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The Year of Governance: Recent Trends and Changes in ESG Law in Italy and the EU

Recent trends and changes in law in ESG-related matters seem, at both an Italian and an EU level, to focus on governance and, specifically, on measures to avoid the gender pay gap between men and women. Partner and head of International Practice at LabLaw Studio Legale Rotondi & Partners, Michela Bani, explains further.

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Michela Bani

“Based on recent research carried out by Eurostat, the gender pay gap in the EU is around 14% and increases to 33% as far as retired workers are concerned.”

New Legislation to Strengthen the Application of the Principle of Equal Pay Between Men and Women

On 30 March 2023, new legislation was proposed, which will provide for more transparency to enable the effective enforcement of the equal pay principle between women and men. The proposed law was adopted by the Italian Parliament’s plenary by 427 votes for, 79 against and 76 abstentions.

Now this legislation must be approved by the Council.

assessed based on objective criteria, such as educational, professional and training requirements, skills, effort and responsibility, work undertaken, and the nature of the tasks involved.

Moreover, information about applicants' initial pay level or its range will have to be published in the job vacancy notice or otherwise provided to them prior to the job interview taking place, without candidates having to request it. Employers will be prohibited from asking candidates about their pay history, whether directly or through a representative.

Employees – who will have to be annually informed by their employer about their right to do so – will be entitled to request information on their individual pay level and on the average pay levels, to be broken down by sex, for categories of workers doing the same work as them or work of equal value to theirs.

On an annual basis, “big” companies will have to publicly disclose to employees and their representatives information about the pay gap between female and male employees by categories of workers, to be broken down by fixed salary and variable compensation; where such gap exceeds a certain threshold and it is not justified by objective and gender-neutral factors, a joint pay assessment will have to be conducted between the employer and workers' representatives.

Workers who have suffered gender pay discrimination will be entitled to receive full compensation or reparation. Within the relevant litigation before the Labour Court, a shift of burden of proof will apply – so, employers will have to demonstrate that there was no discrimination in relation to pay (however, Member States are permitted to introduce evidential rules which are more favourable to employees than those set out by the new legislation).

Workers and their representatives shall not be treated less favourably on the ground that they have exercised their rights relating to equal pay between men and women: specifically, there will be prohibition of dismissals or other adverse treatments relying on retaliatory grounds.

Employers in breach of local laws adopted pursuant to the new legislation will be penalised, which penalties are to be identified by Member States and must be effective, proportionate and dissuasive.

Reduction in Social Security Charges for Those Employers Which Obtain the Gender Equality Certificate

To date, at an Italian level, the legislator's choice has been to establish reward mechanisms for those employers which establish measures to avoid a gender pay gap rather than, as stated by

a reduction in overall social security charges on their charge, up to 1% (within a maximum cap of EUR50,000 per year), to the extent that they are issued with that specific gender equality certificate, thus attesting practices and measures adopted by them to reduce the existing gender pay gap between men and women within their enterprises with respect to –among others –professional growth, equal pay for the same work, as well as protection of maternity.

For the purposes of the certificate at stake being released and then the reduction in social security charges being granted, employers must reach certain specific KPIs, to be met by them with respect to the following areas of assessment: culture and strategy; governance; HR procedures; opportunities in professional growth; women’s inclusion; gender pay equality; protection of parenthood; and work-life balance.

It is worth-mentioning that employers are entitled to apply for this reduction in social security charges only when –in addition to them being issued with the above gender equality certificate –the following two requirements are met:

- regular payment of both social security charges owed to the Italian National Social Security Authority (INPS) and mandatory insurance premiums to be paid to the Italian National Mandatory Insurance against Accidents at Work (INAIL); and
- full compliance with statutory provisions, especially those governing conditions of employment, as well as the ones under collective bargaining agreements at a national, territorial or company level.

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