



1 BACKGROUND AND THE EU PAY TRANSPARENCY DIRECTIVE AT A GLANCE

- **Equal pay** between men and women is a legal right in Germany, governed in particular by the national Pay Transparency Act ("EntgTranspG").
- The EU has adopted **Directive (EU) 2023/970** on 10 May 2023, aimed at strengthening the application of the principle of equal pay in the EU.
- The transposition deadline for the EU member states was **7 June 2026** – Germany has missed that deadline. Details of the applicable regulations can be found below under **3**.
- The Directive's objectives are to **eliminate the gender pay gap** through transparency, reporting obligations, and effective enforcement.

2 KEY CHANGES

- **No minimum threshold:** The threshold of six employees in the comparator group, as currently required under the national Pay Transparency Act, will be abolished. Subject to compliance with data protection law, employees in comparator groups of fewer than six individuals will therefore also be entitled to assert a right to information.
- Employers must actively **inform employees** about the existence of their information rights.
- Reporting obligations now apply from **100 employees** (previously 500 employees).
- Employers must communicate **average pay** (not just median pay), broken down by gender.
- All pay components must be taken into account, including, for example, virtual shares, company cars, and long-term incentives.
- **Recruiting transparency:** the salary range must be disclosed **before the first job interview**.
- Asking about an applicant's previous salary is **no longer permitted**.
- A **joint pay assessment** is required where the pay gap within a group **exceeds 5 %**.
- **Collective legal protection:** Associations and organisations may support employees in asserting their equal pay claims; however, they do not have standing to bring independent legal actions on their own behalf.

Reporting obligations by company size:

Company size	Obligation	Reporting interval
250+ employees	Mandatory	Annually
100–249 employees	Mandatory	Every 3 years
Under 100 employees	Voluntary	At employer's discretion

Note: The first reporting period and exact reporting deadlines will be determined by the national transposition legislation. Employers meeting the relevant thresholds should begin collecting the necessary data in advance.

3 LEGAL POSITION FOLLOWING EXPIRY OF THE TRANSPOSITION DEADLINE (7 JUNE 2026)

	What already applies now:	What is not yet applicable:
Public employers (ministries, authorities, police, municipalities, state-owned companies, etc.) are directly bound by those provisions of the Directive that are sufficiently precise and unconditional. Only such provisions are capable of producing direct effect. Private employers are affected indirectly through directive-conforming interpretation of existing law. - There are legal limits to this indirect effect: interpretation contra legem is not permissible, and courts cannot act as a substitute legislator.	- Pay systems must be non-discriminatory and must already meet the objective, gender-neutral criteria set out in the Directive. Extended right to information: Disclosing median pay values is likely no longer sufficient - employers should be prepared to provide average pay data (including all salary components) broken down by gender. - Blanket pay confidentiality clauses that generally prohibit employees from exchanging pay information are, in our view, invalid.	Pre-employment pay transparency: Disclosure of starting salaries or pay ranges during recruitment remains voluntary; employers are not yet legally obliged to share this information prior to employment. However, given that national transposition is foreseeable, employers are well advised to begin preparing for these requirements now. Pay reporting obligations: No reduction of reporting thresholds and no shortening of reporting intervals; existing requirements remain unchanged. Joint pay assessments: The Directive provides for an obligation to carry out joint pay assessments where the gender pay gap within a category of workers exceeds 5 %. This obligation is not yet applicable, as it requires express statutory implementation at national level. Sanctions and collective enforcement: The introduction of fines requires a statutory basis for administrative offence provisions; collective legal enforcement mechanisms remain a separate implementation issue.

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Recommended Actions for Employers



- **Ensure data quality across pay and HR systems.**



- **Document existing pay differentials and ensure that objective, non-discriminatory justifications are in place for each identified gap — this is one of the most critical preparatory steps in practice.**



- **Implement an objective job evaluation framework covering the four directive criteria: competencies, effort, responsibility, and working conditions.**



- **Adopt a clear and documented remuneration policy.**



- **Prepare for reporting obligations, particularly if the company has 100 or more employees.**



- **Increase transparency in recruiting processes.**



- **Involve the works council early in developing and reviewing pay-setting criteria.**



- **For multi-site businesses, review regional pay differences.**



- **Audit historical/legacy pay structures for latent equal pay risks.**



- **Provide targeted training for HR departments and managers on the requirements of the Directive.**



- **Review and, if necessary, revise existing pay confidentiality clauses – in our view, blanket prohibitions are invalid.**

Note: This document provides a general summary for information purposes only and does not constitute legal advice. Specific legal advice should be sought before taking or refraining from any action.

Getting in touch

When you need clear, employer-focused advice on pay transparency or any other employment law challenge your business may face, please get in touch.

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