No. 96/2026 - aligns perfectly with Article 8 of the Workers' Statute, which forbids employers from inquiring into facts irrelevant to assessing a worker's professional aptitude³⁶. It is therefore clear that the national framework aims to prevent the legitimate demand for pay transparency from becoming a vehicle for the undue proliferation of personal data, limiting the collection and processing of pay-related information to the specific purpose of addressing the gender pay gap.

³²Hooton And Pearce (2023).

³³Ogrisek (2016); Lamberti (2024).

³⁴Rausei (2026).

³⁵Ferradini (2026).

³⁶Tosi (2021).

Privacy and Anti-discrimination Legislation: Common Aspects and Potential Critical Issues

From an operational standpoint, critical issues arise at the intersection of anti-discrimination regulations and personal data protection laws.

One initial systemic tension concerns the methods used to disseminate corporate gender reports within Small and Medium-sized Enterprises (SMEs). In the SME organizational context, disaggregating remuneration data by job classification level and specific role risks enabling the so-called "indirect de-anonymization" of individual employee compensation. If only two people work at a specific classification level, or if an entire corporate function is staffed by a single worker of a particular gender, the aggregated report ceases to be anonymous; in effect, this risks immediately revealing the workers' exact individual salaries. To prevent compliance with pay transparency obligations from conflicting with the data minimization principle, legal experts³⁷ emphasize that companies must implement sophisticated technical and organizational measures such as establishing minimum numerical thresholds for each classification group or restricting report disclosure solely to the Labor Inspectorate or equal pay bodies.

A second critical issue arises from the increasing use of artificial intelligence (AI) systems to process remuneration data, which introduces an additional layer of complexity³⁸. In this regard, Article 22 of the GDPR prohibits purely automated decision-making, mandating effective human oversight - the so-called "human-in-the-loop" approach - for payroll analytics software; this prevents AI algorithms³⁹ from entrenching potential pre-existing wage discrimination inherent in the historical datasets used to train these models, rather than adhering to neutral and objective criteria⁴⁰.

Conclusion

Final Considerations and Conclusions

The analysis conducted suggests that Legislative Decree No. 96/2026 represents a significant development in Italian anti-discrimination law, marking a shift from a predominantly reactive approach to a model based on prevention, transparency, and employer accountability. Through the transposition of Directive (EU) 2023/970, Italy has introduced tools designed to revolutionize not only the litigation process but also the industrial framework regarding transparency obligations—a principle that plays a tangible role in eradicating gender-based pay disparities. A comparison between the European regulations and the choices made by the Italian legislator reveals that this regulatory transformation remains, in effect, incomplete. The decree remains heavily anchored to pre-existing national

³⁷Ferradini (2026); Lamberti (2024).

³⁸Cangemi (2024).

³⁹Giacaglia (2024).

⁴⁰Calvellini (2026).

1 mechanisms, prioritizing alignment with the Equal Opportunities Code regarding
 2 procedural matters and relying once again on the national collective bargaining
 3 system to define the value of work. While this approach attempts to maintain
 4 systemic coherence, it risks diluting the directive's innovative impact.

5 The relationship between pay transparency and personal data protection is
 6 also particularly critical. Legal scholarship is clear on this point: the full
 7 implementation of the new paradigm cannot and must not result in the
 8 indiscriminate proliferation of individual employee pay data; rather, it must be
 9 achieved in compliance with the principles of data minimization, aggregation, and
 10 anonymization outlined in EU Regulation 2016/679. Striking a balance between
 11 transparency and privacy becomes especially complex for SMEs and in the
 12 context of the growing use of artificial intelligence algorithms for pay analysis.

13 Furthermore, a comparative analysis of transposition—or the lack thereof—
 14 reveals that there is no single model for implementing the principle of pay
 15 transparency. Member State legal systems span a spectrum that includes systems
 16 where the transparency principle has historically been upheld by case law, models
 17 where reporting and information obligations are codified in national law, and
 18 models where collective bargaining plays a central role.

19 The failure of major economies - such as Spain, France, Germany, and the
 20 Netherlands - to transpose the directive confirms the difficulty Member States face
 21 in adopting the new European paradigm and integrating it into their national legal
 22 frameworks. The fragmentation of national regulatory frameworks highlights that
 23 the effectiveness of European legislative action depends entirely on the ability of
 24 Member States to tangibly reduce information asymmetries, facilitate workers'
 25 access to justice, and rectify gender pay disparities.

26 Ultimately, Legislative Decree No. 96/2026 appears to be a promising starting
 27 point for Italy rather than a final destination. Its effectiveness will depend largely
 28 on the regulatory and monitoring activities undertaken by companies, trade unions,
 29 and equality bodies. The priority for Italy - and for Europe as a whole - must be to
 30 ensure that the new regulations do not devolve into mere "tick-box compliance,"
 31 consisting of formal requirements that have no real impact on wage structures or
 32 worker protections. Conversely, if the principle of transparency is to become a
 33 genuine tool for substantive equality in the labor market—and if the European
 34 drive for pay equity is to succeed—the EU legislation and its national
 35 transposition must be accompanied by effective remedies, easy access to justice
 36 for workers, dissuasive sanctions, and gender-neutral job evaluation criteria
 37 specifically designed to recognize skills that have traditionally been undervalued
 38 in sectors where women make up the majority of the workforce.

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