The Agenda podcast by Lewis Silkin: Pay Attention

Pay Attention Episode 10: Belgium's First Steps into Pay Transparency

Tom Heys: Hello and welcome to Pay Attention, a regular podcast coming to you from the Lewis Silkin offices in London. I'm Tom Heys.

David Lorimer: I'm David Lorimer.

Tom Heys: And once again, we've gathered around the virtual table to talk about the Pay Transparency Directive. This week, we're talking about Belgium, and we're delighted to be joined by our special guest, Sophie Maes from Claeys & Engels.

Sophie Maes: Yes hello everyone. Thank you for having me here. I'm indeed Sophie Maes, a partner at Claeys & Engels, which is the Belgian member firm of Ius Laboris.

Tom Heys: So I understand in Belgium there is some sort of reporting obligation at the minute. Sophie, could you tell us a bit about that?

Sophie Maes: Actually we do have something, but as you will see, it is not at all what pay transparency will require. We do have a gender pay gap act, which dates back from 2012 and which provides for several measures. There are measures that are provided for at the level of the sectors, but also at the level of the companies and it applies to companies which employ on an average 50 employees. Well, those companies nowadays since 2012, they must establish every two years a comparative analysis of their remuneration structure. There are some standard forms for that which they need to complete and the information that they must fill in is actually the way the remuneration structure looks at to be breaking down between men and female and based on criteria like seniority, educational level but also function category.

But if we look at the function category then the form just refers to well you need to apply the function category that is applied within the organisation or if you do not have one, then you need to provide the information divided in, on the one hand leading personnel, on the other hand, managerial personnel and workers. So, I would say the function categorisation if you don't have one in the company is extremely broad and much broader than what will be required under the directive where reference is made to work of equal value.

That bi-annual report must be delivered to the works council, so not to the authorities, but to the works council who must be consulted on the report and if needed they can ask the company to draft an action plan to make the remuneration structure a bit more neutral. So, it is quite different because under the Pay Transparency Directive, we will need to provide the information also to the authorities and there will be seven statistic formulas, six of which will also be published on a website, whereas now the information is confidential and only members of the Works Council have access to it. So from a company perspective in terms of transparency, that will change a lot of things.

Tom Heys: So this is going to be a big increase in transparency then?

Sophie Maes: Yes.

Tom Heys: Employers are putting this information out to the world at large, whereas it's been pretty limited until now.

Sophie Maes: Yes, yes. And also, it is our impression that until now it was, for example, we did not receive many questions on it. We also had the impression that it was not that high on the agenda of the trade union, but we see already changing it a bit because companies and also employees, I think, are becoming much more aware of those matters as a result amongst others of the pay transparency directive.

David Lorimer: Absolutely, so a bit of a distance to go and you've already touched on one of the hot button topics of categorisation. We'll come back to that. But I guess a big question on everyone's lips is when do you think Belgium will go? Have there been any indications by government or are you prepared to give your best guess, Sophie, for a sweepstake on when you'll implement?

Sophie Maes: No, we do not have any draft text, we do not have any indication yet. And if I look at our, I would say traditional way, in implementing directive is that we are quite always waiting until the very last bit or even be a bit too late sometimes. So my guess is that it will be 2026.

David Lorimer: So just to let listeners behind the curtain on how fast things move in the pay transparency world, after we recorded the original audio for this podcast, Belgium made a bit of a surprise announcement didn't they Sophie?

Sophie Maes: Yes indeed, in the sense that there has been some implementing legislation in Belgium, however we need to be careful what we say here because I have seen many things on LinkedIn saying that we implemented the Pay Transparency Directive. It is correct that there has been some legislation but it's only for the public sector and only for the French-speaking community. So it is very limited, it's not applicable yet in the private sector, and looking at it, it only implements a part of the PTD, and it's quite short. So I would say it does not yet give any guidance on how we might think it will be implemented in the private sector.

David Lorimer: Ah that's really helpful, thanks for busting some of those myths. And it seems that we are still where we are when we first talked - Belgium is a bit like me with airports, we turn up at the last possible moment then.

Sophie Maes: And also, we do have some questions that we are quite curious to see how it will be implemented, for example, in relation to the reporting obligation, because now we have this obligation to make two annual reports and that applies to companies as of 50 employees. Whereas under the Pay Transparency Directive, the reporting obligations, which of course are much broader than what we have now, they are in principle, but that is a minimum standard as of 100 employees. So we are wondering how this will be implemented. Will we keep the 50 or will we adapt to what the minimum is in the Directive, which is 100 employees?

Tom Heys: So you've pre-empted my next question, which was going to be about how Belgium usually implements EU Directives. So do they tend to stick to the requirements of the Directive, or do they go further, and we used to call it gold plating in this country back in the old days when we were in the EU. So yeah, what does Belgium usually do?

Sophie Maes: Well, that's not an easy one to respond. What we see is that very often we already have things that are being done and then normally we keep that as it is and then we adapt to what we still need to do and that is most of the time quite in line with what the Directive will see. So hence also the question what we will do with this 50 employees threshold.

David Lorimer: Yeah, that's really interesting and we'll keep a close eye at the risk of sweepstake fatigue. We really ought to be running one on the headcount reports too, because we think, for example, in Ireland, they'll bring that down to 50. But let's keep a watching eye.

Now, we've already mentioned categories. We've already mentioned this concept that workers need to be put into groups of people who do the same work and work of an equal value for the purpose of the internal reporting obligation. Sophie, is that concept of categorisation something that already exists? You've mentioned some quite broad categories in Belgium law at present.

Sophie Maes: Well the concepts exist because if we look at our legislation which is CBA number 25 on the principle of equal pay for men and women, it does include the concept of work of equal value. Also, I would say categorisation has been quite central in our approach to equal pay in a sense that many sectors do have

function job classification systems. And another part of the Gender Pay Gap Act was for the sectors. So the sectors of industries where collective bargaining agreements are being concluded. But for those sectors of industries that if they conclude CBAs on job classifications that they have to make sure that those job classification systems were gender neutral. So a lot of emphasis has already been made on making sure that if companies and sectors apply job classification systems, that those systems must be gender neutral and not with a two male or female aspects.

But as such, that is only *if* there is a job classification system, and not all sectors do have job classification systems. But then also the next question is then, if there are job classification systems, do they meet the conditions that are now being set forward by the PTD, where work of equal value, where it is determined that it has to be agreed upon with workers' representatives and that it must include four criteria such as skills, efforts, responsibilities and working circumstances.

So a lot of companies, even if they do have job classification systems already in place, the question will be, are they sufficient? And that is something that we don't have the answer for yet at the moment that we will need to see what the requirements are. The Directive also foresees that the member states will need to put forward tools in order to allow organisations to do the evaluation. Today we already have from the government a checklist, but it is very much to make sure that our job classification systems and our job titles are gender neutral, which I think is still something yet different than really assessing whether two jobs are of equal value.

Tom Heys: Yeah, I think it's one thing for a government to provide the information that people need, but then it's a very different thing for actually how that's done in practice, that the people who will be doing that classification, maybe they've never done it before, maybe, you know, it's, it's a specialist sort of thing to do. So I don't know how useful across the EU, so this requirement that governments provide tools and assistance, I'm not sure how useful that will end up being.

David Lorimer: Yeah, and we're seeing in territories, places like France, some suggestions, for example, that new sectoral collective bargaining agreements will carve up categories in a PTD-friendly way. But I think it remains to be seen whether that will work in practice and in accordance with the individual organizations that are doing it and how they work and how they're structured.

Sophie Maes: Yeah, there is a lot of questions around it, even by companies who already do have job classification systems.

What we see is that companies are really wondering whether the job classifications they do have, because most bigger organizations, they do have job classifications, but the question is then, do they meet the requirements under the PTD?

And perhaps another comment is that on sector level, we do have job classification systems, but it's more relating to base pay. And the PTD is much broader than just basic salary.

David Lorimer: Yes, the valuation of benefits is going to be another fun subtopic for us as we wrestle with this, isn't it?

So lots to mull over on categorization. Another thing that comes up time and again, because much of this Directive is kind of collective at its heart is the role of employee reps. You know, we know they're going to need to be consulted on the methodologies used to capture and analyse data. We know they have to be consulted on whether a joint pay assessment is triggered and on that joint pay assessment, which we think is a bit like an equal pay audit with worker reps. So clearly a prominent role. Are those kind of collective obligations novel or newish in Belgium or is there a kind of script we can learn from, the way in which you engage with worker reps under existing legal framework, Sophie?

Sophie Maes: Well, it's quite new, I would say, because so far the rights of works councils or trade union delegation is much around information and consultation. But I think that here in the PTD, it goes further than

just being informed and consulted, because as you already said, if the company introduces its own function classification, then according to the Directive, the criteria based on which will need to be agreed upon with the employee representatives, which is not the case today. For a company, if it wants to apply its own function category, then it will need to inform them, but it will not need to agree with the employee representatives to apply their own function.

So that is, I think, a first new right which goes much further than what we have today. Also, if you read the PTD, as you already indicated, they will need to be informed and consulted about what the companies will report in terms of gender pay gaps, but they will also have access to the methodology and will also need to be informed and consulted about the accuracy of the numbers, which also goes further, I think, than what is happening today. And they can also ask clarifications. And then, as you say, the joint pay assessment is something new, something we do not have today, that you have to collaborate, to work together, to look into the courses.

Tom Heys: So it sounds like to me then that the employee representatives will become more powerful as a result of the PTD. It's not just about informing, it's that they are more the gatekeepers or decision makers as to whether a company's gaps are justified.

Sophie Maes: Yeah, no, absolutely, absolutely.

David Lorimer: Yeah, and one of the messages we've been hearing kind of loud and clear is that's a really important role, we know that. How are they going to discharge it? And in particular, how are they going to know how to deal with these concepts? You know there's complex concepts at play here around categorization, around the reasons for gaps, which might be gender neutral, around, frankly, the kinds of statistical analysis that we're going to have to be carrying out. So I guess that what we fundamentally come back to is that, we're going to need a set of reps who are engaged, informed and quite well-trained in order to work collaboratively with them. Would you agree with that, Sophie?

Sophie Maes: Yes, absolutely. It will also, in order to have a good dialogue, it will be important that everybody is on the same page and understands the figures and the numbers and what it represents. So I think it is also for trade unions, an important step that they will need to be trained and also in the Directive for CESA that member states must help companies of less than 250 employees and also the employee representatives to get training to be able to fulfil their obligations under the PTD.

Tom Heys: Is training a thing that employees in Belgium provide already to their employee representatives or will this be a new thing?

Sophie Maes: Normally training is provided by the trade unions themselves, because the trade unions themselves give most of the time the training to the employee representatives. I think we have already done it, but it is not so common. The most common thing is that it is the trade unions and they provide a lot of training for their representatives.

David Lorimer: OK, so one other big theme, I guess, is these collection of what you might call individual rights. And I think they're all about, at their core, changing the culture at organizations across Europe so that it's more transparent, so that people aren't afraid to ask questions and share information. And so I'm talking about things like the ban on pay secrecy clauses, the right to information on request, about pay in individuals categories and the requirement to provide pay ranges to applicants.

How much do you think that's going to change, I guess, the culture and the approach for employers in Belgium, Sophie?

Tom Heys: Yeah, and is there anything currently like that in Belgium law or will this be a brand new big bang type thing?

Sophie Maes: I think it will be the last thing because I think that is really, really different of what we have today. I think now if you look at recruitment processes and how it works and what employers are asking to

future job applicants, it is not unusual to ask what their pay history is and what they are currently earning to start salary negotiations from there.

So the ban on asking about salary history is something which we really need to adapt because it is quite normal to do that in Belgium. So that will be from a cultural perspective, something really, really a shift towards something else.

Also, the transparency is something which we do not really have today. And the fact, for example, also in job applicants, we will need to see how it will be implemented. They're under the Directive, the initial pay or the pay range will need to be provided, it can be in job adverts or later on, but there are also, that is not something we would normally do here in Belgium. So we also need to see how that will be implemented and how we will need to comply with that. There are some organizations who are really already worrying about this as well, because for example, these are things that we see in the States and the question is, will we then end up in a situation as what is already happening in some states in the US?

Also, the Directive provides for the access to the criteria to determine the pay level and pay progression. That is also quite new. We do not have that now. And then of course, also the right to ask every year not only to receive the information on your own salary but also on the average salary of an employee that belongs to the same category. That is something completely new, which is definitely a cultural complete change of what we used to have now.

Tom Heys: I think you've hit the nail on the head with saying that it's a cultural change. The way I've always thought about the PTD is that if you take each of the different things that it's going to require in isolation, it perhaps might not change too much, but it's all of these different things, the transparency, the new rights, that when they're all stuck together and implemented together, it really will cause a cultural change.

Any thoughts of pay being a taboo subject to talk about - that will be very much in the past, and there will be much more openness about pay, how it's set, who gets paid what.

David Lorimer: Absolutely.

Sophie Maes: I just wanted to add that this is really a change. We already see a change with the younger generation because I think they already talk more easily about the pay than let's say 15 years ago where you really were not supposed to say anything about your pay, etc. So we already we already see a change wit the more younger generation, but now it will definitely even change much more with the PTD.

David Lorimer: Interesting. And I guess then let's extrapolate a bit further about the impact because what we've seen in the UK and I think across lots of other countries is that when employees get access to this kind of information, information about their comparators for equal pay purposes, information about how they're paid by comparison to them and the kind of radical transparency that the Directive is going to usher in, there's a spike in equal pay claims. And so we've seen that in the UK where kind of local government and supermarkets have been particularly impacted by employee reps or employees having this kind of transparency. There's been a long tail of high profile and expensive equal pay litigation. How common are equal pay claims in Belgium at the minute? And do you think that's going to change or increase?

Sophie Maes: Yes I think it will change because now at the moment there are claims, I'm not going to say there are no claims at all. There are claims but it is not so common yet, but we already see some change. But of course sometimes it's also because we simply do not know. So I think now with the PTD everything will become much more visible.

So yes, I do think we will have more claims, so that will be a big change. And also, I think it will also give power to the unions in case of negotiations with, if we negotiate collective bargaining agreements at the level of the organisation, etc. It will give a lot of, you give a lot of information and also the power to the unions to use this as leverage.

Tom Heys: And how common would you say equal value claims are in Belgium as opposed to say the like work sort of equal pay case?

Sophie Maes: Well, actually, so far we don't have any caseload yet on the parameters, for example, to use in case of or to determine work of equal value. I just also looked it up yesterday because we had recently also a report on equal pay and it was literally mentioned in there that so far there was no caseload yet regarding the parameters, how to assess work of equal value, so that says a lot.

David Lorimer: Gosh, you're very lucky. We've been mired in equal value shadow litigation for years in the UK and I think we're still trying to work out how it works.

Tom Heys: Well, we have a reasonably well-established body of case law but at the cost of local governments collapsing.

David Lorimer: We do!

Sophie Maes: I think the concluding remark is that for Belgium, it will change a lot and it will have an impact in organizations because everything is much more transparent. A lot of companies do, for example, also used to give discretionary bonuses, which under the PTD of course will become much more difficult if not impossible. So I think now for organizations, and we discussed this already many times, even if implementation is only in 2026, if you wait until 2026, it will be too late. So I think it's very important to start working in it and mapping everything what you have in your organization.

Tom Heys: So your message to Belgian employers is to not wait until 2026 and to start doing things now. You may not have a perfect approach to how you're going to categorize people. You may not have complete certainty over the headcount, but it's better to start now than wait till later.

Sophie Maes: Yes, absolutely, because in 2026 it will be too late because you will need to report on 2026.

David Lorimer: Great, so a potential tsunami of equal pay claims coming. Excellent. Well, Sophie, look, that's been genuinely really insightful. Any closing thoughts from you on what the PTD is going to mean in Belgium?

Sophie Maes: It's not only the reporting, but it's everything. It's also looking at your compensation and benefits policies. What are the criteria? What are criteria to determine pay? What are the criteria to determine bonuses? Also, how do I see my own pay progression in the organization etc?

All those kinds of things I think we need to look at it now to see whether they will meet the test. Even in 2026, you need to give access on all of those to the employees.

David Lorimer: Thank you so much Sophie for joining us and bringing us up to speed on Belgium.

We'll be back with you all again soon with another Pay Attention pod with more insights on the Pay Transparency Directive. In the meantime, keep an eye on our specialist pay transparency site on Lewis Silkin or reach out to us or your usual contacts at LS to talk more about the Pay Transparency Directive.