

The Seminar

The seminar aimed to stimulate and support a dialogue with and among the Social Partners about the role, costs and benefits of pay transparency measures to reduce the gender pay gap. It aimed to enable an engagement between the European Commission and the Social Partners to explore possible further steps to reduce the gender pay gap.

In particular, the seminar sought to establish:

- What works and what might not be effective in pay transparency measures, including from a cost/benefit perspective.
- What enables more effective enforcement of the equal pay principle.
- Ideas and considerations for possible next steps that could be taken on pay transparency measures and in reducing the gender pay gap.

The seminar was attended by representatives of the social partners from various levels, the European Commission Gender Equality Unit in DG Justice and Consumers, and academics from the SAAGE network.

The Impulse

Presentation

Karen Vanderkerckhove, Head of Unit for Gender Equality Unit, DG Justice and Consumers, European Commission, outlined the persistence of the gender pay gap and the wide spread of its root causes, including: horizontal and vertical labour market segregation; discrimination; the sharing of paid and unpaid work between women and men and associated work-life balance issues; stereotypes; and lack of pay transparency.

She set out the impulse provided at the European level for change in the gender pay gap. This impulse is rooted in the 2006 gender equal treatment recast Directive¹ and enforcement of the equal pay principle.

It gained significant traction with the 2014 European Commission Recommendation on pay transparency² which frames this seminar. This presented four core measures for Member States to improve transparency: employee entitlements to request information on pay levels; companies (of at least 50 employees) regularly reporting to employees or employee representatives on remuneration; pay audits conducted in companies (of at least 250 employees); and inclusion of equal pay issues in collective bargaining.

This impulse took further force with the 2017-2019 EU Action Plan on the gender pay gap³ which now comes to a close, with the end of term of the current Commission. A final action, currently in train, is an assessment of the need for targeted amendments to the gender equal treatment recast Directive.

Progress, while it takes time and may be slow, is evident. There is good practice that can be pointed to and learned from at Member State level. It is clear that the social partner role in advancing gender equality and addressing the gender pay gap is, has been, and will continue to be crucial.

An Overview

Presentations

¹ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006; on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

² Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency (2014/124/EU)

³ Communication from the Commission to the European Parliament, the Council, and the European Economic and Social Committee, EU Action Plan 2017-2019 Tackling the gender pay gap, Brussels, 20.11.2017 COM(2017) 678 final.

Christine Aumayr-Pintar, Eurofound, presented on research conducted by Eurofound on the implementation of pay transparency measures⁴. This research examined the implementation of pay transparency measures, including pay reports and pay audits in companies, in Austria, Denmark, Finland and Sweden. A number of key lessons emerged from this review of these different experiences:

- Employees were often not aware a pay report has been done and was available.
- Compliance with pay transparency requirements was not ideal but was improving. Employers were often not aware of the legal requirements or held the belief that there was no gender pay gap in their company.
- Where the reporting requirements are simpler, compiling them is easier, and there is better compliance. However, reports that are richer in detail provide greater insights into the situation and what might need to be done to address it.
- Follow up action on foot of reports or audits is more likely where this is mandatory or in situations where substantial pay gaps are found to exist.
- There can be some polarisation of the social partners. Employers were less likely to agree on measures than the unions, holding a view of the measure as a cost and an administrative burden.
- Actions to support implementation are valuable and need to focus on SMEs.
- There is room to improve involvement of employee representatives in preparing company measures, compiling company data, and sharing results.
- It is important for governments and social partners to monitor implementation of pay transparency measures, via evaluation studies and ongoing tracking, to assess implementation in quantitative and qualitative terms such as compliance levels across companies and whether the measure is proving effective in addressing the gender pay gap.

⁴ Aumayr_Pintar C., Pay transparency in Europe: First experiences with gender pay reports and audits in four Member States, Eurofound, Publications Office of the European Union, Luxembourg, 2018.

More generally, it is important to engage in ongoing evaluation and adaptation of pay transparency measures. A requirement to ensure dialogue on the measure and its implementation is valuable. Making some components of the measures compulsory and enforceable is helpful. Phased roll-outs of measures are effective and technical support for companies in the early phases improves compliance and creates positive attitudes. Social partners are key in providing this support.

Mark Smith, SAAGE network and Grenoble Ecole de Management, presented on research conducted for the SAAGE network on the costs and benefits of pay transparency⁵. Pay transparency is usefully viewed as being one of a series of tools required to address the gender pay gap. There is currently limited evidence of their costs and benefits, which can be seen at societal, organisational, and individual levels.

At the societal level, costs can be seen in the total cost of compliance alongside the challenge to norms of pay determination, that is where and how pay determination happens. These can be weighed against the benefits of addressing the overall and intra-firm gender pay gap and empowering the social partners. At the organisational level there are compliance costs, the need for a software infrastructure, and risks of: employees being poached; turnover of top earners; pay grade inflation; and reduced motivation where pay inequality becomes evident. These are weighed against benefits of enhanced reputation and attractiveness to employees; enhanced management standards; employee motivation and trust; and employee perceptions of just pay systems and distribution. At individual level, no costs can be seen, while there are benefits of: reducing information asymmetry; improved bargaining power; reduced speculation; and improved salary for disadvantaged groups.

Costs and benefits can vary depending on the nature of the obligation, the threshold and coverage of the obligation, the availability of supports and of shared tools, and requirements to act on disparities identified. In the UK, total set-up costs for the economy, mainly training, have been estimated at 2 million

⁵ This has yet to be published.

Euro, and, within companies, the average cost anticipated is estimated at 287 Euro per employer. In Sweden, the average annual cost per firm, was estimated at between 146 and 192 Euro, depending on the size of the company. Where employees were found to be due a wage adjustment, this meant an average increase of 107 Euro per month per person was estimated.

This research suggests the importance of: communication of rights and obligations; support for managers; ensuring a common understanding of the concepts; enforcement of compliance; requirements to act on disparities beyond the publication of the data; coverage of large and small companies; and ongoing monitoring of impact.

Morten Bennedsen, INSEAD and University of Copenhagen, presented on research in Denmark on whether pay transparency contributes to closing the gender pay gap⁶. The efficacy of pay transparency is a subject for heated debate. Government claims it reduces the gender pay gap. Employers claim it increases the administrative burden, violates privacy of employees; and results in naming and shaming. Those who seek to eliminate the gender pay gap claim the measures are insufficient or too limited.

This study compared companies with 35 to 50 employees, which are subject to the pay transparency requirements to report salary data broken down by gender for groups large enough to protect anonymity, with companies with 20 to 35 employees which are not subject to these requirements. The pay transparency measure was found to reduce the gender pay gap by 7% in the relevant firms. This was achieved despite low levels of understanding of the requirement and poor compliance with it. The mechanisms by which this reduction happens involves increased hiring and promotion of women alongside slowing down the growth pace of male wage and having no impact on the female wage, as well as a small reduction in productivity but no impact on profits. More specifically the law had no impact on wages of employees at a senior level but it negatively affected the wage growth of non-managerial male

⁶ Bennedsen M., Simintzi E., Tsoutsoura M., Wolfenzon D., Do Firms Respond to Gender Pay Gap Transparency?, NBER Working Paper No. 25435, Issued in January 2019

employees. These results are consistent with the fact that the law is more likely to apply to employees whose compensation is wage-based on wages and not based on performance pay. While the positive impact on gender pay gap is limited, the legislation is weak and a greater impact could come from stronger legislation.

Implementation

Presentations

Alexandra Scheele, SAAGE network and Universität Bielefeld, presented on the experience in Germany of implementing requirements for an individual right to information. The Pay Transparency Act 2017: requires companies with more than 200 employees to provide employees an individual right to wage comparison with a comparable group of up to six employees; encourages private companies with 500 or more employees to make an internal report on their pay structure every five years; and requires incorporated companies with more than 500 employees to report on equal opportunity measures including equal pay as part of their financial reports.

There are issues: employees themselves have to address the problem rather than the company; putting the requirement on the employee to ask for the wage comparison information can act as a disincentive; a further disincentive is linked to the lack of legal consequences and lack of clarity about the follow-up where there is no compliance; the comparable group of six employees can be hard to find; and given that company pay reports are not published, there is an absence of public debate on the issue. In one survey 74% of companies with more than 500 employees had ignored the Act. Only a small number of companies were found to have received inquiries about their pay from employees in another survey. In another survey, half of the managers surveyed were still unaware of the Act.

Colette Fagan, SAAGE network and University of Manchester, presented on the experience in the UK of implementing requirements for company reporting on pay levels. Companies with more than 250 employees are required, under changes to the Equality Act introduced in 2017, to report: the median and mean gender pay gap across their organisation; the number of men and women who receive a bonus and the bonus gender pay gap over a twelve month period; and a breakdown of the percentage of men and women in quartile pay bands. Supports have been developed for implementation including: an online tool for employers, reporting guidelines prepared by the social partners, an online quiz for the general public and resources, case studies and the overall database of company reports from the Gender Equalities Office of Government.

There is a compliance rate close to 100% and the measure has resulted in a valuable public spotlight on the gender pay gap. There are some concerns about the accuracy of data provided. Action plans are only encouraged and few companies have a strategy to reduce the gender pay gap. Coverage is limited to about half the workforce due to the threshold size of company. There are no sanctions, but this is to be reviewed if compliance is not satisfactory and this threat of introducing sanctions is a relevant factor.

Anne Eydoux, SAAGE network and LE CNAM, presented on the experience in France of implementing the gender equality index on foot of 2018 legislation. Companies with more than 50 employees have to publish their score under the index and submit to the administration. Companies with a score below 75/100 must adopt corrective measures within three years: provide a dedicated budget to reduce the gender pay gap; comply with the law as regards return from maternity leave; provide for fair individual pay increases to women and men; ensure fair promotions for women and men; and constitute a candidate pool to ensure balanced representation in company's leadership. There are sanctions for non-compliance.

Half of the companies covered have published their results within the time frame. There are good scores on the gender pay gap, outside of the glass ceiling issue. Only 16% of companies scored less than 75/100. This does not reflect the

situation of gender pay inequalities. The process could end up just being a form of positive communication of the index for the employer rather than an incentive to action on the gender pay gap by the employer. There is, further, no independent audit of the calculation made by the employer except in the case of companies that fail to comply. The manner in which equal pay for work of equal value and job classifications and evaluation is addressed is not clear. The coverage is limited as small enterprises of less than 50 employees make up about 40% of total employment. In effect the measure could be a step backwards as it could make it more difficult for an employee to effectively argue a case for gender pay discrimination in court.

Anita Nyberg, SAAGE network and Stockholm University, presented on the experience in Sweden of collective bargaining and implementing requirements in relation to pay audits in companies. The share of employees covered by collective bargaining, which is pursued at central and local level, is 90%. The early focus in this on wage compression in collective bargaining has benefited women more, as so many women are on low pay. More recently the Swedish Trade Union Confederation has expressed a concern to reduce structural wage differences between women and male dominated branches and occupations, though success has not yet been achieved.

Collective bargaining is a different phenomenon to pay audits, based on different principles. In 2009, companies with more than 25 employees were required to conduct pay audits every three years. Legislation introduced in 2017 requires employers with 10 employees or more to conduct a pay audit every year in cooperation with trade union representatives or employee representatives. Recent trade union surveys have shown that compliance stands at less than half the companies covered, with 44% of companies conducting annual pay audits. Among those that complied, 33% identified gender wage differences that required wage adjustments and 33% identified measures other than wage adjustments that were required. The Equal Opportunities Ombudsman examined employer implementation of pay audits in a study over the period 2006 to 2008 and concluded that pay audits can be useful for gender

equal wages at the company level, but other measures are required at branch, sectoral, and national levels.

Deliberation

The social partners explored issues that arise in relation to the design and implementation of pay transparency measures. It was clarified that the discussions were to be an exchange of ideas not in any way a search for agreement and likewise the ideas reported from the deliberations do not represent an agreed set of ideas, merely a report on the ideas raised. The following discussions were reported:

- There needs to be more reference to collective bargaining and collective agreements in this debate and the potential contribution from such processes to contribute to closing the gender pay gap. Collective bargaining at European, sectoral and national levels is key in this regard. This builds on a recognition of the role of social partners in co-determining wages.
- There is a challenge to take the steps required to ensure the existing legislation gets implemented effectively.
- Legislation alone cannot solve everything, it is only part of the solution. There is a need to:
 - Realise the ongoing potential for EU added value under the European Semester, in particular through Country Specific Recommendations. The EU has influence through this process.
 - Take account of the different challenges presented by different sectors and occupations present different challenges in pay transparency measures.
 - Address segregation with a focus on women dominated sectors and not only on closing the gap within sectors, with a better valuing of the work done in women dominated sectors, and a better understanding of the situation and experience of atypical workers within sectors dominated by women or men and the implications of these.

- Recognise and attend to the cultural aspects behind the gender pay gap. The gender pay gap is not only a matter of economics, it is also a matter of ideology. Different cultural sensibilities create different contexts for what might be possible to pursue to good effect.
- There is a risk of being over-optimistic. It will not be a linear process of progress. Pay transparency measures are not a silver bullet and it takes time for the measures to have an impact.
- It is important to track the real impacts of pay transparency measures. It must not be about equalising wages downwards.
- The scope and type of the pay transparency measure will influence its impact. The depth of coverage of companies is relevant, as the use of thresholds can exclude large numbers of the workforce from their remit. Sanctions can be important and need to be implemented if available. Mandatory measures with sanctions are triggers for change.
- Supports are needed to enable companies meet their obligations and to enable individuals exercise their rights. In this it is important that the burden for addressing the issue does not fall solely on the employee. Awareness raising about existing instruments and about specific duties and rights under pay transparency legislation is needed. It is important to ensure that the burden for driving change under these measures does not fall on individual employees.
- Attention needs to be given to the links between high employment rates for women and the gender pay gap. It appears difficult to secure high employment rates alongside a low gender pay gap in the short-term.
- While there might be the potential for disruption in companies due to pay transparency, there is also the potential for the opposite as such measures can calm damaging speculation. Pay transparent companies can also be more attractive to potential employees.

Enforcement

Presentations

Nathalie Meurens, Managing Consultant for Public Policy at ICF, presented some early findings from ongoing evaluation being conducted on the 'equal pay' provisions in Directive 2006/54/EC by ICF for the European Commission. This is examining provisions on the criteria of efficiency, effectiveness, coherence, relevance, and EU added value. It is being done in a context of limited progress on the gender pay gap.

Legal provisions have been found to suffer from: a lack of legal clarity on the definition of equal pay; the possibility to justify pay differences; variations in the implementation of provisions; lack of clarity about the reversal of the burden of proof; limited pay transparency; cost of proceedings; and lack of knowledge about sex-based discrimination. Thirteen countries have now implemented pay transparency measures, with different approaches. There has been EU added value in this field with the Commission's pay transparency Recommendation providing impetus and political added value.

Petra Foubert, Hasselt University and Centre for Government and Law, presented on research conducted, for the European Network of Legal Experts on Gender and Anti-Discrimination, on enforcement of the principle of equal pay for equal work or work of equal value⁷. This research identified that there was room for improvement both in the legislation for equal pay and in its enforcement.

There is a low level of case law which can be attributed to the costs involved, the lack of knowledge about pay discrimination, fear of victimisation, lack of trust in the judicial system, and lack of pay transparency. In particular, confidentiality clauses in employment contracts hinder pay transparency. There are issues of compensation and reparation where material damages awarded are low, non-material damages are rare, and in some instances the parties are anonymised in

⁷ Foubert P., The enforcement of the principle of equal pay for equal work or work of equal value: A legal analysis of the situation in the EU Member States, Iceland, Liechtenstein and Norway, European Commission and European Network of Legal Experts in Gender Equality and Non-Discrimination, Brussels, 2017.

the publication of the judgement. The enforcement provisions in many instances are not adequately deterrent.

The level of enforcement is tightly linked to the material scope of the legislative provisions and their interpretation by the courts. There are issues in the definition given to 'pay', the requirement for a comparator, the criteria for the equal value of work, and the justifications allowed. The more precise the provisions the easier it is to enforce the legislation. There are issues where the judiciary does not apply the reversal of burden of proof. There are limitations where class actions cannot be taken as these lower the access threshold to taking legal action. Attention also needs to be given to the venue for enforcement. The more specialised the venue the better armed it is to address what is a complex legal field.

Katarzyna Wilkońska-Żuromska, Moderator of the Equinet Working Group on Gender Equality, presented on the work of equality bodies and building cases on equal pay⁸. Equinet is the European network of equality bodies. Equality bodies are important actors in the enforcement of the equal pay principle, however they often lack adequate resources to pursue litigation effectively and they can lack adequate powers for such cases. There is a diversity of equality bodies and they can play both enforcement roles in supporting casework and in adjudicating cases, and preventive roles, in supporting good employer practice and in monitoring statutory duties on employers to take action on the gender pay gap. Joint work with the social partners is often pursued and valued in implementing these roles.

Caselaw is limited. The lack of pay transparency makes casework difficult as complainants face obstacles in trying to compare their wage with other employees. Access to information is a particular concern and the manner in which the failure of employers to cooperate is treated. Another factor making pay discrimination cases difficult to tackle is gender segregation on the labor market. This means that a great number of pay discrimination cases are not cases of direct discrimination. Cases involving work of equal value, addressing

⁸ How to Build a Case on Equal Pay, An Equinet Handbook, Equinet, Brussels, 2016.

employment in professional groups dominated by women present particular challenges. Another field of casework that can be difficult to handle is where pregnancy and motherhood and the related leave arrangements result in discrimination in violating the principle of equal pay.

Deliberation on Future Perspectives

The social partners explored future steps to be taken in relation to pay transparency measures and, more broadly, in relation to the gender pay gap. It was clarified that the discussions were to be an exchange of ideas not in any way a search for agreement and likewise the ideas reported from the deliberations do not represent an agreed set of ideas, merely a report on the ideas raised. The following suggestions were reported:

- Introduce a new EU strategy for equality between women and men with an enhanced standing, beyond that of the current Staff Working Paper. Ensure this strategy can drive a holistic approach to reducing the gender pay gap.
- Ensure a focus on the gender pay gap as part of the European Semester with adequate indicators and monitoring of progress and further steps required. Take a holistic focus with consideration of the full range of issues driving the gender pay gap, including but going beyond pay transparency.
- Promote a focus on the gender pay gap in social dialogue at European, sectoral and national level and promote a focus on the social dialogue as a means of reducing the gender pay gap. Strengthen collective bargaining processes and create more capacity to include a focus on gender equality in these.
- Make the provisions of the pay transparency Recommendation binding.
- Take steps to review and improve the legislation for pay transparency in place and to enhance implementation of this legislation. Enhance sanctions for non-compliance. Enhance supports for compliance. Pay secrecy should be ruled out with people free to disclose their pay.

- Make use of public procurement processes to drive progress with some form of premium for 'gender-friendly' companies.
- Segregation in the labour market and in education needs to be addressed as it underlies many inequalities.
- Sectoral initiatives could be supported for companies to share practice and creating opportunities for companies to inspire each other.
- Awareness raising strategies should enable the gender pay gap to become an issue of shared awareness and should be such as to inform decision-making. The date of the Equal Pay Day could be changed from November as its timing is not useful in some Member States.

Concluding Remarks

Montserrat Mir, Confederal Secretary ETUC, pointed to the long history for this struggle to close the gender pay gap and to the fact that we remain far from achieving this objective. ETUC wants to look to a more equal future but there are Member States that are not at the gender equality table. There are countries where progress has been made and countries where progress has frozen and needs to improve.

There is a need for a European gender equality strategy that is implemented and monitored for effectiveness and impact. Further legislation on the gender pay gap remains important. There is a need for more social dialogue. This is not strong in all Member States. Social dialogue and collective bargaining need to be strengthened. Addressing the gender pay gap is a shared objective of the social partners and can be pursued through these processes. The role of the Courts needs to be a focus. It can be difficult to go to court. Trade unions can and do assist but employers often do not deliver the data required.

Becky Smith, Deputy Director for Social Affairs in Business Europe, welcomed the particular nature of the discussion and the usefulness of continuing this type of conversation. Legislation at the European level is now sufficient, while this is

not to say it could not be improved, the key challenge is to implement it. There is a need to look beyond legislation and to focus, at European and national levels, on how to change perceptions. There is a need to find other ways, broader measures, to advance cultural change. This requires innovation and thinking outside the box.

Pay transparency is effective in some cases but it is not a panacea. There is a need to take account too of different national contexts. It is important to learn from where it has worked well in order to find the elements required for success. Simple frameworks work better. Employers need assistance to understand their obligations. It is important to move from a punitive approach based on sanctions to an approach that supports and empowers employers and that mirrors the concept of constructive dialogue. DG Employment also need to be involved in this issue.

Agnieszka Bielska-Decugniere, from the Gender Equality Unit, thanked participants for their contributions. She invited further contributions to the topic from the national social partners. Innovative thinking for action on this issue, including legislation, is important and there is an openness on the part of the European Commission to ongoing dialogue on this issue.