

Insurance Europe response to EC targeted consultation on pay transparency

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Questions on the general stay of play of pay transparency:

1. *What is your perception of gender pay discrimination between employees? Is it often reported as an issue from your members?*

Our members in DE, DK, IT, FI and SE said that gender pay discrimination is seldom reported. In fact, companies receive very few remarks concerning gender pay discrimination. At national level in DK and FI, there have been few court cases in recent years, which shows that the extent of gender pay discrimination is limited. In this regard, it should be remembered that wage gaps do not automatically equal wage discrimination. In most cases these gaps are explained by differences in tasks, job requirements and performance.

IT reported that there are many best practices in place in the workplace that have addressed the problem by either eliminating the issue or by establishing a monitoring system. In IT gender pay discrimination is discussed within the National Commission for Equal Opportunities, even if the pay gap depends on many factors not only attributable to discriminatory attitudes.

For example, an Italian insurer reported that, due to an observed 10% pay gap, it decided to:

- Create opportunities: 50/50% in promotion, salary increase, hiring and succession planning;
- Create awareness and give support to women's development, including: 360° for women; welfare support for caring for children and old people; parental policy; smart working.
- Allocate budget over the 2019-2023 period and perform gender analysis to support every HR process;
- Improve gender pay gap in 2019 with an adjustment only for women.

In DE there is no general debate within companies on pay discrimination. For this reason, the Transparency in Wage Structures Act of 2017 (Entgelttransparenzgesetz, EntGTransG) was deemed unnecessary by DE employers. The first EntGTransG report was published in 2019. Given the short time frame since the implementation of the DE Act, the report could only provide initial evidence about the effects of the law. However, the report confirmed what DE employers had reported in the past that DE employees are satisfied with their wages and working conditions. According to the report, only 4% of surveyed employees (in companies with a workforce over 200 employees) made a claim for information.

Moreover, the report showed that, apart from the fact that both men and women requested information just as frequently, the most common motivation was the desire to be able to better assess the own status within the

company. Only one third of the few employees who requested information suspected that they were being paid unfairly.

In 2019, a survey among insurance companies revealed that, where a difference of pay was identified between employees of different gender within a peer group, this difference was not due to gender but mainly to different work experience.

2. How easy is it for your members to use the equal pay legislation in your country? Please explain

As an EU Federation, these questions are difficult to answer as understanding of equal pay laws varies significantly across the EU.

FI said it is difficult to compare jobs and assess work of equal value because the tasks, job specs and skills vary considerably. This is difficult within one field and even more so across different ones and as such is not a fruitful exercise.

A gender pay gap based on the average of all wages does not equal discrimination: it reflects the structure of the labour market and the segregation of the jobs between genders. The same unequal distribution of tasks between genders can often be seen within a company, and comparing wages does not imply discrimination as the tasks men and women perform can be different.

If wages are to be compared, work performance should also be considered. In many positions, a high performing employee would usually receive more pay than a low or averagely performing one, despite having in principle the same tasks. This very important aspect has been overlooked in the EU discussion on equal pay up to now.

In many countries, laws on equal pay and obligatory pay audits have been in place for many years and a significant gender pay gap remains. More rules on pay transparency will not address the root causes of the wage gap which are mostly due to segregated labour markets and differences in behaviors. More rules would only generate greater costs and administrative burden for employers.

Markets provided the following additional feedback:

- In SE, the Swedish Discrimination Act requires employers to investigate, remedy and prevent unfair gender differences in pay. For example, equal pay surveys require employers to analyse whether there are unfair gender differences for equal work or work assessed to be of equal value. Equal pay surveys must be carried out annually and employers with ten or more employees must document this work. The Discrimination Ombudsman (DO) is responsible for supervising compliance with this legislation. When conducting surveys most companies understand the regulations and the SE employers' national associations receive very few questions on the requirements. However, when they do, the association assists its member companies in complying. SE also reported that it is rather easy for employers to compare pay differences for work that can be regarded as equal. However, it is more difficult to assess whether there were unfair pay differences for work that can be regarded as of equal value.

If an employee or union raises an equal pay claim, it is handled either within the scope of the collective agreement or within the scope of the Swedish Discrimination Act.

- The DK national employers' associations assist member companies in complying with legal provisions on equal pay. If an employee or union raises an equal pay claim, it is handled within the scope of the collective agreement. Having sufficient resources or making a collective claim is not an issue.
- IT is not aware of disputes concerning employees that requested pay information comparators. Trade union equal pay collective claims are handled within the scope of the insurance collective agreement.

- DE highlighted several regulations in its market concerning equal pay, for example:
 - The General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz, AGG), the Transparency in Wage Structures Act (Entgelttransparenzgesetz, EntgeltTranspG), the Collective Agreements Act (Tarifvertragsgesetz) and the Works Constitution Act (Betriebsverfassungsgesetz);
 - A statutorily prescribed internal complaint management and support by the works council;
 - Access to justice for the employee is ensured and in confirmed cases of pay discrimination an individual right to wage adjustment, damages and compensation (non-pecuniary loss) exists;
 - A shift in the burden of proof in favour of the employee, so they must only prove circumstantial evidence of discrimination, which then shifts the burden of proof to the employer;
 - Affordability and cost advantages in labour court cases: For socio-political reasons, the legislator has reduced costs of labour court cases in comparison to other legal proceedings;
 - Grant of legal aid, if needed;
 - Furthermore, the work counsel informs employees about their rights.

DE has already implemented several EU regulations – in part in reaction to the Commission Recommendation of 7 March 2014 *on strengthening the principle of equal pay between men and women through transparency*. In comparison to the AGG, the EntgeltTranspG is more specific. However, its introduction also resulted in some duplications (eg, principle of equal pay, prohibition of gender discrimination). In the view of DE, further measures would overburden the existing framework and therefore not achieve their aims.

3. *In your opinion, is there a conflict between the General Data Protection Regulation (GDPR) and pay transparency measures? Please explain*

Some of our members reported that there could be potential conflicts between the disclosure of pay transparency information and the objectives of the GDPR:

- FI reported that currently there is great legal uncertainty on the extent of information that can be provided regarding wages. In FI, it is not clear how much information can be distributed from, for example, the obligatory gender equality plans and pay audits based on the Finnish Equality Act. The basic principle in the Finnish pay audit process has for many years been that information on the individual worker's wages cannot be revealed. For this reason, only the average wages of groups of more than 5 persons (groups of men and women must have at least 6 + 6 employees) can be provided and no information is disclosed if groups of men and women are smaller.

Moreover, FI reported that the demands for greater transparency and distribution of wage information are in conflict with the objective of the GDPR, which is to protect individuals' personal data. The employers take their obligations under GDPR very seriously and are very careful about collecting and distributing any personal information. Therefore, new initiatives on pay transparency should aim at transparency only on the level of the **wage systems** and not at the individual level in order to abide by the aim, spirit and letter of the GDPR. It is very likely that if employees were given a right to information on the pay of their colleagues, it would be impossible to safeguard against breaches of the GDPR. This would be especially difficult in smaller companies.

- DK reported that there is no conflict with the GDPR as the Regulation provides a legal basis (Article 6 (1) (c)) to process data regarding legal obligations and pay transparency disclosure fall under this circumstance.
- SE noted that it is not possible to answer yes or no, since it would depend on the details of the proposed pay transparency measure.
- IT reported that there can be more risks to disclose sensitive data concerning employees if the legal obligations to disclose pay transparency information are very detailed. Companies could face fines if they were found to breach the GDPR, therefore the disclosure of pay transparency information should be only provided on large numbers of employees.
- DE reported a potential conflict between the GDPR and pay transparency measures. In accordance with the GDPR, when responding to a request for information on pay transparency, the protection of personal data of the employee asking for the information and of those affected by the request must be safeguarded.

A limitation of the right to request information by means of high threshold values for the size of comparison groups of the opposite gender, must therefore be ensured in any case. Otherwise, too small comparison groups would make it possible to draw conclusions about individuals. Moreover, small and medium-sized companies, which in most cases would not be able to carry out comparisons (due to small sized comparison groups) should be excluded from the scope of transparency measures.

Compliance with data protection – and avoiding friction in the workplace – can be especially difficult for an employer if, for example, they can assign enough people to a comparison group, but then need to inform on personal data in order to explain possible pay differences or differences in additional pay components, for example: final grades in training or study programmes, professional experience, special foreign languages and computer skills or performance-based forms of compensation such as commissions. Employees could become absolutely "transparent colleagues", which would entail a significant risk of creating friction in the workplace.

4. *Would you like to share good/bad practice of pay transparency? Please explain*

- FI noted that the Finnish social partners have cooperated in promoting wage awareness and transparency about how the wage systems function. They also conducted a survey some years ago on workers' knowledge of their own wage system and on how they can influence their own wages.

In FI, some sectoral associations regularly monitor the functioning of the wage system they are using and provide training on the system for their members. In the view of the national insurance association, transparency and gender-neutrality of the job classification system and job evaluation are at the heart of modern pay systems. In many cases in FI, the wage system in use is the result of employer / employee collective bargaining negotiations and the social partners are best positioned to assess the functioning of the system and make necessary adjustments, if necessary.

For decades, the FI social partners in the finance sector (both in insurance and banking) have worked together to produce a gender equality report every three to four years. The reports contain a statistical overview of the average wage level by gender and distribution of men and women in different tasks. On the basis of this information, the social partners have made recommendations for companies on, for example, awareness raising on the reasons for wages and transparency of wage systems. The social partners also recommend that companies commit themselves to analyzing and fixing wage gaps if there is no justification for these gaps.

- DK reported that companies of more than 35 employees and at least 10 men and women, must complete an analysis of the pay gap within the scope of the international standard classification of occupations (ISCO code) and share it with union representatives. This allows yearly discussions on any pay gaps in comparable groups.
- SE noted that annual pay surveys and wage statistics collected at an aggregate level for sufficiently large groups of employees could be used to achieve pay transparency. Individual data or rules on data at individual level do not provide transparency, other than in legal processes where wage discrimination is being investigated.
- IT reported that an insurance collective agreement has established that every year the national insurance employer's association (ANIA) must provide the signatory trade unions with information on employment levels and the cost of labour by communicating the total amount of wages paid, separated by gender, and the number of hires divided by contract type and divided by gender, etc. Similar reports - including more detail ones - must also be provided to the trade unions. This disclosure is widespread and trade union organisations are constantly informed about the state of the insurance sector's wages.
- DE reported that the Transparency in Wage Structures Act (EntgTranspG) caused considerable burden for companies due to its extensive provisions (eg, right to information, reporting obligations, internal company evaluation procedures), as well as additional bureaucratic work, without providing sufficient added value for employees. Unlike in some other member states, the DE legislator chose the individual entitlement to disclosure as a key element of national pay transparency provisions. Uptake of the right to request information was, however, low. According to the first evaluation report on the Act, only 4% of the employees entitled to request information made a claim. This low use demonstrates that employees in DE companies are satisfied with their wages and working conditions. Furthermore, the survey among insurance companies showed that it takes up several hours to respond to a single request of an employee seeking information about the wages of their opposite gender peer group. Providing several hours to respond to each individual request would be a challenge for many SMEs who do not have the resources to do so. The social partners have demonstrated that collective bargaining agreements - in contrast to a new law that would interfere with collective bargaining autonomy and add further new administrative burden - are an effective way to achieve transparent and fair pay structures.

5. *Do you think different sectors would require 'tailor-made' pay transparency measures? Please explain*

- SE and DK said this could be the case. However, they noted that their knowledge is limited to the insurance sector and therefore cannot provide a fully informed answer.
- DE noted that a cross-sectoral assessment of work of equal value is not possible, nor is a "one size fits all" definition for equal work or work of equal value. In any case, equal work and work of equal value with the same employer is paid the same, regardless of gender. Fully harmonised regulations would not allow to take account of the different and specific conditions across companies and sectors and would interfere with the collective bargaining autonomy. The current provision in § 4 (2) EntgTranspG, which stipulates that the factors of the type of work, training requirements and working conditions must be taken into consideration when assessing work of equal value, allows the social partners, operating partners and companies to take account of sectoral and company- specific conditions. It is welcomed that the definition in § 4 EntgTranspG can be adjusted to the requirements of the different sectors. The impact of an activity on the core business and on the turnover is often a relevant factor for the level of remuneration.

Type of possible legal obligation and social partner's involvement

6. *Different combination of legislative options could be set to achieve a minimum level of requirements on pay transparency at EU level. Please explain.*

- FI reported that the first four options could be implemented by FI employers since there are already similar systems in place. However, FI acknowledged that these options could be difficult to implement for other countries and differing national legislation and practices should be taken into account. Even though there is rather detailed legislation regarding pay audits, the gender pay gap still exists in many countries. This implies that the root causes for the gender pay gap may not be effectively addressed with more legislations or with putting in place additional administrative burdens on employers.
- DK and SE reported that it would be disproportionate to impose further legal obligations as existing legislation in their markets addresses pay transparency effectively and companies have experienced very few requests related to equal pay. Moreover, it would be disproportionate to impose legal obligations as to what social partners must negotiate collectively. Any measures proposed must be effective and impose as little bureaucracy and administrative requirements as possible.
- IT noted that collective agreements already cover many of the aspects addressed in the options in this question, and consequently legislative provisions would not add any value on pay transparency. On the contrary, new legislation would risk increasing compliance burden and costs to the detriment of companies.
- DE noted that the existing EU legal framework is sufficient. In DE, the EU Commission's proposals on the recommendation "on strengthening the principle of equal pay between men and women through transparency" was implemented through the introduction of the Transparency in Wage Structures Act. An employee who feels discriminated against by their employer is already protected (see DE answer to question 2). At the same time, collective agreements ensure transparent and fair pay structures. If new rules are adopted at EU level, it must be ensured that member states which have already adopted a law in this field are not burdened further and, therefore, that the national law meets the EU requirements.

8. *The frequency of the modalities could vary, including the calendar year, fiscal year or a specific period (eg, every two years) What frequency would you prefer for the above-mentioned modalities? Please specify modalities and frequency.*

- FI and IT said that assessment on the frequency of monitoring and reporting should remain to be decided at company level, since the situation and employee turnover varies significantly amongst companies.
- DK and SE said that representatives of the social partners analyse information about pay levels and gender pay gaps per employee category in regular pay audits. Beyond these exercises, DK and SE do not consider that the above proposals are appropriate to achieve pay transparency.
- DE would not support any additional measures to the existing EU legal framework. The business community is contributing to addressing potential issues with diverse initiatives and measures, including, for example with flexible, family-friendly working hours and initiatives to attract more women to scientific and technical professions. It is in the companies' own interest to raise the potential of well-qualified women and to harness it at all levels of the company.

9. *Different organisation size thresholds could be applied to different legal obligations being imposed on the organisations. Please explain.*

- Markets (FI, SE, DK and IT) said the social partner autonomy should be respected at all times. Therefore, social partners must decide for themselves which matters they discuss in collective bargaining and which thresholds should apply depending on the size of the company.
- DE reported that all abovementioned measures would not be appropriate, independently of the companies' size, and that small and medium-sized companies with less than 500 employees should be excluded from the scope of any new regulation in this area so as to take into account data-protection concerns and to avoid burdening further SMEs.

10. *Apart from organisation thresholds, what exemptions or criteria to grant exemptions from applying pay transparency measures would you find adequate? Please explain.*

- For DK, it is important that each group contain no less than 10 men and 10 women.
- IT noted that collective bargaining on the matter may represent the exemption from the application of legislation.
- SE noted that pay transparency could be provided by wage statistics at the aggregate level for sufficiently large groups.
- According to DE, employers applying collective agreements should be excluded from the scope of new regulations in this area. Furthermore, there must be the possibility of limiting the right to request information if conclusions are to be drawn about individuals, due to a small size of the comparison group of employees of the opposite gender. Therefore, high thresholds for the size of the comparison groups are needed (see DE reply to question 3) and SMEs should be excluded from the scope of new transparency measures.

Gender neutral job evaluation and classification

[Gender-neutral job evaluation and classification systems: systematic way of determining the value/worth of a job in relation to other jobs in an organisation with the aim to compare their relative worth and ultimately establishing a rational pay structure].

12. *Do you think that making the current organisation-level job evaluation and classification systems gender-neutral would bring additional costs to organisations?*

- DK, IT, SE, and FI confirmed that making the current organisation-level job evaluation and classification systems gender-neutral would bring additional costs.
- External evaluation procedures are highly labour-intensive and expensive, since the company-specific pay structures would need to be mapped with an externally developed, standardised evaluation system. These tools require various sorts of data to be taken into account. However, some of the information needed might not necessarily be included in the company's accounting system, eg, on allowance in kind. If the remuneration analysis instrument does not provide for the same pay structure data entry as is used in the respective company, the employer must enter this data manually, which is very burdensome. Moreover, without the support of management and HR consultancies with suitable information technology to analyse

and advise on the evaluation of the results – which itself would incur significant costs – in many cases it will not be possible for companies to carry out evaluation procedures.

13. In your opinion, would making the job evaluation and classification system gender-neutral be beneficial to organisation performance, image, etc.?

- DK and SE do not have enough evidence to answer the question. IT confirmed that making the job evaluation and classification system gender-neutral could be beneficial, but that these decisions should be made at company level and through collective bargaining agreements.
- DE noted that the question is wrong in implying that the existing job evaluation procedures are not gender equal as remuneration regulations based on collective bargaining already ensure equal pay.

Impacts

16. What in your opinion would be other possible impacts of pay transparency measures? Please explain

- FI notes that the answer to the question in Q.15 depends on the definition of “pay transparency” and the measures regarding pay transparency. However, there is no evidence that transparency on pay improves work climate or employee performance.
- DK notes that there is a difference in transparency of pay in general and transparency of pay for equal work.
- DE noted it is essential to exclude SMEs as well as employers applying or bound by collective agreements from new regulations in this area in order to not impose further disproportional administrative burdens on them. When considering the right to request information, it is also important to ensure that data protection principles and rules are fully considered and complied with.
- Considering the recent introduction of the DE Transparency in Wage Structures Act and companies significant implementation efforts, DE would not support a new legislative initiative in this area that would result in further changes to internal process and administrative burden. Further to the EU Commission’s Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, DE implemented legislative measures in all proposed core areas, as well as additional provisions.

Awareness

17. Are you often solicited by employees on issues related to gender equal pay? Is this issue otherwise raised in your organisation? Please explain.

- FI, SE and DE reported that this is seldom an issue in their markets and that no cases had been reported to their knowledge. DK noted a similar situation and said that in the last 20 years only two cases involving equal pay claims in the insurance sector were reported.
- IT said this issue has occasionally been reported in recent years but that companies had put in place best practices to ensure pay transparency - these practices have addressed the problem – and established monitoring systems. Moreover, in IT there is no statistically significant data on court cases on equal pay claims.

18. *Is adequate expertise on this topic available in your organisation e.g. you are able to assist your members on questions related to it? Please explain*

- DK, IT, FI and SE reported that their national insurance associations have adequate expertise and provide advice to their respective companies. However, there are very few cases in courts concerning equal pay claims.
- In particular, SE said that it assists member companies requesting so concerning questions on inter alia active measures or annual salary surveys.
- IT noted that beside the advice provided by the national insurance associations, employees and employers can refer to the National Commission for Equal Opportunities. This body provides advice on contracts and gives assistance at company level to raise awareness and import good practices on equal pay.
- The DE employer's association in the insurance sector advises its members in all kind of legal questions concerning gender equality. The organisations have developed guides for implementing the EntGTranspG; and conducted a survey about the impacts of the aforementioned law. The DE employers' association organises a lot of events dealing with "women in leadership" (<https://www.agv-vers.de/projekte/fraueninfuehrung.html>).

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