



## EQUAL TREATMENT OF MEN AND WOMEN IN AN EMPLOYMENT RELATIONSHIP – A CURRENT TOPIC AGAIN

### I. EUROPEAN LEGISLATION

In May 2023, *Directive (EU) 2023/970 of the European Parliament and of the Council on strengthening the application of the principle of equal pay for men and women for equal work or work of equal value through pay transparency and enforcement mechanisms* was adopted, and Member States are required to implement this directive into national law by 07/06/2026.

This directive is not a fundamental change for some Member States, as they have long applied the principles of transparency and equal pay.

For other Member States, this directive is a significant change, since their legal systems do not yet have such obligations to this extent, and everyday practice in the respective national states is not yet as advanced in this respect. Did you know that the difference between compensation for men and women in many European countries, such as the Czech Republic, France, Finland, Slovakia, Hungary, the Federal Republic of Germany, Austria and Estonia, is 15% or more (as of 12/2022)?

There are therefore significant differences between EU countries with regard to equal treatment of men and women in terms of work pay and pay transparency, which this directive should help to eliminate.

### II. “OLD NEW RESPONSIBILITIES” FOR COMPANIES

What are the key directive obligations for companies? Here is a short summary:

*Pay transparency before employment* includes the obligation to inform the job applicant about the starting pay or its range before the interview and about the collective agreement, if necessary. Asking the job applicant about their pay trends should not be permitted.

*Pay transparency and the right to information* includes the employee’s right to be informed about objective and gender-neutral criteria with regard to the determination of their pay, pay amount and pay trends, as well as about the average pay amount for the same work. In addition, the employee may not be prevented from disclosing their pay; contractual terms to the contrary are prohibited.

A detailed, mandatory *report on the pay gap between men and women* for employers with 100 or more employees should be made to the competent national authorities. The frequency and time of reporting depend on the number of employees (annual reports, reports every three years). In certain cases, these employers are further obligated to carry out *joint wage assessments* with employee representatives.

The directive is generally intended to ensure that the difference in the average amount of pay between women and men – *gender pay gap* – is no more than 5% in a group of employees, unless the difference is justified by objective and gender-neutral criteria.

If an employee considers their rights to be violated due to the principle of equal pay not being applied, the employer always bears the *burden of proof* in a dispute before an authority or court



that there is no direct or indirect pay discrimination.

If such discrimination is proven in connection with the principle of equal pay, the employee is entitled to complete *compensation*, including compensation for non-material damage.

### III. PUBLIC CONTRACTS AND CONCESSIONS

Companies that participate in public contracts and concessions must strictly comply with the obligations in connection with the principle of equal pay and pay transparency.

Member States will have the opportunity to implement significant sanctions for violations within the framework of their national regulations, e.g. the possibility of termination of the public contract, exclusion from participation in the procurement procedure, etc.

A *gender pay gap*  $\leq 5\%$  in a group of employees must be strictly observed.

### IV. WHAT CAN WE RECOMMEND FOR YOU?

- Follow the process of implementing the directive into national law and remember that individual Member States may implement even stricter obligations.

- Review and adjust the compensation policy in your company where appropriate, with a particular focus on establishing compensation criteria that must be objective and gender-neutral while reflecting skills, dedication, responsibility and working conditions.

- Review sample employment contracts, with a particular focus on the corresponding determination of compensation and the elimination of invalid agreements.

Does your company employ more than 150 employees? Then prepare for regular reporting starting from 07/06/2027.

Does your company participate in public contracts and concessions? Then remember that

non-compliance with the principle of equal pay and transparency can result in significant penalties.

For further information on legislation in individual Member States, please contact the location responsible for our Schindhelm Alliance.

Our colleagues who follow the implementation process will inform you in due course in national newsletters about the associated obligations.

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