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SPECIALI **ENGLISH VERSION**

Pay transparency: a new law for fairness in Italy coming down the road

According to the EIGE's Gender Equality Index, **Italy ranks 14th** in the EU for **gender equality**: a figure that legislators will need to consider when implementing the EU Directive on **pay transparency**, whose new obligations for companies should aim to redress some **structural inequalities**.

di **Luca Failla** - Avvocato - Managing Partner studio boutique Failla & Partners

di **Paola Salazar** - Avvocato in Milano

An important new **transparency requirement** touching employee salaries is about to be introduced into the Italian legal system.

Following the introduction of more stringent **transparency rules on working conditions** in 2022 – on the basis of EU Directive 2019/1152 (transformed into Italian law with Legislative Decree no. 104/2022) – a new issue is now on the line with a deadline of June 7th, 2026: the obligation to implement into Law another important EU Directive – EU Directive 2023/970 – on **pay transparency**.

This represents another significant step in the EU's strategy to improve working conditions through the introduction of more stringent transparency rules on **employment conditions**, which directly affects the **information to be disclosed** during the hiring process and throughout the employment relationship.

The 2019 Directive had emphasized the obligation of reporting more precisely than in the past the elements that make up a **worker's salary** – including contributions in cash or in kind, overtime payments, bonuses, and other compensation, received directly or indirectly as a result of the employment relationship – without prejudice to the employer's freedom to provide for additional remuneration components, such as one-off payments.

With the new 2023 Directive the theme of **pay transparency increasingly comes into play as a strategic lever** for overcoming gender inequalities that are still deeply rooted in many workplaces.

Gender Equality Index

A useful tool for the analysis of this topic can be found in the "Gender Equality Index 2024" which is an **annual report** published by the **European Institute for Gender Equality** (EIGE) – with the aim of assessing the progress of gender equality in the European Union. The report assigns **each European country** an overall score from 1 to 100, taking into account several **key indicators**: decision-making power, labor market participation, health, time – with particular attention to care activities, education, and wealth.

Interestingly, this report highlights significant differences between Member States and demonstrates a slow and steady progress towards gender equality within the EU – with an **average overall score of 71 out of 100**. In this report, Sweden, for example, maintains the highest score with 82 points, while Romania ranks last with 57.5 points. According to the latest survey, **Italy** has improved its ranking compared to previous editions, but still remains low, in **14th place with a score of 69.2**, slightly below the European average.

This report is of a twofold importance: it reveals an important impact regarding the evolution of EU law on **inequality** and, at the same time, demonstrates how labor market indicators cannot be the only factor taken into consideration when assessing gender equality. The final score assigned to each country is also influenced by **factors such as education and wealth**, especially with regard to the **risk of poverty** to which some men and women are exposed to – due to gender pay inequality. This is sometimes a result of varying degrees of educational levels within a workforce.

This is certainly the fundamental premise underlying the Directive's provisions on pay transparency. Indeed, the preamble states that the gender pay gap is a reality within EU countries, caused by **structural factors** such as gender stereotypes, the persistence of the "glass ceiling," and horizontal segregation – not to mention the overrepresentation of women in low-paid jobs in the service sector, coupled with the unequal sharing of family care and support responsibilities. This certainly has significant long-term consequences which may result in the prospect of the further widening the pension gap between men and women.

Although there is no legal obligation at the national or EU Community level (nor could there be) for equal pay for equal work - the objective of ensuring, from a gender equality perspective, the application of the principle of **equal pay** for both male and female workers **for equal work or work of equal value**, constitutes a fundamental principle of protection of working conditions enshrined in the founding treaties of the European Union.

Pay transparency therefore becomes **a useful (but also necessary) tool** to ensure the achievement of the equity objectives that characterize the parallel regulations of gender equality. Precisely because a general lack of transparency regarding pay levels within organizations maintains a high level of risk to prove a situation where gender-based pay discrimination and prejudice could come into light.

Therefore, EU Directive 2023/970 identifies new **binding measures** to improve pay transparency and also encourage organizations to review their pay structures - thereby effectively ensuring equal pay for women and men performing the same work or work of equal value, and enable victims of discrimination to assert their rights.

What are these measures?

First, in order to promote **a genuine transparency requirement starting from the candidate selection stage** - before hiring, employers must provide information on the starting salary or the proposed salary range. They are also prohibited from asking candidates about their current salary or **salary from previous employment relationships**. The criteria used by an employer to determine the proposed salary during the hiring process must be **objective and gender-neutral**.

In addition, employees have the **right to claim damages** if they do not obtain information:

- on **average wages**, disaggregated by gender, for categories of workers performing the same work or work of similar equal value;
- on the **criteria** used for remuneration, CCNL classification, and career advancement.

Transparency also involves **reporting obligations** (and therefore, by extension, the transparency required by ESG principles, especially with regard to the social component of the reporting obligations set forth in the relevant legislation on Sustainability Reporting).

Here, employers with **at least 100 employees** must:

- Publish and submit **periodic wage reports** to the competent Labour authorities and employee's representative bodies.
- Conduct a **joint wage analysis** with employee representatives if an unjustified wage gap of $\geq 5\%$ is identified.

We still have to wait and see in concrete terms **how these principles will be translated** into the Italian legal system. In terms of compliance, what usually happens in cases involving a violation of non-discrimination obligations is that if the mandatory information requirements set out in the new legislation are not met - it is likely that (as provided for by the Directive) the **burden of proof will be reversed** - in that the burden of proof will be on the employer to demonstrate that the conduct reported by the employee did not result in discrimination.

This is an important and necessary evolution. However, it must be said that based on these principles and regardless of the obligations that will arise from Italy implementing legislation - **companies can already begin** to account for the principles of transparency and fair pay they apply within their organizations. The **regulatory tools** — including certification — **are already in place** and can be applied to both small and large companies.

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