

The Agenda Podcast by Lewis Silkin

Episode 16 - Pay Attention: Lithuania's quiet head start on 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: And I'm David Lorimer.

Tom Heys: Once again we've gathered around the table to talk about pay transparency. Lithuania might make you think of windswept Baltic dunes, medieval castles or perhaps the fragrant cold beetroot soups, but it's also the ancestral home of some of Hollywood's biggest stars. Scarlett Johansson even has Lithuanian roots. And then there's the hill of crosses, an ever-growing monument to endurance, perhaps the perfect metaphor for pay transparency.

A project that's never truly finished, but just continuously added to by those brave or naive enough to keep on building. And let's not also forget the Amber Road, an ancient trade route carrying fossilized resin to Rome. Amber is literally millions of years old, which makes eerily alike some pay decisions. Fossilized, set in stone, and almost impossible to remould. Employees are now being asked to turn that prehistoric amber back into malleable sap, ready for transparency, compliance, and fairness, so, good luck with that.

And as Lithuanians wisely say, "Gareu velo negu negada", better late than never. to help us untangle this and perhaps critique my Lithuanian language skills, we're joined by Jovita Valakaita from COBALT Legal, who knows the Lithuanian landscape inside out.

Jovita, welcome to the show.

Jovita Valakaita: Hello, Tom, yes, your attempt to speak Lithuanian is very admirable, but I will repeat it to you that the phrase in my native language, so we say "geriau veliau niniakada", which for our speakers it means it's better later than never.

David Lorimer: Excellent. Thank you for the correction and hopefully you'll keep us on track when it comes to the Pay Transparency Directive in Lithuania as well. Thank you so much for joining us, Jovita. So, let's kick off then on that timing point. Lithuania actually isn't late. It seems to be one of the more on track member states. So Jovita, could you bring us up to speed on where you're up to on the implementation of the directive and what we can expect in the coming months.

Jovita Valakaita: That's correct. Lithuania is well advanced in transposing the directive. In fact, we have had a few conferences this May and we have found out together with our clients that the draft laws were already prepared and provided for the public to review and perhaps provide some critique. The process on how a certain piece of legislation is born in Lithuania is quite lengthy and especially in employment relations or the laws that relate to employment relations, because usually a ministry prepares the relevant draft, then it goes to the trilateral tribunal, which unites employees, employers and institutions. This they're considered and then it goes to the commission of employment relations and it is there actually reviewed point by point and perhaps some inconsistencies are removed, some last state changes are made and then the drafts go to the Parliament.

So I'm glad to update you that we have already passed nearly all the stages before the drafts going to the parliament and we are hoping it will happen in this autumn session because our parliament usually gathers and considers the laws in an autumn session and spring session.

So if the drafts will not be considered in the autumn session, then they will be transferred to the spring session but whatever the case may be, we hope that the drafts will be adopted before the deadline to transpose the directive.

David Lorimer: Excellent. Well, it sounds like the type of rigor that some bits of the directive itself could have done with, that's good to hear that it's going through all the processes in Lithuania.

Tom Heys: So I want to start by talking about the publication of pay ranges for job applicants. How long has that been in play in Lithuania? Has there been much impact? And what is it that has to be published? Is it just salary? Is it the range for the full package, so including bonus and the other complementary or variable pay elements?

Jovita Valakaita: You're quite correct, Tom, and pointing out that Lithuania already has some elements on the directive in place. For example, the pay ranges for a few years already, all the employers, whenever they publish job advertising, they have to include pay ranges and it should be the minimum sort of amount and then the maximum amount that anyone can get if they apply to a particular job position.

So, those pay ranges should be quite accurate and our state labour inspectorate reviews even advertising on LinkedIn, they're quite active and they actually issue fines to those who are not willing to comply. Of course, the employers find some creative ways to indicate those job ranges without perhaps providing a lot of detail but still the aim is to have as much clarity as possible. And I would say that these pay ranges have changed the employment landscape in Lithuania quite a bit. The candidates do have a lot more information on what they can expect in a specific job post and they actually come with quite a bit of knowledge and quite a bit of bargaining power. I think this is one of the aims of the directive and that is already working in Lithuania.

David Lorimer: That's good to know. you know, clients have been asking us if the sky is going to fall whenever we have to publish all of our pay data or provide our pay data and sounds like the Lithuanian experiences, things will be okay. In fact, things might get better.

Jovita Valakaita: I think so. Things have gone better, in fact, when this change was implemented, because there is less time wasted. The employees know what to expect in terms of what the job functions would be, but also what salary range may be expected. And the employers also attract a crowd that is willing to do the work for the money that is offered. I do remember that seven or eight years ago, we did have a situation where if a couple of specialists come to apply for a specific job and one of them asks for, let's say, euros, while the other asks for 2500 and both of them work the same type of job, they are applying to the same type of position. However, one of them asked for a little bit more money because perhaps they do have a bit more self-esteem or they regard themselves as a better man or woman in that particular position. And then the employer accepts both offers, but one of the colleagues will get a lot less money. And of course there is a compounding effect throughout the years if nothing changes or the salary is being increased, but we have the same salary base.

So in that case, one of the candidates, one of the employees will get a lot less money. So, this type of change removed this type of effect and we do see a lot more transparency and a lot more satisfaction from the employers and the employees.

David Lorimer: Excellent news. Well, thank you for sharing that Intel.

Tom Heys: It's really interesting to hear you talk about the benefits that have been seen from the publication of pay ranges. It stops applicants who have unrealistic expectations as to what they're going to get paid from applying to jobs. So employers are just picking from candidates who know what to expect and there's less time wasted. I think this aspect of potential efficiencies that the PTD will bring in across Europe isn't something that is really talked about very much.

David Lorimer: Yeah, absolutely. There's going to be a real fairness dividend you'd expect, especially in those recruitment provisions, so, thanks for sharing that insight Jovita.

One question I had is around whether or not the draft legislation deals with the issue of categories of workers. So, the obligation on employers to put workers in groups are people who do work which is the same work or work of an equal value is continuously one of the things that clients struggle most with. Is there

anything that we can tell from the draft provisions in the theory about that? Is there any existing system to categorize workers?

Jovita Valakaita: Yes, we did have a very similar legislation before. In fact, our labour code obliged the employers to have a remuneration policy and the remuneration policy was an obligation applicable employers with a headcount of 20 and more.

So, the legislation deals with categorizing the employees and the employers are aware that this should be done and quite a few already have remuneration policies in place, which means that they have been categorizing employees. This was done mostly on the basis of their salary, the basis of their skills, education, work experience and all of these matters. However, when the directive is transposed, this will change a little bit. We will have to include more soft skills into the categorization model, which means that all of the employers will have to change their practices a little bit, even though they already have some sort of remuneration policy in place.

One other aspect of this change is that remuneration policy will be an obligation for all the employers regardless of the headcount. So even if you have just a handful of employees you will have to prepare a document that is quite lengthy and quite detailed in terms of categorization, salary ranges, benefits and all of that.

Tom Heys: So the focus before of categorization was not quite grouping people into equal value roles, whereas it will be after implementation. Is that right?

Jovita Valakaita: Yes, that's correct. Equal value was not the main focus before. It will be after the directive is transposed and the draft laws are dealing with that. However, the employers do have some sort of system currently, so I'm curious to see how they will adapt to change. If you do not have any type of remuneration policy, any type of categorization, sometimes it's easier to start from scratch than relearn what you have been doing the past seven or eight years.

Tom Heys: So the reporting obligations in the pay transparency directive will be a new thing in Lithuania. That's not something that's currently in place. How is that going to work? Is there going to be a government portal that is going to do all the work, or will employers have to do all of the analysis themselves? Is there any information on that?

Jovita Valakaita: There isn't too much information at the moment, but we do expect that the government portals will do the heavy lifting. We do have some transparency in terms of pay at the moment and any candidate can search a company and they can see what is the average salary in that company. Of course, the numbers are not very precise, but they can see what are the tendencies in a particular company. So we do expect that the information will be pulled from the Social Security Insurance Board platform and then provided perhaps for the employers to review and then when they press confirm then the information will be live and perhaps they will be able to make some edits to the information to the data as well. So we do expect that it's not going to be such a big administrative burden to the companies because we do have experience with the system at the moment so we think that it is going to be quite smooth. However, there is another side to this.

In our draft laws, the employees and the employer representatives may ask for the information about the pay differences in terms of gender, the pay gap, but also they can ask about their own salaries. The trade unions and works councils do have the power to request some pay related information from the employer in terms of supervision to review whether the practices at the workplace are in line with the laws. So, aside from the obligation to provide the information publicly, there is an obligation to provide the information internally. And this will be something that every single company will have to deal with.

David Lorimer: Yes, the right to information increasingly coming up as a worry as we get closer to the implementation deadline. So it's a good point to flag. And of course, when we're trying to find solutions for the right to information and on reporting, one of the big questions tends to be, well, what does the directive

mean when it talks about pay? Are we talking about everything as the directive seems to suggest? Is there any clarity around that, Jovita?

Jovita Valakaita: So the draft laws are a little bit opaque in Lithuania however, the tendency is that pay should encompass everything that the employees getting from their employer, meaning all the benefits, bonuses and other means of compensating the employees should be included when we review whether there is a pay gap or there isn't one. Which means that if a base salary of two employees is the same, however, one of them receives, for example, an additional insurance, a very expensive training, perhaps a company car or something similar, then there could be a pay gap which should be reported and corrected as the draft law obliges the employer to do.

Tom Heys: So, is there de minimis requirement for what benefits are included? We've talked on the podcast before about the free tea bags example. So where is the line drawn? Are we including the free tea bags as a benefit or is it some way after that? Or is that for employers to make a judgment call?

Jovita Valakaita: In general, in Lithuania, if the employers offer something that can be consumed by every single employee and you cannot really judge how much each employee consumed of that particular benefit, for example, free fruit, tea bags, some food or anything of that kind, then it is not considered an individual type of benefit that we could quantify and calculate when we are judging if there is a pay gap or not.

So, in terms of drawing the line, we should focus on the benefits that are assigned to the employees individually. For example, additional insurance, pension premiums, expensive training, company car, perhaps other working tools that are not really working tools but also are used for the personal benefit.

And another side of the question is how the employers decide to calculate the taxes on those benefits. Sometimes if personal income tax is calculated off of a certain benefit, then it is considered a part of a total compensation package. If the law does not oblige you to calculate the personal income tax in that case, we can exclude it.

David Lorimer: And if the government or the social security portal is helping employers in the union to calculate gaps, then presumably they will have a role in determining what they think is in scope and what isn't based on social security and income tax. Is that right Jovita?

Jovita Valakaita: Most probably yes, because every single month Lithuanian employers have to report how much tax is being calculated off of the employee's salary for the previous month. That information is provided to the Social Security Insurance Board and then off of that information different type of calculations are being made. So, we hope that this will be the system that will help to report the information on pay but also that will help to review the information for the employees and employers themselves.

David Lorimer: It sounds like a utopia, that's excellent news. OK, so you've mentioned already the role of worker representatives, and you've cited the role of trade unions both in bringing the legislation to parliament, but also in pay more generally. Obviously, the directive envisages that worker representatives will have a big role. How prevalent are worker reps at the minute in Lithuania, do you expect that the directive will mean there will be many more in new workplaces or will it be business as usual?

Jovita Valakaita: That's a complex question, David. However, the labour code obliges the employers with a headcount of 20 and higher to have a works council in place. Trade unions are also becoming more and more prevalent and more and more popular. Our prime minister, for example, has come from a trade union. So, there is a bit of a political side to all of this process as well. But we do see that trade unions are becoming more and more prevalent, and popular, they do challenge the employers more and more as well. So, we expect that both works councils and trade unions will come into play in the next five years a lot more than they have been during the last five years.

David Lorimer: Interesting. Watch this space.

Tom Heys: So let's talk about enforcement and sanctions that are envisaged in Lithuania Pay Transparency Directive implementation. Is there any information on that? Are we talking fines and penalties? Or is more of the threat or risk coming from equal pay litigation?

Jovita Valakaita: Yes, so there are some sanctions that are already known. The sanctions are basically administrative sanctions to the employers and a very interesting peculiarity in Lithuanian law that any administrative offenses or any administrative sanctions are being placed upon individuals, meaning natural person, not a company. So, if the company does not align their practices with the law. They may be charged with an administrative offense. However fines should be paid by the director of the company or a person who should manage a particular process. So, we do see that HR managers do have to pay fines. The directors of the companies also have to pay fines. They're sometimes reimbursed by the company, but it's not a pleasant process, nonetheless. We know that the fines will be in the thousands, so if you fail to report, if you fail to provide information about paid transparency, the gaps in the company, then you should expect a fine that will not exceed most probably 1,500 euros. If you fail to calculate the salary that should be calculated according to the law, then the fines will be a lot higher, so it could be up to 6,000 euros.

Tom Heys: Do you think that those fines are big enough to ensure employers actually do it? Or do you think some employers might think, well, it would cost me a lot of time and effort to do all of this work. I'll just pay the fine instead.

Jovita Valakaita: That is sometimes the sentiment of some employers. However, litigation is a very easy route for the employees in Lithuania. So, it costs them nothing to start a case against the employer. And here we have a very interesting clause in the draft legislation. This indicated that the employer should always cover the litigation costs regardless of whether the employee loses or wins the case, provided that the employee had a good basis to file a claim. So, if there was a strong doubt that the employee was not remunerated in line with the law, there was a gap which was not explained and which did not have a good reason or perhaps a reason was discriminatory, in that case an employee can bring a claim through a labour dispute commission. As mentioned, it is very easy process, free of charge process. And if the claim goes to the court after the labour dispute commission, it is possible that the employer will have to pay litigation fees of the employee and the employer.

In addition to that, the employee may claim unpaid wages, differences with the of the wage with their colleagues, any interest, penalties, pecuniary damages, non-pecuniary damages. So, these sums amount quite quickly to pretty big sums, which means that litigation is not a very good outcome in this particular situation. And we do see that the employees start claims with quite expensive lawyers, and they're not afraid to do that because they think that most probably this process will be free of charge and that they will be able to win the case.

It is also a strong sentiment from the courts and the labour dispute commissions that the employees are weaker party to the employment relationship. So, they do win the cases quite more frequently compared to the employers.

David Lorimer: Oh dear. I mean, as you might expect, we hear from clients a lot that the real winners under the directive of the lawyers, and it seems that that might be the case in Lithuania, but let's see, that's a really good overview. And I guess, is there any insight that we can get from how pay equality as between genders is litigated in Lithuania at the minute? Is that a popular strand of claim an equal pay type claim or is it something that you expect to go up once the directive is implemented?

Jovita Valakaita: It's not a very popular type of claim. However, again, I have to backtrack a little bit because if we review all the claims that go through the labour dispute commissions, 75 % of the claims are related to pay. So, the rest of the claims are related to illegal dismissal, discrimination, and all the other matters that are prevalent in employment law. However, 75 % is quite a lot.

No one is calculating at the moment what is the percentage of the claims related to pay transparency, pay gap and all the similar matters. But we think that perhaps in the future those 75 % of the claims will be divided into subcategories and there will be more data, more tracking on what claim is related to which law or which change, whether it's directive related, or other law related. So, we do think that this category of claims will increase in the future.

David Lorimer: Excellent. Well, Jovita, that was a really useful run through of what exists and what's coming down the pipeline in Lithuania. So, thank you for it. My main takeaways, for what it's worth are that the process of reporting may not be as difficult as it will in other countries, but that whoever ultimately takes responsibilities for those statistics better get them right, because otherwise they might find themselves with a personal fine. That's definitely one to watch out for. And of course, unions will be on the rise, we expect.

So lots for us all to think about. Thank you so much Jovita and as usual Tom for joining me and thanks to you all for listening. We'll be back in your ears with another episode of Pay Attention Very Soon.