

Ceemet's views on the proposal on pay transparency Directive

On 4 March 2021, the European Commission published its proposal for a Directive on pay transparency. Although Ceemet agrees with the aim of the Directive and supports the principle of equal pay between men and women, it believes this proposal is not the way forward. Not only will it fail to reach the intended goal but it will also cause heavy additional administrative burden and costs for companies. Moreover this proposal is a far-reaching intrusion on the autonomy of social partners and it disregards well-functioning social systems and measures in place in the Member States.

Ceemet's key messages

- Ceemet supports the objective of the proposal; yet it believes that the Directive will create more problems than it aims to solve.
- The prescriptive measures proposed by the Commission will strongly restrict the negotiating power of employers and employees and of social partners, while these are their core responsibilities. This will result in an unacceptable limitation of the free labour markets of the Member States and will be detrimental to respond to the dynamic changes in the labour market.
- The measures proposed will create a substantial amount of administrative burden and costs for companies and lead to needless litigation. They could also have a strong ill-founded negative impact on the companies' reputation.
- The proposal interferes greatly in the competences of social partners as regards the setting of wage as it transfers powers from the social partners to the national governments to determine the content of pay structures.
- The one-size-fits-all solution will be difficult for Member States to implement as many countries already have well-functioning systems of pay transparency in place.
- The measures proposed by the Commission are extremely detailed and too elaborate for a Directive. They do not leave enough discretion for Member States to implement the Directive in line with their national context.

Ceemet's views

The European tech and industry employers fully support the objective of the proposal which is to ensure equal pay between men and women. The principle of equal pay is of vital importance and actual pay discrimination is unacceptable. In the MET sector, collective agreements are gender neutral and foresee equal pay between men and women for work of equal value.

In practice, gender neutral collective agreements should result in the fact that there is no difference in pay between men and women. Nonetheless, there are cultural approaches or societal models, which have no link with discrimination, but can lead to the reality that there is a difference in pay. Indeed, pay difference and the gender pay gap exist due to several different factors, such as gender segregation on the labour market and the employment rates of women.

The proposed Directive does not address the root causes of the gender inequalities and will therefore not have the desired effect on the gender pay gap. While the Directive will not have a positive effect for (female) workers, it will create many difficulties for companies, social partners and Member States.

- Difficulties for employers

The setting of wages result from negotiations, either directly between employer and employee, or by collective agreement, following negotiations between social partners. Ceemet believes that the market mechanism must allow wages to adjust freely to changes in demand and supply of labour or in function of other objective elements such as tasks to be performed and performance of workers. The proposed text fails to take this into account and strongly limits the free and flexible labour markets of the Member States by proposing very prescriptive and rigid measures, which will be detrimental to respond to the dynamic changes in the national industrial relation systems. The proposed measures establishing pay transparency entail a big decrease in the flexibility for employers to set wages in accordance with the experience, competences and performance of workers and strongly limit the bargaining power to negotiate salaries with applicants.

This Directive imposes many obligations on employers which causes a substantial amount of red tape. These extremely detailed requirements will also be very difficult for companies to implement. It is therefore too far-going to propose that an employer who has failed to comply with certain aspects of the Directive, for example by not providing an element of the list of information, is assumed guilty of pay discrimination and will have to prove that such discrimination has not taken place. This will undoubtedly lead to abusive litigation and could have a strong negative impact on the reputation of companies.

Further, the measures proposed will create a huge amount of administrative burden and costs for companies. In this regard, we highly doubt that the Commission has correctly identified the costs related to the pay transparency measures in the impact assessment. Experiences with similar measures in certain Member States show that the Commission has seriously underestimated the costs following the measures proposed. Moreover we would like to remind the Commission to the mission letters to Commissioner Schmit and Commissioner Dalli which highlighted the importance of the 'One In, One Out' principle by stating that every legislative proposal creating new burdens should relieve people and businesses of an equivalent existing burden at EU level in the same policy area. This important principle has so far been completely disregarded by the Commission. European companies are already struggling heavily with the excessive amount of administrative burden and related costs in the area of social policy and will be even more so due to the obligations imposed by several EU level legislative proposals, notably this Directive.

- Difficulties for Social Partners

In many Member States, wage-setting is a core responsibility of mandated social partners at the appropriate level. The Commission's proposal interferes greatly with this social partners' competences. The Directive obliges Member States to take measures to ensure that employers have certain pay structures in place. This obligation transfers powers from the social partners to the national governments to determine the content of pay structures. This is often an essential part of collective bargaining-based pay systems and will have substantial implications for salary setting provisions. The proposed prescriptive measures will thus surely disrupt negotiation competences of social partners as regards pay and will be detrimental to respond to the dynamic changes in the labour market.

In addition, the existence of such a legally binding text means that the European Court of Justice will acquire jurisdiction on purely national collective agreements and wage setting.

These very intrusive measures proposed by the Commission therefore threaten the flexible and free labour market of the EU Member States.

- Difficulties for Member States

This one-size-fits-all solution will be very difficult for Member States to implement as many countries already have diverse but well-functioning systems of pay transparency in place. Provisions proposing the job classification system may in several countries differ from the different but well-developed systems in place. Also, the obligations proposed by this Directive often do not correspond to the requirements which already exist in several EU countries. It rather gathers and cumulates the various measures existing in the 27 Member States and requires them all to be implemented at once. Consequently, the proposal completely disregards the efforts made by Member States on this matter.

Moreover, the measures proposed by the Commission are extremely detailed and too elaborate for a Directive. This adds on to the reality that it will be even more difficult for Member States to correctly implement the Directive in line with both existing national legislation and their national social and industrial relation systems.

To conclude, Ceemet believes that this proposal, which imposes far-reaching pay transparency measures, does not address and improve the framework conditions for women in working life, nor their participation in the labour market and consequently their income prospects. Therefore, it does not address issues as gender segregation in the labour market and women's employment rates, which are the main causes of the problem. The proposed obligations for companies such as the information obligation, the reporting duty and assessment will inevitably create additional costs and administrative burden on companies while the effect of these measures will be minor at best for employees. For Ceemet, this proposal for a Directive is not the way forward to achieve the objective envisaged by the Commission.

Therefore, we call on the Commission to withdraw this proposal for a Directive and explore other means which will help create real equal opportunities between men and women on the labour market. This could be achieved by encouraging Member States to provide easily accessible and affordable (child-) care facilities, career guidance and a focus on educational choices for both girls and boys in order to encourage a cultural shift.
