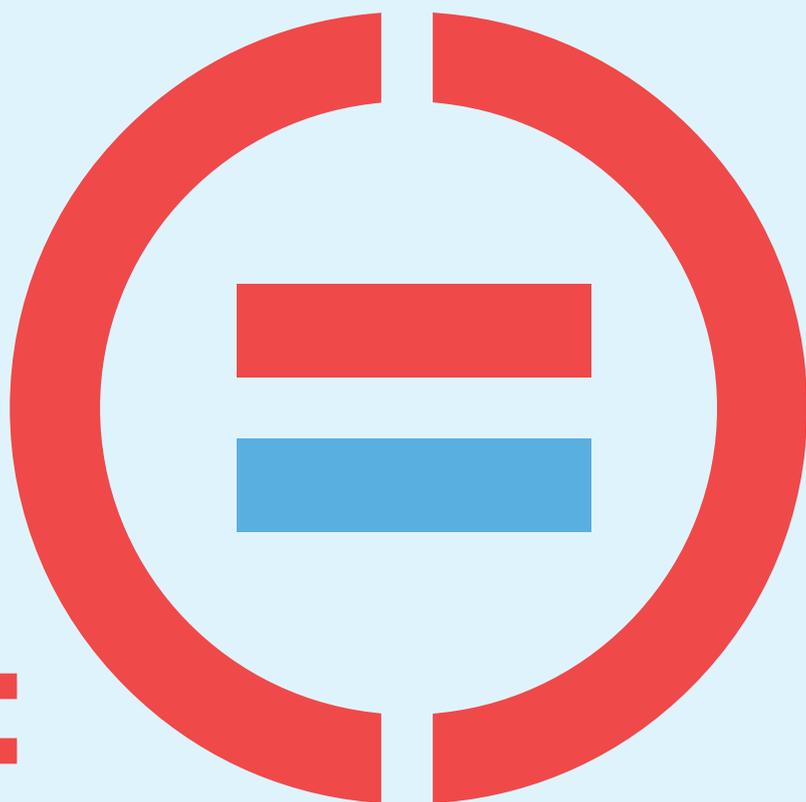


**Network on protection  
against discrimination**



# **‘SALARY: UPON AGREEMENT’**

**EXECUTIVE SUMMARY**

## **Reducing gender gap through transparency of salaries**

Directive proposal of the European Parliament and the Council for reinforcing the application of the equal salary for equal work principle or equally valued work between men and women through transparency of salaries and mechanisms for implementation

Document on public policies







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If you have ever had the opportunity to look for a job in RN Macedonia, you are probably well aware of the fact that job advertisements rarely contain the net-salary amount. Employers persistently refuse to obey the legal regulation which obliges them to include the basic net salary pay amount or the amount starting from the lowest to the highest degree regarding the job position being advertised, specifically when this process is performed via public announcement.<sup>[1]</sup> Depending on the employer's magnitude with respect to the public advertisement and vacant job positions, as well as taking into consideration that not even the fines starting from 200 to 1 000 euros against the Employment Law do not prevent the employers from this practice,<sup>[2]</sup> it is obvious that salary secrecy is straightforwardly in the employers' best interest, and that it does not suit and it is actually to the detriment of the employees.<sup>[3]</sup>

To be more precise, the advertisers often emphasize that the salary amount will be agreed upon after completing the employment procedure with the eligible candidate, because by doing this, they only take into consideration their own best interests, which means lower salary for the employee.<sup>[4]</sup> This especially applies to the negotiations where the successful candidate about to be employed is a woman,<sup>[5]</sup> because the positioning of the labour market itself places women in a more disadvantageous position to negotiate. The data indicate that women represent a vast majority of the inactive population,<sup>[6]</sup> they often earn less and work in industries which are generally paid less.<sup>[7]</sup>

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1. Article 23, point 1 paragraph 5 of the Employment Law ('Official Gazette of Republic of Macedonia' N° 62/05, 106/08, 161/08, 114/09, 130/09, 50/10, 52/10, 124/10, 47/11, 11/12, 39/12, 13/13, 25/13, 170/13, 187/13, 113/14, 20/15, 33/15, 72/15, 129/15, 27/16, 120/18 and 'Official Gazette of RN Macedonia' N° 110/19 and 267/20).

2. Article 265, point 1 paragraph 7 of the Employment Law.

3. This is almost a hundred-year-old discussion, as illustrated more specifically in Jones, J. H. (1926). *The Secret of High Wages*.

4. More information regarding this approach can be seen in much older publications, such as, in Pfeffer, J. (1998). *Six dangerous myths about pay*. Harvard business review, 76(3), 109-120.

5. For a more insightful perspective, see Federici, S. (1975). *Wages against housework*. Bristol: Falling Wall Press.

6. According to the last data regarding labour market in 2021, the rate of inactive population is 37.5 % among men and 62.5 % among women. Source: State Statistical Office, Active population in RN Macedonia, Results from work force Survey, First trimester of 2021.

7. Westminster Foundation for Democracy, North Macedonia, K, Kolozova and a group of authors (2019), *Political participation of women in North Macedonia: study and scientific research articles*, 162-163.

Transparency of salaries means that both male and female workers are being informed about value scaling of labour and are precisely familiarized with the net salary amount starting from the lowest heading to the highest degree regarding specific job positions.<sup>[8]</sup> Transparency of salaries enables employees to be aware of and to prove possible discrimination on gender basis and makes gender bias visible in the salary systems and in the grading of certain professional skills, which are mostly perceived as female qualities and as such ought not to be additionally paid.<sup>[9]</sup> The best example in this respect are female health workers, female nurses and female caregivers, who despite performing one of the most difficult and most important jobs, due to stereotypical perception of care as something ‘natural’ for women, are not at all valued and their salaries are mostly significantly below the average salary.<sup>[10]</sup> Having in mind that this bias might also be unconscious, transparency of salaries will contribute in raising awareness about the problem that exists among employers and will assist in identifying discriminatory differences in salaries based on gender, which cannot be explained by the use of valid discretion factors.

It has not been known if the State Labour Inspectorate (SLI) has received any complaint and/or has reacted upon with respect to public announcements.<sup>[11]</sup> The fact that there are no reports on such cases adds on to the reality in most of the time in RN Macedonia – meaning salaries are not being discussed. The degree of (non)transparency of salaries is initiated by publishing the advertisements itself and the fact that they do (not) include the salary amount, even after the employments and throughout the whole employment period; thus more often than not there are colleagues who work on the same position and those people are differently paid for the same type of work, and at the same time they are not being aware of this.<sup>[12]</sup>

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8. Ramachandran, G. (2011). Pay transparency. *Penn St. L. Rev.*, 116, 1043.

9. Proposal for a Directive of the European Parliament and of 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 COM/2021/93 final, Brussels, 4.3.2021, page 2.

10. Source: State Statistical Office, *Average monthly paid net-salary per employee*, March 2021.

11. For example, the annual reports by the SLI (State Labour Inspectorate) in the period between 2011 and 2019, information on complaints and/or reactions upon public announcements cannot be found at all, the reports are available on: [https://dit.gov.mk/?page\\_id=69](https://dit.gov.mk/?page_id=69).

12. Globally illustrated in Baker, M., Halberstam, Y., Kroft, K., Mas, A., & Mes-sacar, D. (2019). *Pay transparency and the gender gap* (No. w25834). National Bureau of Economic Research.

In a situation of significant gender inequalities in RN Macedonia regarding income, profit, and distribution of responsibilities in households,<sup>[13]</sup> the outcome leads to unjust status quo, which harms female workers and economy in general. All in all, the index of gender balance in Macedonia in 2015 was 62 and it is below the average index for the European Union (EU) which is 66,2.<sup>[14]</sup> According to the last available data, gender gap in salaries in RN Macedonia in 2017 was 15 per cent, and this gap increases to 17.3 per cent if components like education, work experience, age and job profile are taken into consideration; the gender gap is 28 per cent if people who only completed primary school are taken into consideration.<sup>[15]</sup> This means that on the average for every 20 000 denars earned by a man in RN Macedonia, depending on the circumstances, a woman for the same work would earn 17 000, 16 540 or 14 440 denars. This is mostly due to the firmly established patriarchal gender roles in many households in RN Macedonia and generally in the system practices which have been depreciating female work and have attributed female work as 'gender characteristic'.

The situation is being additionally deteriorated for women who belong to ethnic minorities and/or women coming from rural areas,<sup>[16]</sup> the result being that women spend seven times more time compared to men when it comes to household work.<sup>[17]</sup> Stereotypical division of gender roles is further on reflected on the labour market, thus the jobs mostly performed by women are among the least regulated and the least paid, and women are primarily employed for lower standing job positions.<sup>[18]</sup>

This document on public policies analyzes the positioning of Macedonian legislation with respect to protection of the right on equal pay for equal job or job of equal value and examines the opportunities for reducing gender gap through transparency of salaries. The main topic of this analysis is the 'novel' Directive proposal of the European Parliament and the Council for greater application of equal pay for equal work or equally valued work between men and women through transparency of salaries and other mechanisms

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13. Solidar Foundation (2021), *Social Rights Monitor 2020 Country Monitor: North Macedonia*, 7.

14. Ministry of Labour and Social Policy and State Statistical Office in the Republic of North Macedonia in cooperation with the European Institute of Gender Equality, Bashevsk, M. (2019) *Gender Equality Index for North Macedonia*.

15. Eurostat, (2018), '*Life and work in North Macedonia*', June 5, 2018.

16. Explained in detail in Sproule, K., Dimitrovska, N., Risteska, M., Rames, V. (2019). *USAID/North Macedonia Gender Analysis Report*. Prepared by Banyan Global.

17. Solidar Foundation (2021), *Social Rights Monitor 2020 Country Monitor: North Macedonia*, 7.

18. For example, even 40 % of the female Roma population and 46 % of the female Albanian population are inactive work force on the labour market. See more in Sproule, K., Dimitrovska, N., Risteska, M., Rames, V. (2019).

of implementation. The document on public policies analyzes the provisions of the Directive proposal and suggests solutions for implementing these provisions in Macedonian legislation. The above stated exposition indicates that RN Macedonia, except in certain parts and to some extent, does not have the necessary legal basis for reducing gender gap and that in fact, there are no steps undertaken with regard to real problem solving.

For that very reason, this document enlists conclusions and recommendations whose aim is to advance Macedonian legal system by placing the outlines of improved legislation in terms of labour and antidiscrimination. Recommendations are explained in detail and they are intended for the Parliament, the Government, the Ministry of Labour and Social Policy, the State Labour Inspectorate, the Commission for Protection against Discrimination, labour unions and employers.

## CONCLUSIONS

The legal framework for equal pay, especially regarding transparency of salaries as part of that process, is mostly inadequate in RN Macedonia and it is not in line with EU law. On the other side, the parts which are regulated do not obtain the appropriate protection through institutions' execution of practice. The insufficient focus this topic has had in Macedonian public discourse has been influencing on gender gap problems and salary transparency not getting anywhere and results in insufficient efforts by the state to provide and guarantee prevention of negative effects. Overcoming the identified problems is achievable through altering and amending the law regulation for utter enclosure of the Directive proposal in Macedonian context and through significantly improved implementation. Firstly, the Employment Law has to determine a responsibility adequately followed by a proportional fine regarding transparency of salaries on each level, starting from the advertisement announcement itself. Besides the fact that this is obviously related to a Directive still being in its infancy, as a country candidate for EU membership, we are obliged to align our law with EU law, and after the Directive being passed, we will have to implement it in our legislation. Nevertheless, implementation is a question of political willingness which will firstly be tested by (non)passing of the necessary legal alterations and amendments, and later on by altering the institutions' execution of practice and reinforcing their capacities. Presently, it is indisputable that RN Macedonia is obliged to fully implement Directive 2006/54/E3 (Updated), including those parts emanating from EUPP (European Union Public Procurement) legal practice, in relation to equal pay and transparency of salaries.

■ The data that there is no information on any instigated procedure in the country regarding protection of the equal pay right in the last three years, speaks volumes about two key problems.<sup>[19]</sup> Firstly, court and administrative protection mechanisms are inefficient, and secondly, institutions are not available and do not enjoy fine reputation in an atmosphere of insufficient informacy and possible stigma as well as fear of job consequences among female workers if such case is being initiated.<sup>[20]</sup> Agencies on equality, such as the Ombudsman, the Commission for Protection against Discrimination, the Ministry of Labour and Social Policy's legal representative and the mostly applied administrative mechanism for protection of workers' rights – the State Labour Inspectorate, have not been sensitive in relation to this issue and have been failing in their informative, preventive, counselling and repressive competencies when it comes to establishing violation and protection of these institutes.<sup>[21]</sup>

■ The situation is even more disadvantageous when examining the segment of transparency of salaries, which is not at all embedded in Macedonian legislative and does not even exist as an idea, the exception being the announcement of salaries in job advertisements. It is clear that capacity building within the Ministry of Labour and Social Policy, the State Labour Inspectorate, the Commission for Protection against Discrimination and the Ombudsman is necessary in order to identify and act upon cases of right of equal salary violation, to initiate procedures in a day's work and to work on raising awareness and to inform the citizens, but also to highlight the idea of salary transparency. It is necessary to build all-level-judges' capacities in terms of legal protection so that when making a decision, they can apply the standards and the practice of the European Union's Court of Justice related to these problems, the necessary terms for creating a prima facie case of discrimination and load transferring in proving procedures in relation to proving violation of the right of equal pay .

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19. I. Jadrovski (2020).

20. *Gender based discrimination and workers' rights in North Macedonia*, Reactor – Research in action, 2019.

21. I. Jadrovski (2020), 43.

## RECOMMENDATIONS

### 1. Proposal-alterations and amendments regarding Employment Law.

**Ministry of Labour and Social Policy and the Work group for drafting** the new Employment Law regarding the article on the definitions, which ought to encompass the following terminology ‘salary’, ‘net-salary’, ‘transparency of salaries’, ‘equal salary for equal work or for equally valued work’ and ‘worker’ in terms of this Directive proposal;

**Ministry of Labour and Social Policy and the Work group for drafting** the new Employment Law regarding amendments containing an adequate specific article in the legal text which will guarantee the transparency in terms of the employer enabling both female and male workers an easily accessible description of gender-neutral criteria on the basis of which salary levels and promotion conditions are being determined;

**Ministry of Labour and Social Policy and the Work group for drafting** the new Employment Law regarding alignment of the definitions on discrimination and types of discrimination within provisions of the Law on prevention and protection against discrimination.

### 2. Proposal-alterations and amendmenst regarding Law on Litigation Procedure.

**RN Macedonia Ministry of Justice** regarding submitting proposals on alterations and amendments which enable court competencies or competencies of the parties involved to issue orders for stopping violation on any rights or obligations regarding the equal salary principle;

**RN Macedonia Ministry of Justice** regarding submitting proposals on alterations and amendments which enable the courts or competent

authorities to request that the defendant undertakes structural or organizational measures in order to create alignment with the responsibilities regarding equal pay;

**RN Macedonia Ministry of Justice** regarding submitting proposals on alterations and amendments which will enable the courts ability to request revealing confidential data in cases related to transparency and equal salary;

**RN Macedonia Ministry of Justice** regarding submitting proposals on alterations and amendments which will enable determining a limit of the deadline of at least three years with respect to instigating claims in court and will not be initiated prior to equal salary principle violation or any right or responsibility violation stemming from these problems, in a case when the petitioner is well aware of the violation;

**RN Macedonia Ministry of Justice** regarding submitting proposals on alterations and amendments which will envision that successful plaintiffs have the right to request reclaim for all expenses of the defendant, while the defendants who will succeed in proving that there is no discrimination in the specific case, should not have the right to request for expense payment by the defendant until the lawsuit has not been proven mala fides.

### **3. Proposal-alterations and amendments regarding the Law on equal possibilities for women and men or adoption of a new Law on gender equality.**

**RN Macedonia Ministry of Labour and Social Policy** regarding submitting proposals on alterations and amendments that will establish tools and methodologies on national level aimed for evaluation and comparison on work value according to a summary of objective criteria including educational and professional terms, skills, effort and responsibility, scope of accepted work and nature of work assignments itself, as a first step towards transparency of salaries;

**RN Macedonia Ministry of Labour and Social Policy** regarding submitting proposals on alterations and amendments which enable all employees the right to obtain information, upon their own request regarding their salary and the level of salary, distributed by gender, for the category of workers who perform the same work or equally valued work (the right to informacy);

**RN Macedonia Ministry of Labour and Social Policy** regarding submitting proposals on alterations and amendments which will urge the employers to be obliged for informing the workers about their right

to informacy on an annual level, and by their own willingness to have the opportunity of choosing a provider for that type of information, without the workers ever having the need to demand them.

RN Macedonia Ministry of Labour and Social Policy regarding submitting proposals on alterations and amendments which will guarantee the right to information on salary; notification by the companies; revision of salaries; and collective agreements with respect to salaries.

#### **4. Proactive role of the Ministry of Labour and Social Policy and the State Labour Inspectorate on improved implementation of employment legislative.**

**Ministry of Labour and Social Policy and the State Labour Inspectorate** on adopting a firm position and promoting the idea that issues related to salary amount of previous jobs is included in the scope of article 26 of the Employment Law, meaning that the employer has no right to request this information and the candidate is not obliged to provide an answer;

**The State Labour Inspectorate** on initiating implementation of the warranty provided by article 23 point 1 paragraph 5, where it is stated that the employer hiring a worker via public announcement is obliged to state the pay amount of the basic salary or the amount starting from lowest to highest degree of net salary regarding the position being advertised for a male or female worker;

**The State Labour Inspectorate, labour unions and citizens' associations** to be actively engaged in informing the male and female workers and to proactively react should they encounter advertisements which do not meet the provided conditions according to the legislative.

#### **5. Inspection and profound consultancy while defining the acts which will further on define the new positioning system regarding the fight against gender gap in salaries.**

**Ministry of Labour and Social Policy** on providing massive participation of the involved parties in formulating the solutions.

## 6. Preparing a plan for mutual representation of labour unions which will enable the female workers to provide their own uniqueness while negotiating with institutions and employers.

**General unions** to initiate and lead the process of preparing this plan;

**Holders of this process** to include all labour unions available, irrespective of the level they represent out of the possible four (labour unions on level of employers, vocations, branching and general unions);

**Labour unions** to provide consultancy which is as comprehensive as possible, meaning engaging the citizens' associations working in the field of workers' rights, taking into consideration their insights as well.







