

## THE EU PAY TRANSPARENCY DIRECTIVE: COUNTDOWN TO IMPLEMENTATION

The EU Pay Transparency Directive aims to enforce equal pay for equal work or work of equal value between men and women through enhanced pay transparency and enforcement mechanisms. EU Member States are required to implement legislation giving effect to it by 7 June 2026, the date on which the general obligations in relation to pay transparency and information provision come into force. The gender pay gap reporting obligations will come into effect on a phased basis starting on 7 June 2027.

This briefing outlines the key requirements of the EU Pay Transparency Directive (PTD) and the preparatory steps that employers should consider in order to be well placed to meet the new pay transparency and gender reporting requirements.

### Scope and territorial reach

The PTD applies to all employers in public and private sectors with relevant workers in the EU; i.e. workers who have an employment contract or employment relationship as defined by law.

A UK or other non-EU registered company that has more than 100 employees based in an EU member states will need to comply with the implementing legislation and reporting requirements for that location even though the PTD does not apply to the UK (or other non-EU jurisdiction).

### What are the additional obligations imposed by the Pay Transparency Directive and when do they apply?

In broad terms the PTD is introducing a number of obligations to achieve pay equity and transparency in relation to the following:

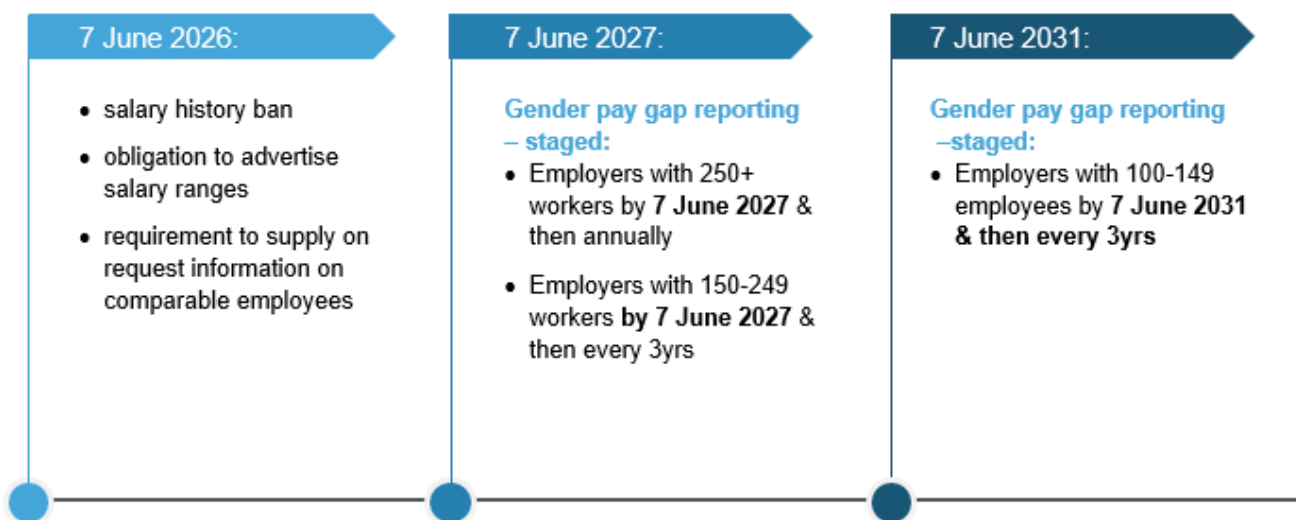
- Transparency of pay policy
- Information rights/obligations
- Gender pay gap reporting
- Joint pay assessments

### Key issues

- Pay transparency obligations prior to employment
- Prohibition of pay secrecy clauses
- Prohibition of pay history questions
- Transparency on pay policy, pay setting and pay progression
- Mandatory gender pay gap reporting including detailed breakdowns of pay and bonuses
- Mandatory joint pay assessments
- Right to Remedies: Compensation and other remedies for breaches of equal pay principles

The PTD's definition of pay is broad and includes salary and other types of remuneration or benefits (whether in cash or kind) which a worker receives, directly or indirectly, from the employer. This includes bonuses, overtime compensation, benefits, compensation for attending training, payments made in case of dismissal, statutory sick pay, other forms of statutory compensation and occupational pensions.

## Timeline



## Pay transparency at the pre-employment stage

- Applicants will have the right to receive from a prospective employer information about the initial pay or its range (based on objective and gender- neutral criteria) for the specific position.
- This information will need to be provided either in the job vacancy notice or otherwise before the interview, without the applicant having to request it.
- Employers will not be allowed to ask candidates about their pay history.

## Implications for employers

- Will the obligation to provide pay level/pay range data lead to employers publishing wider than usual salary bands as a protective measure?
- Some argue that companies put themselves at a disadvantage by publishing a very wide salary range, as they could be unnecessarily deterring candidates by the low number while disappointing others who are not offered the highest. Some research also suggests that wide bands could dis-enfranchise existing employees who are below or at the bottom of the published salary range who perceive that they are suffering from a loyalty penalty.
- It is unclear whether an employer will be exposed to a legal challenge if it recruits on a level of pay outside its published salary range for the position e.g. to secure a star candidate or where the candidate field is underqualified?

- It is unclear whether the initial pay/range information only includes fixed pay or whether variable remuneration should also be addressed?
- In some sectors candidates are routinely required to provide historical remuneration data, the PTD prohibition will necessitate a fundamental change in approach.

## Right to information

- Workers and their representatives have the right to request and receive in writing information on their individual pay level and the average pay levels, broken down by sex, for categories of workers performing the same work as them or work of equal value to theirs.
- Employers will need to make accessible to workers a description of the criteria used to determine pay levels and pay progression. These criteria will need to be gender neutral.
- Employers will be obliged to inform all workers, on an annual basis, of their right to receive this information and provide the requested information within a reasonable period of time and in any event within 2 months of a request.
- Certain confidentiality clauses will also be prohibited, insofar as the disclosure of any pay information is aimed at enforcing the right of equal pay.
- Employers must ensure that job titles and job vacancy notices are gender neutral.

## Implications for employers

- Many employers will have to revisit (or consider for the first time) how they determine categories of worker and whether jobs are of equal value – are they applying an objective trusted job evaluation system?
- Employers will need to take care in drafting confidentiality and non-disclosure clauses in employment contracts and exit arrangements, ensuring that they do not fall foul of the new provisions.
- How far does the obligation to ensure gender neutrality in job ads and titles go? Research indicating that women are less likely than men to apply for a job if they do not possess all/most of the criteria specified in a job role. Should/will employers address this in their approach to what is included in recruitment ads/head-hunter search criteria?

## Transparency on pay policy: pay setting & pay progression

Companies will be required to make easily accessible to their workers the criteria used to determine workers' pay, pay levels and pay progression. Member States can exempt employers with fewer than 50 workers if they so wish.

## Implications for employers

- This requirement is likely to lead to a shift in behaviours for employers particularly those with less structured pay systems where the approach to pay levels/grades may have evolved over time.

- All employers (even those with established pay progression processes) must ensure that they are consistent and non-discriminatory in their application of pay progression criteria and be prepared to evidence how it operates in practice.
- If performance is the principle pay determining factor is the employer's process transparent and defensible, particularly where different managers are involved?

## Gender pay gap reporting

In scope companies will be required to produce gender pay gap (GPG) reports that include the following data:

- Mean and median pay gap between male and female workers.
- Mean and median bonus and other variable pay gap between male and female workers.
- Proportion of male and female workers receiving a bonus or other variable pay.
- Proportion of male and female workers in each quartile pay band.
- Pay gap by category of worker, broken down by ordinary basic salary and bonus and other variable pay.

Given the broad definition of 'pay' bonuses, restricted stock options, LTIPs, overtime compensation, travel facilities, housing and food allowances, compensation for attending training, payments in the case of dismissal, statutory sick pay, statutory required compensation and occupational pensions are all in scope.

The PTD definition of pay is wider than that used for other pay reporting and pay benchmarking obligations including the gender pay gap reporting regime in the UK and the EU Corporate Sustainability Reporting Directive. This may require some organisations to carry out a multitude of different calculations to meet their various reporting obligations with the potential for confusion.

Employers can publish their gender pay gap (GPG) report annually on their website or otherwise make them publicly available. It must also submit all the GPG data to the designated national body which will make the information public.

In addition, the employer must provide the GPG information by category of worker, broken down by ordinary basic salary and bonus and other variable pay to workers and their representatives and (if requested) to the equality body and labour inspectorate. The workers' representatives have the right to access the methodologies applied and to receive from the employer any additional clarifications and details regarding any of the data provided within a reasonable period of request.

## Joint pay assessment

Where pay reporting reveals a gender pay gap of at least 5% in any category of workers then it must either objectively justify it or remedy it within 6 months failing which it must carry out a joint pay assessment (JPA) in co-operation

with the workers' representatives, not just in relation to the category of worker in relation to which the pay gap is identified but the whole workforce.

A JPA is essentially a detailed equal pay audit aimed at the identification, remediation and prevention of differences in pay between male and female workers doing the same work or work of equal value. The PTD is quite prescriptive about what the JPA should include for example, it specifies that it must include the proportion of female and male workers who benefited from any improvement in pay following their return from maternity or paternity leave, parental leave or carers' leave, if such improvement occurred in the relevant category of workers during the period in which the leave was taken.

### Implications for employers

- The trigger of a joint pay assessment is likely to be time consuming and costly. To pre-empt this, employers may wish to consider conducting a dry run of the gender pay gap report to identify existing pay gaps in average pay levels between male and female workers and whether they can be objectively justified.
- Where there are pay gaps that can't be justified active measures can be undertaken to commence the process of remedying the position.

### Remedies

The nature of remedies and penalties applicable for breaches of the right to equal pay and the obligations to produce GPG reports will be established at member state level but will include fines and compensation including recovery of back pay, bonuses, payments in kind, lost opportunities and interest on arrears. In some states the right to an injunction to stop particular pay practices may be available.

The burden of proof will be on the employer to prove that there was no discrimination in relation to pay.

### Implications for employers

In addition to the potential financial impact, companies will also be very mindful of the reputational risks of non-compliance with the potential adverse impact on recruitment pipeline, customer relations and on the 'social' aspects of its ESG credentials.

### Employer Action points

Although the final form of the PTD implementing legislation is not yet available in all EU Member States there are some preparatory steps that employers can take:

- Identify workforce size and when/what GPG reporting obligations will apply.
- Review the structure of the workforce and what 'categories' employees are/could be grouped under. Is there an established job classification system for the entire workforce?
- Assess whether the approach to levels/grades is non-discriminatory and underpinned by an analytical job evaluation and classification methodology. Simply mapping roles into a structure based on salary levels, reporting lines or a pay benchmarking report may be problematic.

- ⦿ Consider whether the organisation is able to understand and identify equal work across the entire business.
- ⦿ Audit current approach to pay setting and pay progression; is there an established process applicable throughout the organisation?
  - If yes are objective gender-neutral criteria applied? (e.g. performance/market premium)
  - Is it consistent across the organisation? e.g. are different managers determine pay progression of staff in same category, are differentiations defensible?
  - Is the process well documented by managers/HR applying it?
- ⦿ If performance is the principle pay determining factor assess whether the process is transparent and defensible.
- ⦿ Consider whether managers need more guidance and training on remuneration decisions/ documenting decisions/performance management.
- ⦿ If pay differences are being justified on the basis of market premiums, is this backed up by accurate market data?
- ⦿ Consider conducting a dry run pay gap analysis to identify data collection/data gap sticking points.
- ⦿ Assess what (if any) objective justification applies where there is a pay gap >5%.
- ⦿ Consider whether changes to recruitment strategy are needed to help reduce any pay gap but be mindful not to stray into unlawful positive discrimination territory.
- ⦿ Review recruitment process: job descriptions/pay ranges/instructions to head-hunters/interview questions.
- ⦿ Review documentation (employment contracts, handbooks and termination agreements) for unlawful pay confidentiality provisions.
- ⦿ Consider appropriate mechanism for annual employee notification of the right to request information. How might this be achieved, by email, salary slip, handbook, other?
- ⦿ Consider what new processes, or changes to existing ones, may be needed to interact with worker representatives for the purposes of information sharing, and where necessary joint pay assessment (JPA) exercises.
- ⦿ Consider whether training worker representatives in relation to any JPA will facilitate a smoother and more productive JPA process.
- ⦿ Consider what strategy to adopt in relation to internal and external comms. In relation to: identified pay gaps in the GPG report, data collection and other related matters (e.g. published salary bands).
- ⦿ Multinational employers must assess whether a global approach is possible not only in relation to gender pay gap reporting but also in relation to pay transparency, the publication of salary bands, pay secrecy clauses and discussions about pay history?

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