

HOFFMAN NEWSLETTER

New EU Directive on Pay Transparency

May 2023

This EU Directive will have a significant impact on HR policies within companies, including on recruitment, reward and ESG policies.

The European Parliament has adopted on March 30 the new "EU Pay Transparency Directive." Member states have three years to transpose the directive into national legislation.

As summarized by the EU Parliament (1):

"Under the rules... pay structures to compare pay levels will have to be based on gender-neutral criteria and include gender-neutral job evaluation and classification systems. Vacancy notices and job titles will have to be gender neutral and recruitment processes led in a non-discriminatory manner.

If pay reporting shows a gender pay gap of at least 5%, employers will have to conduct a joint pay assessment in cooperation with their workers' representatives. Member states will have to put in place effective, proportionate and dissuasive penalties, such as fines, for employers that infringe the rules. A worker who has suffered harm as a result of an infringement will have the right to claim compensation. For the first time, intersectional discrimination and the rights of non-binary persons have been included in the scope of the new rules.

Prohibit pay secrecy

The rules stipulate that workers and workers' representatives will have the right to receive clear and complete information on individual and average pay levels, broken down by gender. Pay secrecy will be banned; there should be no contractual terms that restrict workers from disclosing their pay, or from seeking information about the same or other categories of workers' pay.

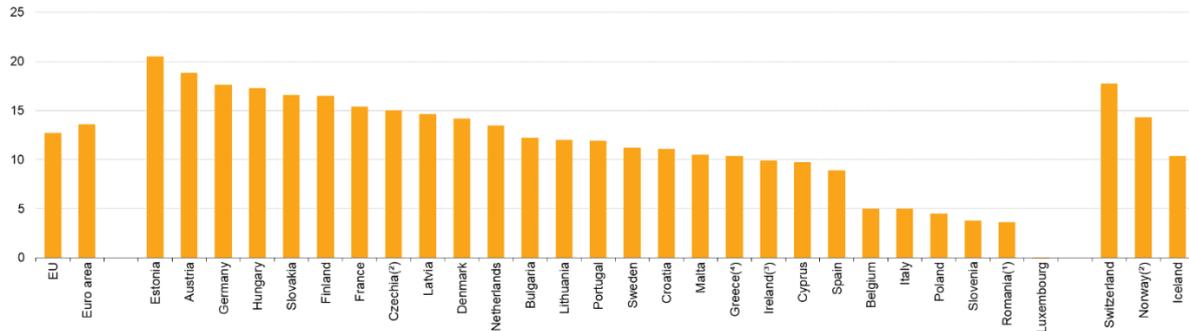
Shift of burden of proof

On pay-related issues, the burden of proof will shift from the worker to the employer. In cases where a worker feels that the principle of equal pay has not been applied and takes the case to court, national legislation should oblige the employer to prove that there has been no discrimination."

Let's first have a look at some data on the current situation:

The unadjusted gender pay gap, 2021

(difference between average gross hourly earnings of male and female employees as % of male gross earnings)



Note: For all the countries except Czechia and Iceland: data for enterprises employing 10 or more employees, NACE Rev. 2 B to S (-O); Czechia: data for enterprises employing 1 or more employees, NACE Rev. 2 B to S; Iceland: NACE Rev. 2 sections C to H, J, K, P, Q. Gender pay gap data for 2021 are provisional until benchmark figures, taken from the Structure of Earnings survey, become available in December 2024.

(*) Estimated data
 (**) Definition differs (see metadata)
 (*) 2020 data
 (*) 2018 data

Source: Eurostat (online data code: sdg_05_20)

eurostat 

The pay gaps are in fact very different, in any given country, between sectors. In Belgium, while the global score shows an average difference of “only” 5%, it reaches 11% in information & communication.

What will be the concrete impact for companies ?

Once transposed into national legislation, this directive will have a significant impact on HR policies within companies, including on recruitment, reward and ESG policies:

- Recruitment will have to make sure it is at all stages gender-neutral and all the process be non-discriminatory, including the rights of non-binary persons.
- Employers won't be allowed anymore to ask candidates about their pay history, and they will have to inform them about the initial wage level or pay scale in the job announcement (or before the interview).
- Employees have the right to request information about both their individual salary level and the average salary level, broken down by gender, for categories of employees doing the same work or work of equal value. This right applies to all employees irrespective of company size. An employee who has suffered harm as a result of an infringement will have the right to claim compensation.
- Companies with more than 250 employees will have to report annually on the gender pay gap, companies with more than 100 employees will have to report every three years.
- If the gender pay gap exceeds 5%, a joint pay gap assessment will have to be conducted with employee representatives.

This is part of a larger European movement striving for workplace diversity and inclusive policies in the framework of a future proof ESG strategy (Environmental, Social and Governance standards).

What should companies do?

Considering that member states have only three years to transpose this directive into national law, employers should waste no time and start preparing by:

- Defining clear objectives;
- Reviewing their current HR policies and procedures against ESG requirements. In particular, clear policies and suitable training for all the managers involved in hiring processes will have to be rolled out;
- Mapping the potential current wage gap based on objective data and statistics;
- Defining a clear set of actions, and their implementation, to meet the objectives, including closing the potential wage gap;

Companies will have to carefully consider how to communicate on the issue, and the actions taken.

What are the risks?

As mentioned earlier, “On pay-related issues, the burden of proof will shift from the worker to the employer”, and therefore it will be up to the employer, not the employee, to prove that there was no wage discrimination. Organizations dealing with equal treatment as well as employee representatives may act on behalf of employees in judicial or administrative proceedings. Compensation will have to be paid in case of infringement.

Sanctions will be defined by the national law, but are likely to include fines.

What will be the potential impact on the society in general and at company level, and what are the “open questions”?

At the country level, one could expect that the measures imposed by the Directive will contribute to narrow wage gaps between co-workers. But they may also contribute to push employers to negotiate harder and limit the wages they would be willing to offer to avoid ripple effects.

Pay transparency will also make wage differences between employers much easier to see, and as a consequence will contribute to increase the competition between employers when hiring new talents but also when (trying to) retaining their own talents.

How we will ensure that positions subject to wage comparison are really comparable is an open question, in particular in companies with few employees. This includes degrees of expertise in a given matter: two engineers may have very different levels of specific expertise but have “comparable” position titles. Another question is how comparisons will take into account wage differences related to the location (wages are higher in major cities than in remote locations, and vary significantly between countries in EU).

Pay transparency should contribute to ensure that candidates who apply for a certain opportunity are more likely to be motivated to go to the end of the recruitment process since they will from the start know the expected wage. Wage negotiation will likely be less of a protracted process. On the other end, it will be an issue for those cases where there was real flexibility in order to attract the (very) best candidate as employers would now have to reveal their possible wage levels to all candidates.

How pay transparency will take into account all dimensions of the package will have to be considered: besides purely financial elements (fixed and variable), there are elements which may not be measurable such as working hours flexibility, percentage of remote work, etc. besides elements that have more than a purely financial value like number of leave days but also insurances, etc.

Companies should therefore more than ever work on their HR policies to make sure that they will offer (much) more than a financially competitive package.

What can we do to help?

Reach out to us if we can assist you either on the recruitment part, or more generally the HR policies including the reward policies

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(1) <https://www.europarl.europa.eu/news/en/press-room/20230327IPR78545/gender-pay-gap-parliament-adopts-new-rules-on-binding-pay-tr>