Pay Transparency – What applies from June 8 onwards?

Practical guidance through the chaos of implementation

Introduction

Breaking news: The EU Pay Transparency Directive (PTD) implementation law will not be on the agenda for the cabinet meeting on May 27, as originally planned, but will instead be discussed on June 24. As is well known, however, there are only a bit more than two weeks left until the implementation deadline on June 7. Even though there appears to be a certain degree of political posturing in this regard, a draft law or other information regarding the content of an implementation act is still lacking. In short: Implementation by the stated deadline is off the table, and doubts are growing as to whether implementation can be achieved at all in the short term.

In contrast, many companies have done their "homework," including preparing the new administrative processes that are now required – such as informational letters regarding the criteria for determining compensation, etc. The question now is whether and how they should begin in just over two weeks. Below, a brief overview.

General – "Indirect Third-Party Effect"

First, it should be made clear that the fact that a directive has not yet been transposed into national law does not mean that employers can "sit back and relax." EU directives generally do not apply directly between private parties, i.e., between employers and employees (no so-called "horizontal third-party effect"). They must first be "translated" into national law. Employees cannot, therefore, directly invoke individual provisions of the PTD against private employers. Nevertheless, the PTD does have a significant indirect effect: national courts are obliged to interpret existing law in accordance with EU law, particularly after the implementation deadline has expired without result.

And this is precisely where the practical risk for employers arises. The PTD itself does not serve as a basis for claims, but rather as a "tool for clarifying" existing law (in particular the Pay Transparency Act (EntgTranspG) and the General Equal Treatment Act (AGG)). However, the courts remain bound by the prohibition of interpretation "contra legem". The courts may not disregard clear wording, the structure of the law, and the discernible intent of the legislature to achieve a directive's objective.

In Practice

It is up to the courts to determine where an interpretation of German law that complies with the Directive is possible and where the line into "contra legem" interpretation is crossed. Nevertheless, the following broad distinction can be drawn:

To the extent that the provisions of the PTD concern the concept of remuneration itself and the substantive requirements for remuneration systems (Art. 3 and 4) – as is well known, these must now be based on legally defined criteria and be measurable against them ("competencies, workload, responsibility, working conditions, and, where applicable, relevant factors") – these requirements will have to be observed after the deadline on June 7, 2026. Technically, there are numerous legal points of reference here in the existing EntgTranspG and the AGG.

However, regarding the numerous new administrative requirements particularly concerning transparency in the application process (Art. 5), information obligations (Art. 6), the right to information (Art. 7), and reporting obligations (Arts. 9-11) – a more nuanced picture emerges:

Regarding the expanded right to information, full implementation is unlikely. The EntgTranspG provides only for a more limited right to information, which is additionally tied to thresholds (Section 12 EntgTranspG: more than 200 employees). An "overlay" of the thresholds through a directive-compliant interpretation is likely to exceed the limits of permissible judicial development, which is why there are strong arguments in favour of small and medium-sized enterprises remaining excluded from the scope of application for the time being, contrary to the PTD. In contrast, however, the scope of the disclosure obligation is unlikely to remain set in stone. Employers subject to the disclosure requirement will therefore likely no longer be required to provide only median values but will also have to disclose meaningful average values as well as the underlying pay criteria.

As far as **information and reporting obligations** are concerned, however, there are strong indications that these cannot simply be read into the existing regulatory framework of the EntgTranspG. Courts must not assume the role of a substitute legislature and subject companies that have not previously been required to file reports – in the absence of national implementing regulations – to the full scope of the extensive reporting obligations set forth in the PTD.

In short: Yes, to substantive regulations on pay equity, but generally no to formal regulations on pay transparency – at least not in a comprehensive manner.

Outlook

Whether and when legislation will be enacted remains unclear at this time; and a look at Europe also shows that – to put it mildly – there is anything but "implementation euphoria"; in fact, there have recently been reports of open confrontation in Sweden. And yet, the PTD is having a practical impact, particularly with regard to the substantive requirements for remuneration systems. When it comes to administrative processes, however, there is more room for caution.

In short: A thorough analysis and, where necessary, adjustments to compensation structures remain essential; most companies have already taken such steps. However, when it comes to certain bureaucratic excesses of the directive, there are good reasons not to rush into compliance too hastily.

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