

## Commentary: Pay Transparency Directive and “Workers’ Representatives”

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### Summary:

- The Pay Transparency Directive becomes national law in June 2026, less than a year from now.
- Unlike such laws in other jurisdictions, the Directive prescribes a significant role for “workers’ representatives”.
- But what happens if you do not already have “workers’ representatives” in place?
- Will the Pay Transparency Directive result in a surge of new workplace representative structures?

### Introduction:

While “pay transparency” laws have become common across the world in recent years – many are well documented in reports from major law firms – most of them focus on the publication of pay data to flush out hidden gender discrimination in recruitment and career advancement.

Of course, the EU’s *Pay Transparency Directive* also requires the publication of pay data. But it differs from most other pay transparency laws in one major aspect. It provides for the involvement of workers’ representatives at various points in the process of verifying and making pay data public.

If gender pay gaps of more than 5% by grade or category are identified and cannot be quickly eliminated, then management will have to engage with the workers’ representatives in analysing the reasons for the gaps, and how they might be closed. Other provisions on the Directive require engagement with workers’ representatives as well.

In many Western European countries, such as France, Spain, the Netherlands, and Sweden, there are well established systems and procedures for employee representation in the workplace. But this is not the case in most Central and Eastern EU Member States, nor is it the case in Ireland. In the absence of a recognised trade union, there is generally no system of collective workplace voice.

But what if you don’t have established representatives through trade unions or work councils? Over 20% of large German companies have no works councils and in Poland, where representation is primarily through trade unions, 70% don’t have representative arrangements. So how will this work?

### What does the Directive say?

The Directive (Article 3(1)(m)) defines workers’ representatives as follows:

*‘workers’ representatives’ means the workers’ representatives in accordance with national law and/or practice.*

Recital 43 to the Directive provides some further insight on “workers’ representatives”.

Joint pay assessments should trigger the review and revision of pay structures in organisations with at least 100 workers that show pay inequalities. The joint pay assessment should be carried out if employers and the workers’ representatives concerned do not agree that the difference in average pay level between female and male workers of at least 5 % in a given category of workers can be justified on the basis of objective, gender-neutral criteria, if such a justification is not provided by the employer, or if the employer has not remedied such a difference in pay level within six months of the date of submission of the pay reporting. The joint pay assessment should be carried out by employers in cooperation with workers’ representatives. ***If there are no workers’ representatives, they should be designated by workers for the purpose of the joint pay assessment.*** Joint pay assessments should lead, within a reasonable period of time, to the elimination of gender-based pay discrimination through the adoption of remedial measures. (Our emphasis).

## 2002 Directive

There is an argument that the 2002 Directive on a *General Framework for Informing and Consulting Employees* mandates the establishment of employee forums in undertakings with more than 50 employees. Article 1.2 says:

*The practical arrangements for information and consultation shall be defined and implemented in accordance with national law and industrial relations practices in individual Member States in such a way as to ensure their effectiveness.*

The words “shall be defined and implemented” and “in such a way as to ensure their effectiveness” suggest that this is mandatory and not voluntary. But we know that this simply does not happen in practice.

I am most familiar with employee and labour relations practices in Ireland. I could count on the fingers of one hand (two, at a push) the number of employee forums set up under the 2002 Directive, transposed into Irish law by a 2006 Act. Why? Because under Irish law employee forums under the 2002/2006 law are not mandatory, they must be triggered either by the employer or by a request from employees. There has been no rush to set up such forums.

The same is true in many Central and Eastern European countries where consultation is through trade unions and bargaining coverage is very low. We also know that there are many workplaces in Western Europe where there are no internal systems of workplace representation... even in France, Spain, and Germany.

## Why no take-up?

Why has the 2002 Directive not resulted in the establishment of employee forums where none previously existed? I am not aware of any research work on this issue as say, compared to European Works Councils, it just does not grab academic or trade union researchers’ attention.

My own best guess is that both parties in the workplace, managers and employees, see little in it of benefit for them. The information that would be made available to an employee forum, data about the company’s performance, is generally already widely available. No need to reinvent a wheel.

The *Pay Transparency Directive*, by way of contrast has a focus, gender pay differentials, if they exist. This is something that will command attention, maybe not immediately, but likely to happen once the data is published. Why? Because there is a potential, specific end result. The elimination of a pay gap. Something

that employees can understand and see as a benefit. A positive outcome to an engagement process. Something worth getting involved in.

## *Finding representatives*

If there are no existing “workers’ representatives in a workplace, how are such representatives to be decided on? As already noted, the Directive (Article 3(1)(m) defines workers’ representatives as follows:

*‘workers’ representatives’ means the workers’ representatives in accordance with national law and/or practice.*

In Western European countries where there are works council systems in place, then it would seem that representation will have to be through such systems, which could see the appearance of works councils in places where they do not currently exist.

In Ireland and countries in Central and Eastern Europe, “national law” should probably be seen as whatever law transposed the 2002 General Framework Directive into national law. Unless there are laws on workplace union recognition which would trump the transposition of the 2002 Directive. As, for example, is the case in Spain where existing law, which pre-dates the Directive, requires companies to deal with sectoral trade unions in the absence of internal worker representation, even if such unions have no members in the company. We know of cases where this has happened.

If we assume that it is the transposed 2002 Directive that applies, then can an employee forum set up under that legislation be limited to pay transparency, or would it have to be a forum with a mandate to discuss the full gamut of issues outlined in [article 4](#) of the 2002 Directive? I lean to the view that once an employee forum is set up to discuss pay transparency it will become a permanent fixture and will want to discuss issues other than pay transparency, but I am open to be convinced otherwise.

Whatever the case might be, however national laws deal with this matter, and we still await most national laws to be published, such laws will have to make provision for workers’ representatives to be engaged on pay transparency, if workers so request.

If you already have workplace employee representation in place, you will know how to deal with this issue. However, if you do not have any existing workplace representation, then you need to start thinking now about what pay transparency could mean for you in this regard.

How do you get ahead of the curve? Could you set up a “Pay Transparency Forum” ahead of when the law hits, and start training up representatives to understand the issues involved? Limit the forum to pay transparency. The law is vague and what might be doable, or not doable, still has to be defined. Best to be proactive and manage matters to best suit your circumstances.

*If you are interested in learning how HR Policy Global Europe can be of assistance to you and your team, email [tom.hayes@beerg.com](mailto:tom.hayes@beerg.com)*

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