

Pay implications of proposed equal pay directive... and actions to consider now

by Iain Stark, for Equal Pay Directive Webinar on May 20th

This paper is both about what the directive may require when European Union countries transpose it into their legislation in 2 years or more and actions to consider now.

It quickly gets technical around **categorisation** of roles by level/band and the associated pay ranges that companies consider appropriate to disclose to potential employees and internally. It is also another opportunity for each business to review the current status across the world, perhaps at a more detailed level than before.

This is a journey with increasing attention in many countries about results versus intentions. Joe Biden called the issue out in his address to Congress in April and it is clearly within the S element of the increasing ESG (**Environmental, Social, Governance**) focus of shareholders, investment managers, proxy advisors (i.e., ISS, Glass-Lewis) and society at large. While diversity overall, especially of the Board and the executive leadership team, has had more focus (Copé-Zimmermann in **France** with a 40% target for the companies quoted in the SBF 120 index plus, in principle, for all with 250+ employees and a revenue of 50+ million euros, and just this month a proposed law that would require that in businesses with 1000+ employees at least 30% of the “leadership team” are women by 2027 and 40% by 2030; Hampton-Alexander (FTSE 350; 23,000 leadership positions) in the **United Kingdom** where the target is at least 33% (Board and then the executive committee plus their direct reports), **pay equality may move up the agenda**.

The proposed directive adds significant new disclosure requirements about categorisation and pay levels including in countries such as **France, Germany** and **Spain** where there is already legislation. While the **United Kingdom**, post-Brexit, is out of legal scope (although there is some uncertainty about Northern Ireland here as in other areas) the directive will surely be a reference for additional disclosure, pay transparency at hire being a leading example. The appendix to this document summarises current legislation in these 4 countries and where there are new elements the proposed directive would add.

Current landscape

Overall status – European Union : Eurostat for 2019 (2014 as a reference for progress)

- Gap across the EU 27 : 14.1% (15.7%)
- Low : Luxembourg 1.3% (5.4%); Italy 4.7% (6.1%)
- France 16.5% (15.5%); Germany 19.2% (22.3%); note : UK for 2018 was 19.8% (20.9%)
- High : Latvia 21.2% (17.3%); Estonia 21.7% (28.1%)

Disclosure overall and by pay “band” (source Equileap) ranges from 82% in Spain, 55% in Italy, 27% in France and less than 20% in Germany, the Netherlands and Sweden (Non-EU : From 78% in the UK to 18% in Switzerland, 5% in the US and 2% in Japan)

Governments continue to press, i.e., new legislation came into effect in Spain earlier this year

Outside the European Union, recent legislation in **Canada** affecting federally regulated employers (to come into effect for 2021 reporting) and continuing efforts in the **US**, i.e., at the Federal level, the proposed Paycheck Fairness Act supported by Joe Biden and Kamala Harris.

While most of the gap can be attributed to differences in profession and level, which raises broader issues, after adjusting for these factors there remains an unexplained gap which is typically around 3-6%. One example being this study by Glassdoor in 2019.

	"UNADJUSTED" BASE GENDER PAY GAP		"ADJUSTED" BASE GENDER PAY GAP	
	Average Cents/Pence Earned by Women Per Dollar/Pound/Euro of Male Earnings	Percentage Male Pay Advantage	Average Cents/Pence Earned by Women Per Dollar/Pound/Euro of Male Earnings	Percentage Male Pay Advantage
Australia	0.85	15.1%	0.97	3.1%
France	0.88	11.6%	0.96	3.7%
Canada	0.84	16.1%	0.96	4.0%
United States	0.79	21.4%	0.95	4.9%
United Kingdom	0.82	17.9%	0.95	5.0%
Singapore	0.87	12.8%	0.95	5.2%
Germany	0.78	22.3%	0.94	6.4%
Netherlands	0.81	18.9%	0.93	6.6%

Source: Glassdoor Economic Research (Glassdoor.com/research).

Proposed Disclosure

Employers with at least 250 workers:

- (a) the pay gap between all female and male workers;
- (b) the pay gap between all female and male workers in complementary or variable components;
- (c) the median pay gap between all female and male workers;
- (d) the median pay gap between all female and male workers in complementary or variable components;
- (e) the proportion of female and male workers receiving complementary or variable components;
- (f) the proportion of female and male workers in each quartile pay band;
- (g) the pay gap between female and male workers by **categories of workers broken down by ordinary basic salary and complementary or variable components**. *The proposed directive states that “The categorization of workers performing work of equal value is based on a combination and weight of criteria, which are relevant to the specific employer concerned. The differences in pay by category are therefore not comparable across employers, which is the reason why this information should not be made public. “*

Companies are required to publish (a) to (f) on an annual basis. The information from the previous four years, if available, shall also be accessible upon request. The employer shall share this information with the monitoring body. The accuracy to be confirmed by management.

What constitutes Pay Transparency?

In the directive ‘**pay**’ includes salary and any other consideration, whether in cash or in kind, which the workers receive directly or indirectly (‘complementary or variable components’), in respect of their employment from their employer. This includes any additional benefits such as

- bonuses,
- overtime compensation,
- travel facilities (including cars provided by the employer and travel cards),
- housing allowances,
- compensation for attending training,
- payments in case of dismissal,
- statutory sick pay,
- statutory required compensation and
- occupational pensions.

It should include all elements of remuneration due by law or collective agreement.

3 core pay requirements from the proposed directive

Pay transparency prior to employment : So far, no minimum standards on pay transparency prior to employment exist at EU level. This provision requires that employers indicate the initial pay level or its range (based on objective and gender-neutral criteria) to be paid to the future worker for a specific position or job. Such information may be provided in a job vacancy notice or otherwise prior to the job interview without the applicant having to request it. In addition, it prohibits employers to ask prospective workers about their pay history of their former employment relationship. *Note : This is similar to legislation in several states in the US where the objective is to avoid perpetuating lower pay for women.*

Transparency of pay setting and career progression policy : To ensure the gender-neutrality of pay setting and career progression, this provision requires employers to make accessible to workers a description of the gender-neutral criteria used to define their pay and career progression. The employer shall provide the information by category to all workers and their representatives, as well as to the monitoring body. It shall provide it to the labour inspectorate and the equality body upon their request. Workers and their representatives, labour inspectorates and equality bodies shall have the right to ask the employer for additional clarifications and details regarding any of the data provided, including explanations concerning any gender pay differences.

Joint assessment : This is really new. Required where the pay reporting demonstrates a difference of average pay level between female and male workers of at least 5% in any category of workers; (b) the employer has not justified such difference in average pay level by objective and gender-neutral factor

4 actions :

- Review the current landscape by country including any reporting as it varies so much, i.e., France versus Germany versus Spain. Does the data align with company diversity principles, communications and actions.
- Tactically, are there any current pay discrimination claims that inform what should change?
- Perhaps the key: What is the current data on pay by category and level that makes business sense. Some category aggregation may make sense as many companies have very granular job role categories.
- What is currently disclosed to employees, their representatives and to potential hires?

France: Proposed directive versus current legislation

Country	Metrics	Business impact	Potential impact of the proposed directive
France (required since 2019 for larger employers; since March 2020 for all with 50+ employees)	100 point scale 1. 40 points : Pay gap by professional categories* then by age range ** 5% tolerance margin. 2. 20 points : Pay increase gap 3. 15 points : Promotion rate gap 4. 15 points : Pay catch up on return from maternity leave 5. 10 points : # women in top 10 paid (at least 2 for 5 of the 10 points; 4 for 10 points) If less than 250 employees, no promotion metric and the increase gap counts for 35 points.	<ul style="list-style-type: none"> • If under 75 points a plan to be created to get to 75+ within 3 years. Otherwise a risk of a fine of 1% of payroll • From 1 June 2021 the detailed results to be published on the company internet site • Average score of 85 in 2021 	<ul style="list-style-type: none"> • The 5% tolerance pay margin may disappear? • Will it still be OK to use the 4 broad categories? • Will the definition of pay be expanded?

* The default is 4 socio-professional categories = Workers; Employees; Technicians, Supervisors; Engineers and executives (cadres). A different categorisation can be agreed with the employee representatives.

** 4 age ranges : Under age 30; 30-39; 40-49; 50+

Germany: Proposed directive versus current legislation

Country	Metrics	Business impact	Potential impact of the proposed directive
<p>Germany : Since 2018 if 200+ employees, individuals requests; if 500+ employees, publish a report on gender equality overall, not only on pay</p>	<ul style="list-style-type: none"> Each employee can request a pay comparison versus a group of at least 6 comparable employees of the opposite sex <p>Ties in with the proposed directive: « <i>All workers should have the right to obtain information, upon their request, on their pay and on the pay level, broken down by sex, for the category of workers doing the same work or work of equal value. Employers must inform workers of this right on an annual basis. Employers may also, on their own initiative, opt for providing such information without workers needing to request it.</i> »</p>	<ul style="list-style-type: none"> No prescribed corrective action or penalties Equal pay claims continue on a case-by-case basis 	<ul style="list-style-type: none"> Would significantly transform the current case-by-case situation with added gap metrics overall and by category with the potential for joint assessments

Spain: Proposed directive versus current legislation

Country	Metrics	Business impact	Potential impact of the proposed directive
<p>Spain : New decrees in October 2020 taking effect in March 2021 if 100+ employees and March 2022 if 50+</p>	<ul style="list-style-type: none"> • Average and median pay by gender • Pay includes bonuses • Benefits also by gender • Data by professional classification = « groupings » by role and level <p>Supported by government-provided information and software</p>	<ul style="list-style-type: none"> • Explain any differences of 25%+ in a classification • Consult with employee representatives on what is published • Potential penalties if plans not created to close gaps 	<ul style="list-style-type: none"> • Are the current groupings reported OK? • 5%+ difference vs 25%+ • New requirement for joint assessments • Will the definition of pay be expanded?

UK: Post-Brexit a reference for multinationals?

Country	Metrics	Business impact	Potential impact of the proposed directive
<p>UK (first results published in April 2018 if 250+ employees; BUT due to Covid a) requirement suspended in 2020 and b) reporting for 2020/21 can be delayed to October 2021 (data snapshot March 31, 2020 or April 5, 2020)</p>	<ul style="list-style-type: none"> • Difference in hourly rate (average and median) • % women and men in each pay quartile • % women and men who received bonus pay • % difference in bonus pay (average and median) <p>Published on the website with the accuracy confirmed by a senior executive</p> <p>The gender gap website is one of the most transparent</p>	<ul style="list-style-type: none"> • No prescribed corrective action or penalties • Equal pay claims continue on a case-by-case basis 	<p>While the directive will not apply it could be a reference for employees, their representatives, shareholders and proxy advisors regarding</p> <ul style="list-style-type: none"> • equal pay transparency by category (role and level) including at hire • progress on closing the overall gaps