

## **NCPE Online Conference to mark Equal Pay Day 2021**

**11<sup>th</sup> November 2021**

**Microsoft Teams**

### **Minister for Equality, Research and Innovation - Hon. Dr. Owen Bonnici**

- Klabb 3-16, free Childcare scheme, Maternity Leave Trust, in-work benefits, and remote working policies facilitate work-life balance for working families.
- Such measures led to an increase in the participation of women in the labour market.
- The Government's commitment not only aims to ensure that more women participate in the labour market, but that the working conditions for all employees are fair, just and equal.

### **Introduction - NCPE Commissioner, Ms Renee Laiviera**

- The average difference in pay between men and women in the EU is 14.1%.
- The gender pay gap in Malta is 11.6%.
- However, the pay gap can be as high as 25% in financial and insurance activities.
- Over the past years, the NCPE has taken various measures to address the gender pay gap and unequal pay.
- The NCPE is empowered by Chapter 456 - The Equality for Men and Women Act to investigate complaints of gender discrimination in employment, including in the terms and conditions such as pay.
- This year, the court has asked the NCPE for an opinion on a case investigated by the NCPE.
- Last year's NCPE online conference to mark Equal Pay Day 2020 considered the need of pay transparency to be of vital importance for gender equality at the workplace.
- This year's online conference **will delve into the effects of the proposed pay transparency Directive on the national scenario.**

## Proposal for a pay transparency Directive - Prof JosAnn Cutajar

- The legislation in place, but the implementation across Europe is lacking.
- Jobs that are different in nature can have an equal value. Job classification helps determine the relative rank of different jobs in an organisation - A good job classification leads to fair, equitable, and consistent compensation, and enables succession planning to more senior roles.
- The Directive on Pay Transparency enforces the right to request information on one's pay and reporting obligations for companies employing 250 or more employees.
- In fact, a number of countries have gone beyond the minimum provided for in the proposed Directive, such as Iceland – 25+ employees (a country which is smaller than Malta).
- Job applicants have the right to receive information from future employers.
- The proposal received criticism – for example, on limiting reporting to companies with 250 or more employees; and on referring to workers' representatives rather than unions. Employers can choose a worker with less pay for comparison purposes. The Directive does not specify how to carry out a job evaluation. Also employees who are not unionised.
- According to personal studies, the difference between the gender and race pay gap is relatively minimal, and so, while addressing women in this issue, race is also acknowledged.
- Therefore, the proposal should take an intersectional approach.
- In MT we have a 6-tiered wage gap – Maltese, EU and non-EU males and females. Research findings showed that non-EU males are worse off than the female nationals.

PowerPoint Presentation available [here](#)

## Q&A

- **Q** - Why is obligatory reporting only for companies that employ 250+ employees? The majority of the companies in Malta are Micro or SMEs, so it's not targeting them

**Prof JosAnn Cutajar** - In fact, a number of countries have gone beyond the 250, such as Iceland - 25+ employees. It is up to the Member States to decide how they would like to develop the proposal at the national level.

- **Q** - When one is looking to transpose this Directive, we need to keep in mind the costs to the employers if we want this to be a success.

**Prof JosAnn Cutajar** – The costs will be minimal. It will be more costly for employers if there is unequal pay.

#### **The NCPE Equal Pay Tool (Developments) - Mr Matthew Sacco**

- The *Prepare the Ground for Economic Independence* (PGEI) EU co-funded project kick-started the NCPE Equal Pay Tool
- The goal of this tool is to provide an evidence-driven framework for constructing an equal pay tool for Malta that assesses the degree of inequity in relation to pay across gender for work of the same value within the same organisation, to assign an Equal Pay certification, in addition to the Equality Mark certification, for companies that request it

PowerPoint Presentation available [here](#)

#### **Panel discussion – Moderated by Ms Renee Laiviera, NCPE Commissioner**

**Mr Joseph Farrugia**, Director General - Malta Employers' Association (MEA)

**Ms Abigail Mamo**, CEO - Malta Chamber of SMEs

**Mr Anthony Azzopardi**, Assistant Director - Department for Industrial and Employment Relations (DIER)

**Mr Josef Bugeja**, Secretary General - General Workers Union (GWU)

**Ms Cher Smith**, Employment Manager - UHM Voice of the Workers

- **Ms Laiviera**
  - What is the position of your organisation on the **proposal for a pay transparency Directive**? Do you agree with what is being proposed? Why?
  
- **Ms Abigail Mamo**
  - The main focus of the Chamber are the micro and small businesses in Malta.
  - The Chamber supports this Directive, but is concerned on how to go about reaching equality, and how to get SMEs to collaborate.
  - The costs envisaged by the European Commission for the implementation of the Directive are low.
  - In the EU there is the so-called proportionality principal to ensure that what needs to be implemented is proportional to who will implement it. The fact that the Directive covers companies with 250 employees is sensitive to the reality, because small businesses still can comply in a different way.
  - Many employers might not be always 100% within the law not because they want to discriminate but due to lack of knowledge. There is a learning curve and SMEs need to be supported to understand the basic definition of equal pay for work of equal value.
  
- **Mr Joseph Farrugia**
  - First of all, one cannot be against the intentions of the Directive because the objective to reduce gender inequalities is necessary.
  - There is no argument against the principle. However, smaller companies might want to attract a person to that organisation because of a labour market shortage. Because of this, although this might create friction amongst employees, the employer has no choice but to increase the package offered, whether the employee is a woman or a man. An allowance has to be made by the Directive for such labour market situations.

- On the other another hand, companies that employ more than 250 employees, have certain structures, which micro companies do not have, such as an HR manager. Other instruments tailor made to different companies can be developed.
- What we should be after is compliance by being flexible. We can adopt a top-down approach and start with the larger companies which may be in a better position to collaborate, and then move forward with smaller companies.
  
- **Mr Josef Bugeja**
  - Definitely in favour of the proposed Directive as this principle has been embraced by the GWU since it started collective bargaining.
  - We need to address the reasons behind the gender pay gap and why women opt for certain jobs. Why are women obtaining to go for low-wage jobs? Is it because of flexibility or is it because they do not have the necessary skills?
  - The Directive proposes two main positive aspects – the right for full compensation for unequal pay and recovery of past pay and legal fees, and the fact that the burden of proof is on the employer and not on the employee.
  - The Directive applies provisions to companies with 250+ employees when it comes to reporting obligations. However, the GWU deems that the reporting obligations should be applicable to companies with 20+ employees since as it stands, only 0.01% of companies in Malta will be obliged to report.
  - We need a change in culture that pay discrimination is totally wrong.
  
- **Ms Cher Smith**
  - Whether the business is big or small, the Union’s efforts are always the same in collective bargaining and to draw up a Collective Agreement.
  - The issue lies with how to encourage employers whose employees are not unionised to come on board. The regulatory framework should be flexible, and it should be a learning curve to employers.

- In this context, the UHM proposed the introduction of a portal where all employment contracts are uploaded/registered and vetted or scrutinised by the Regulator. This portal may pinpoint mismatches and display the actual working conditions in the labour market.
  
- **Mr Anthony Azzopardi**
  - The lack of pay transparency is the main obstacle in reaching full and true equality in pay.
  - The proposed Directive will therefore help with reducing the gender pay gap and unequal pay.
  - The structures and mechanisms that are going to be put in place, as proposed in this Directive, would not cause burdens on employers especially on micro businesses.
  - This Directive is still a work in progress.
  - Next year, DIER will work on a portal where various samples of contracts would be online to help employers and employees know their rights.
  
- **Ms Laiviera**
  - There is a comment in the chat: *“When speaking about micro and small businesses we cannot only think of financial cost, one needs to consider also the bureaucratic burden.”*
  - The costs are not minimal in certain circumstances – training, HR Managers, support in general, and legal advice.
  - Will financial support from national Governments help with the implementation of this Directive?
  
- **Mr Joseph Farrugia**
  - Flexibility is very important. We should aim at the objectives and not the methods because the methods might vary according to different situations.

- There are still ways of assessing if there is pay transparency in a company without using complex models.
  - Market forces may be a factor for differences in pay in some cases.
  - Every employee should have a contract of employment, which is also of interest to the employer.
  - With respect to unionized workers, when there is a collective agreement, the incidence of pay discrimination is less. Although it can still happen. For example, employees might still be overlooked for promotions or are not treated fairly in performance reviews, and this applies to both men and women employees.
  - The draft Directive makes it very specific that any employee can lodge a complaint. Thus, it is not limited to employees in larger companies engaging over 250 employees.
- **Ms Abigail Mamo**
    - When it comes to the smaller businesses, we do see tools as complimentary and also that tools leave a positive impact. We have seen this when DIER uploaded contract related information and tools on their website.
    - When something is developed, we need to consult with employers, and it would benefit everyone as these tools will be used by different companies.
    - We should not push employers in one direction because they are not a homogenous group.
    - Many a time, employers and unions tend to be on opposing sides. A bigger effort is needed to see what we can agree on and push on those aspects as well as try to find a balance on issues we disagree upon.
    - A risk-based approach is good to implement this proposed Directive. Rather than trying to enforce something on everybody, we need to make sure the law is clear to avoid ambiguity and to avoid a system which subjects employers to unnecessary burdens.

- **Mr Josef Bugeja**

- The principle of equal pay has been enshrined in EU law since 1957 so this is not new.
- This Directive is needed because we still see cases of unequal pay thus needing a legal framework to address related anomalies.
- The Directive is not the end, it is the starting point to achieve what everybody agrees upon.

- **Ms Cher Smith**

- We need to factor in some level of flexibility because not all employers have the same resources. At the same time, there needs to be a main structure to be adhered to.
- The flexibility that is needed will eventually help one determine the type of tool that they need to achieve the result that everybody is looking for.
- Input from all stakeholders is needed and committees supporting businesses of different sizes should pitch in to support companies with the implementation of this Directive and to help in eliminating biases.

- **Mr Anthony Azzopardi**

- DIER's approach entails that when we see an infringement, we try to teach and to tell the employer how to go about it before going to court.
- DIER will support the implementation of this Directive and suggest social dialogue to move forward.

- **Ms Laiviera**

- Thank you all for this fruitful conference
- We encourage you to give your feedback by sending an email on [equality@gov.mt](mailto:equality@gov.mt).