

Pay Transparency Directive Webinar Series

Transparency in Hiring

Pay information for applicants under the EU Pay Transparency Directive

Speakers



Tom Heys
Pay Reporting Lead
UK



**José Miguel
Mestre Vázquez**
Partner
Spain



Carmen Van Liere
Senior Associate
Netherlands

Agenda

1. Pay transparency before employment: Article 5
2. Disclosing pay: what and when
3. Building a defensible range
4. Pay history and gender-neutral hiring
5. Practical questions
6. Key takeaways, next steps and Q&A

Pay transparency before employment: Article 5

“Applicants shall have the right to receive... information about the initial pay or its range, based on objective, gender-neutral criteria”

Article 5(1)
EU Pay Transparency Directive

Poll

WHEN DO JOB APPLICANTS FIRST GET PAY INFORMATION (SALARY OR RANGE) FROM YOU?

- A) In the job advert
- B) Before the first interview
- C) Later – at offer stage or only if they ask
- D) We don't currently provide it
- E) Don't know / varies by country
- A)

Disclosing pay: what and when

What must be disclosed, and by when?

Article 5(1) sets the framework; Member States may go further

What

Information on the initial pay or its range for the position, based on objective, gender-neutral criteria – plus, where applicable, the relevant provisions of the collective agreement applied to the role.

When and how

In a manner that ensures an informed and transparent negotiation on pay – such as in the published vacancy notice, prior to the job interview, or otherwise (Art. 5(1)).

Recital 32 points to ‘prior to the conclusion of any employment contract’ as the outer limit.

Applicants are expressly in scope for Article 5 (Art. 2(3)).

Building a defensible range

Pay ranges and gender-neutral criteria

What counts as “pay”

Broadly defined – much more than base pay.

“the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which a worker receives directly or indirectly” (Art. 3(1)(a)).

Be clear what the quoted figure does and does not include.

Objective, gender-neutral criteria

Article 4(4) requires pay structures based on objective, gender-neutral criteria, agreed with workers’ representatives where they exist.

It names skills, effort, responsibility and working conditions – plus any other factors relevant to the job. Soft skills must not be undervalued.

The criteria must be explainable to an applicant, without reference to their pay history.

Practical recommendation – a defensible range rests on three things

01 Get categorisation right

Assess the role using the PTD criteria

02 Reliable data for the role

Benchmark the job, not the individual in front of you.

03 Stated reason for the offer

Explain where in the range it sits – and why.

Pay history and gender-neutral hiring

Poll

DO YOUR APPLICATION FORMS/PROCESSES STILL ASK FOR CURRENT/PREVIOUS SALARY?

- A) Yes
- B) No
- C) Don't know



The prohibition on pay history questions

Article 5(2): employers “shall not ask applicants about their pay history during their current or previous employment relationships”. Article 5(3) adds that vacancy notices and job titles must be gender-neutral and recruitment processes conducted in a non-discriminatory manner.

What this means in practice:

- ✓ remove current and previous salary fields from application forms
- ✓ brief recruiters, agencies and interviewers – Article 5(2) binds the employer, and recital 33 says employers should not ‘enquire or proactively try to obtain’ pay history, so outsourcing the process does not take you outside it
- ✓ anchor conversations on the range for the role and how you decide a position within that range, not on what the candidate earns now
- ✓ a candidate may volunteer their pay – acknowledge but make clear it won’t be recorded and won’t form part of decision making for offer
- ✓ drop gender-coded wording and gendered job titles from notices

Practical questions

Practical questions

Is publishing the range in the advert enough?

For example, €45,000–€55,000, with the pay setting criteria summarised.

Yes. This meets Art. 5(1) and is the cleanest evidence of timely disclosure.

Can we publish a very broad salary range?

For example, a range of €25,000–€75,000 with no further details. This carries higher risk.

If the range is not genuinely based on objective, gender-neutral criteria or does not allow an informed and transparent negotiation, arguably it is not compliant (Art. 5(1)).

Significant overlap with other grades creates further issues.



Practical questions

Can we wait until after the first interview?

Not ruled out. Art. 5(1) allows disclosure in the advert, before interview or otherwise (recital 32: before contract). Late disclosure is higher risk.

Can we ask candidates what they currently earn?

No. Ask expectations within the published range instead, e.g. “The range is €45,000–€55,000. Given how we pay, where do you see yourself in this range?”

Can we negotiate above the advertised maximum?

Yes (recital 32). Document an objective, gender-neutral reason for agreeing pay above the advertised maximum.



Practical questions

Can you appoint someone outside of the range?

Yes (recital 32), but it may cause wider problems. Consider if it is necessary.
Discipline around pay setting will be increasingly important.

How big can a range be?

No universal rule. Two typical approaches:

- **80–100:** the published top is really the midpoint – but is that the range “attributed for the position” (Art. 5(1))?
- **80–120:** the true range; 100 is the midpoint.



Practical questions

What about sales roles with OTE?

Ranges are harder to set: performance against target varies, and above-target earnings may be uncapped. Be transparent about both.

Consider listing base pay and total OTE separately.

Do I have to publish a complete range or can I set things out separately?

No clear answer, but the aim is transparency over the whole package. Separating elements out may be acceptable absent local law or guidance to the contrary.

EXAMPLE: “Base salary is €45,000–€55,000, bonus is up to 20% of base pay, and the full range of benefits provided is available [here](#).”



Key takeaways and next steps

Where to start

Five practical next steps:

- ✓ Set and document a defensible range, and the criteria behind it, before advertising
- ✓ Decide your disclosure point, early enough for an informed negotiation and compliant with local legislation
- ✓ Remove every pay history question from forms, systems and interview guides
- ✓ Make notices and job titles gender-neutral, and brief everyone who recruits for you
- ✓ Track national implementing law; the Directive is a floor, not a ceiling (Art. 27)



Our panelists:

- Tom Heys - Tom.Heys@lewissilkin.com
- José Miguel Mestre Vázquez - jmv@sagardoy.com
- Carmen Van Liere - c.vanliere@bd-advocaten.nl



Upcoming PTD webinars

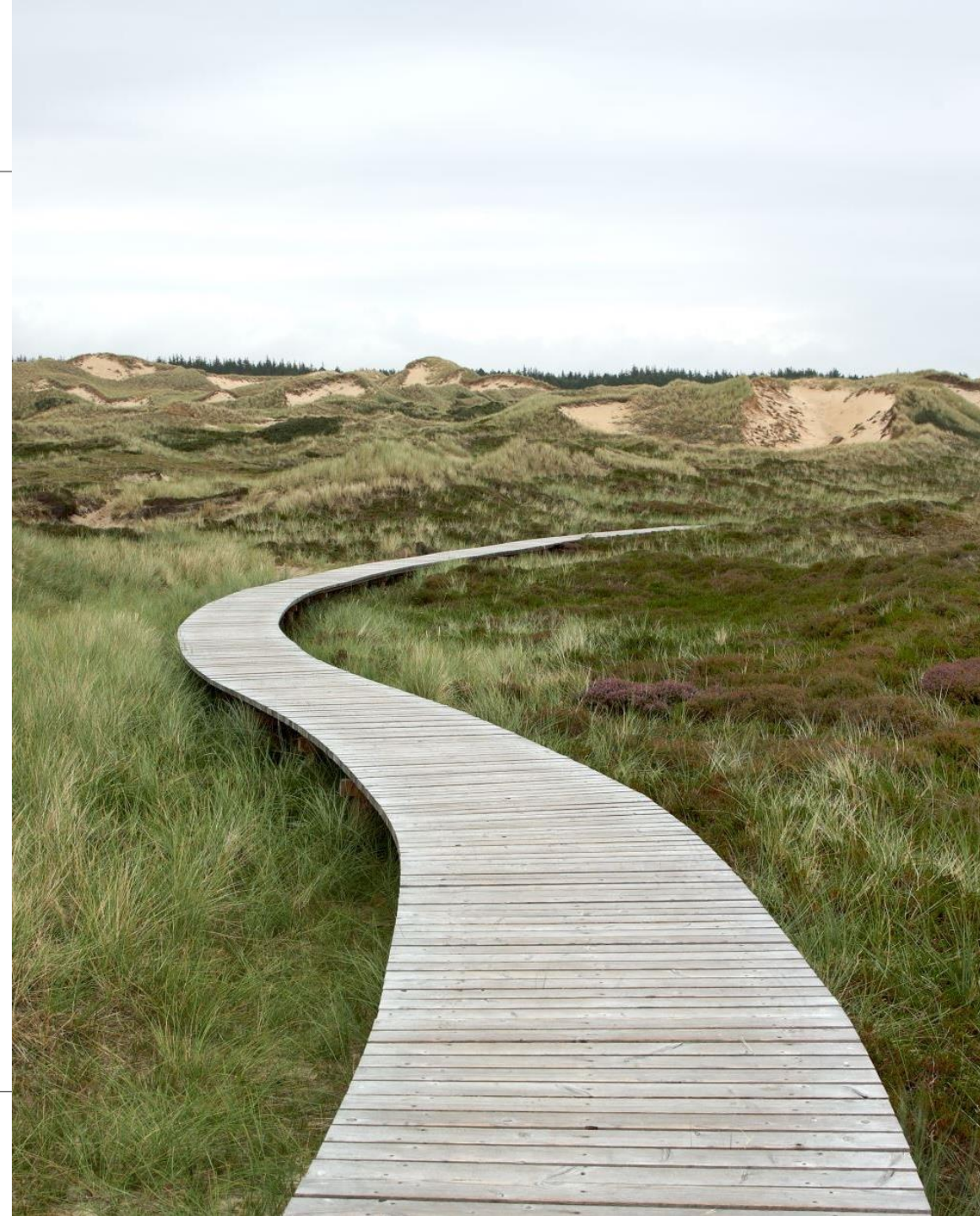
- **10/11**

Worker representatives and employee consultation – role, access to information and engagement strategy

- **24/11**

Reporting and statistics – methodology, data quality, regression analysis, small groups, etc

Register [here](#)





Americas: Argentina - Brazil - Canada - Chile - Colombia - Mexico - Peru - United States - Uruguay

EMEA: Austria - Bahrain - Belgium - Bulgaria - Croatia - Cyprus - Czech Republic - Estonia - Finland - France - Germany - Greece - Hungary - Ireland - Israel - Italy - Kazakhstan - Latvia - Lithuania - Luxembourg - Malta - Netherlands - Norway - Poland - Portugal - Romania - Saudi Arabia - Serbia - Slovakia - Slovenia - Spain - Sweden - Switzerland - Turkiye - Ukraine - United Arab Emirates - United Kingdom

Asia Pacific: Australia - China - Hong Kong - India - Japan - Malaysia - New Zealand - Singapore - South Korea - Thailand

www.iuslaboris.com