

The Agenda podcast by Lewis Silkin: Pay Attention

Pay Attention Episode 4: “chi ha tempo non aspetti tempo” – Italy & the Pay Transparency Directive

Tom Heys

Hello and welcome to another episode of Pay Attention, a regular podcast coming to you from the Lewis Silkin offices in London and in Belfast. I'm Tom Heys, [and I'm David Lorimer] and once again, we've gathered around the table to talk about the pay transparency directive and we're joined today by Ornella Patanè, our Ius Laboris colleague from Italy.

Ornella Patanè

Yes, hello everybody I'm a partner at Toffoletto De Luca Tamajo which is the Italian law firm of Ius Laboris.

Tom Heys

This is going to be the first in a series of episodes where we look at the implementation of the pay transparency directive across different jurisdictions and so, Ornella, I was wondering if you could start by telling us about what existing gender pay reporting requirements there are in Italy?

Ornella Patanè

Ah yes, in Italy there is not at the moment an existing pay transparency or gender pay regime. The only existing measures on gender equality are mainly 2. One is the report that both public and private employers with more than 50 employees must prepare every two years on the employee situation in which they must specify the working conditions applied to male and female employees. The content of the report is not only focused on pay but the report must include information on pay. It must include for example among others the number of employees by gender working hours, total amount of compensation paid by gender, performance of working remote, overtime hours, hiring, termination and transformation of the employment contract by category and gender. The report is sent to the ministry of labour, the works councils, the regional councillor for equality and the department of equal opportunities at the government. The ministry of labour publishes on its website the list of employers who had sent the report and the relevant report as well and companies that don't comply with these obligations are given sixty days to do so. Failing this an administrative sanction will be applied in case of delay. Additionally, employers are obliged to provide a copy of the report to the company's union's representatives and the gender equality counsellor or unit representatives must provide a copy of the report to any employee would request to claim for discrimination. The other measure that we have currently in place is the gender equality certification which was introduced by a recent reform of 2022 and this certification is assigned to companies that demonstrate to have policies and concrete measures in place to reduce the gender gap based not only on pay. The gender certification involves for companies some benefits such as social security contributions exemption or to receive public funds as well as positive reputational effects.

Tom Heys

So is this the pink Sticker regime.

Ornella Patanè

Ah, it is yeah exactly.

David Lorimer

That's one of our favourites where the government offers to mark employers' homework. So, look it sounds like there is the basis of some of the measures but probably in Italy we're going to see quite a lot of change with the introduction of the pay transparency directive. We'll get into some of our favourite subjects as part of that soon, but could you just give us a quick overview of what you think will change and in headline basis in Italy.

Ornella Patanè

Yes, of course, David thank you and so the main changes that the transparency directive will bring in Italy are first of all the introduction of the principle of equal pay for equal work or work of equal value between men and women because in Italy so far, we have only non-discrimination principle but we don't have principle of equal pay for equal work, so this will be a big change in our system. Then the other main change will come from the obligation of transparency on pace structure and transparency on pay I think and pay progression policy. This is a very big challenge for Italian employers because so far because there is not this obligation to transparency. Another big change will also be pay transparency before the employment towards candidates or job applicants and also the specific reporting obligation on pay gap between female and male because this kind of reporting is very different from the one the current one which I described before.

David Lorimer

Okay, that's really interesting. Thank you Ornella. We've all become legislative watchers and 1 of the big questions tends to be when will each member state implement the pay transparency directive. Obviously, there's an obligation to do so by June 2026 so could you give us your best guess as to when it will be implemented in Italy.

Ornella Patanè

Yeah I think that's the implementation in Italy is expected in February 2026 so some months before the final deadline. Not so much before but in any event in the year of the deadline.

Tom Heys

And what is typical in Italy in terms of new legislation? Will it be the case that the draft legislation will be published far in advance for employers to be able to consider and think about the implications of and prepare for properly or as we've seen in some other countries, the legislation can sometimes just be published and then employers have to deal with it.

Ornella Patanè

Yeah, yeah, the second one Tom because this is our legal system. The laws are implemented and approved and published and after the publication they take immediate effect.

David Lorimer

Interesting. Well we'll keep an eye on that and we'll keep everyone updated on implementation across the EU. Ornella one of the main challenges and we see it across the whole of the EU is this obligation to put workers into groups to categorise them into groups of workers who do like work or work of an equal value. How much of a challenge is that going to be in Italy and is there an existing concept of categorising workers there that?

Ornella Patanè

Yes, thank you David. About categorisation, this will be a very big challenge for Italian employers. I must say that in Italy since 1942 employees have been split into four categories by the Italian civil code; so executives, managers, white collar and blue collar workers. Then there are some other categories within collective bargaining agreements, and these allow for different salary levels for different workers depending on the kind of job performed and the kind of responsibilities under that job. For example, within level C of the collective bargaining agreement for chemical industry, you can find employees in finance and administration, senior sales, marketing operators or employees were responsible for some productive processes and all have the same salary level. The categories and the sectorial collective bargaining agreements may be appropriate in theory for the category of the pay transparency directive. However I think that the adoption of those levels presents some concerns for 2 kinds of reasons. One because the application of a collective bargaining agreements is not mandatory under Italian law and therefore some employers cannot be bound by them and then second reason is that the result of litigation around which category particular employees fall within, often employees claim to be part of the higher salary level of the collective bargaining agreement and they have hard proof and regarding the kind of job performed.

Tom Heys

So do you think then that this is going to be an area where employers in Italy will see a lot more litigation as people start finding out more about the pay of those people within the same category and employers having to publish this and the new rights the individuals will get to be able to find out this information. Do you think there'll be lots more litigation or not?

Ornella Patanè

Ah, yes, Tom I think that this will bring more litigation of course, but at least we will have more transparency on that within a company and therefore let's say the burden of proof on the employees will be easier.

Tom Heys

Are there any limits on the amount that employees can claim equal pay compensation for - in the UK it's limited to 6 years but I know that in some other countries it's unlimited and it can be 30/40 plus years.

Ornella Patanè

Ah, yeah, we have a time limitation which is 5 years but there is disputes in the highest courts and about so when this time limits will start if during the employment relationship or at the end of the employment relationship, and the most recent decisions on that are that this time limited starts from the date of termination; therefore from the date of termination the employee has 5 years of time to claim about differences in pay which are older than 5 years.

Tom Heys

That's interesting because over the past 10/15 years in the UK there's been loads of equal pay litigation and similarly lots of it has been spun off into satellite litigation about technical points and so it's interesting that that's something that might also happen in Italy.

David Lorimer

Yeah, absolutely. One of the other themes that we're getting to grips with Ornella is the rule of worker representatives. They clearly have a very prominent rule under the pay transparency directive. They need to be consulted on categorisation on the figures and involved heavily on joint pay assessment or equal pay audits if they're triggered. How does that fit with the current rule for worker representatives. Do you think that will be a smooth transition or is there much to do in Italy?

Ornella Patanè

I think David that we have much to do in Italy on that because actually pay transparency directive introduces a lot of obligations on the employer to engage in social dialogue within previous representatives or rights of the employees' representatives to ask and obtain information from the employer. For example, pay transparency directive provides the obligation of the employer to agree with the employees Rep on Objective Gender Neutral criteria which structures must be based on. That refers also to the obligation of the employer to consult with the employees rep on the accuracy of the information to be reported to the public authorities and the employees Rep have access to the methodologies used by the employer in finding the information to report to the public authorities. And also they have some rights to ask for clarifications to the employer.

The other point which is new is that the employer must conduct in cooperation with the employee's rep a joint pay assessment and they need to work in close cooperation with the works as representatives and all this involvement of the employee's rep is really new in Italy and on that I have two comments. First of all, all those obligations on the employer and are new because in our system an obligation to reach an agreement for example with the employees' rep doesn't exist. An obligation to inform and consult in certain situations for example in case of transfer of undertaking or mass redundancy. But there is not an obligation to agree on to reach an argument with them so the obligation to agree with them on something is really new in Italy. This would imply a veto power in the hands of the employee's Rep.

Another new concept for example for Italy is the obligation of cooperation with the employees rep this is new because again in our system we have all obligations to informing consult but no obligation to cooperate because cooperation means something more than simply informing and consulting. It's a real obligation to collaborate which is new in our system and equally new is the right to access to companies' information in our system. The employees rep know what the employers inform them about and cannot access to companies information so again, this right to access companies information is really new. Italian employees representatives, I think we are not prepared to get involved in the manner that the pay transparency directive wants. This could potentially be an obstacle for employers in the implementation of the principle of equal pay included in the in the pay transparency directive and on this point for example I can tell you that companies in Italy are really concerned on that and one of my clients for example, asking me to train employee representatives on pay transparency directive to be prepared once the directive will be implemented in Italy.

Tom Heys

I think that training point is a really important one and that's something that we've heard from colleagues across the EU and I think what we saw in the UK when gender pay gap reporting was brought in was that a lot of people didn't understand it or what the figures meant and because of this new right for employee representatives to really dig into the data and to ask a lot of probing questions and that will be very difficult for employers if the people asking those questions for want of a better phrase, don't understand what it is they're talking about so it will be very important for employers to provide that training themselves to at least provide the funds for the employee reps to get the training that they need so that the employer can have sensible conversations with the representatives about the data, what it says help them understand where there are problems where there are not problems and I think that's something that employers across the EU will have to deal with.

I had another question about Enforcement. As you know the pay transparency directive is pretty quiet on enforcement and how each member state should enforce the terms of it. Obviously there is the looming threat of a joint pay assessment in the event of an employer having pay gaps within categories that are too high, but besides that the pay transparency directive doesn't set out any explicit means of enforcement by authorities or the states; I was wondering whether you think given how Italian employment law currently is whether you think that there will be any potential for fines or penalties or anything like that when the pay transparency directive is implemented.

Ornella Patanè

Yeah I think that's a list of remedies are provided already in the pay transparency directive and so one in particular is the procedure that associations organisations see quality that your other legal entities can engage in an administrative procedureal court proceedings in case of all alleged infringement of the rights or obligation to the principle of equal pay and I think that this will be one of the most concrete measures to enforce the directive in Italy because employers can receive claims regarding the breach of the principle of equal pay either individually from employees but most probably from legal entities association organisations, so unions, in case of an illegit infringement of the directive so I think that so this will for companies in Italy.

Tom Heys

So you're expecting lots of Union driven multi-party equal pay litigation going to be hitting employee employers in Italy?

Ornella Patanè

Ah, I Expect so because in Italy we don't have the culture of transparency on pay, we have more the culture of a discretionary bonus let's say and this will disappear and therefore I think that companies in Italy need to change a mindset and organisation and approach this kind of topic.

Tom Heys

And are there any particular industries that you think this sort of thing might particularly impact.

Ornella Patanè

Ah, not industry but I think that the most affected companies in Italy will be not the Italian companies of multinational groups but the Italian owned companies because this culture of non-transparency is very popular in the Italian owned companies.

David Lorimer

So that's a really interesting theme to land on to kind of bring us to close Ornella because of course one of the stated reasons of the EU of bringing this directive in is to change the culture of secrecy around pay and put in the hands of employees and employee reps proper information about how pay is determined and sadly you know we think it's going to be a common experience that that's going to play out through lots of equal pay litigation in many member states and good to hear your insights on that from Italy too. Well look thanks for joining, a big thank you in particular to Ornella for joining us and bringing us up to speed on Italy today. We do plan to be in your ears again soon talking about the pay transparency directive in various other member states so keep an eye out in your usual platforms for that.

In the meantime, you can keep an eye on Lewis Silkin's website where we publish insights and FAQs and all sorts of materials on the pay transparency directive and of course if you want to discuss further do reach out to your usual Lewis Silkin contact or any of us on the pod including Ornella. Thanks again and bye from us.