

Implementation of the EU Pay Transparency Directive – Where Are We Currently?

May 2024



How transparent are your pay practices and procedures? Do you have systems in place to enable you to categorise workers who do the same work or work of equal value? Do you provide job applicants with information about initial pay or pay ranges for the position applied for?

These are chief among the questions that businesses with operations in continental Europe should be asking themselves now if they want to comply with the requirements of the Pay Transparency Directive from 7 June 2026, with the new gender pay gap reporting obligations applying from 7 June the following year.

But that's still several years away. Surely that can be pushed a bit further down the "to do" list? Unfortunately not. Although we are not aware of any EU member state yet having introduced local legislation implementing the requirements of the Directive, businesses with operations in continental Europe should not be lulled into a false sense of security. The Pay Transparency Directive will impose potentially significant new obligations on affected companies, and it is likely to take months (if not years) for most businesses to implement the changes required. Remember – if pay reporting demonstrates a difference in the average pay level between male and female workers of at least 5% in any category; the employer cannot justify such a difference on the basis of objective, gender-neutral criteria; and it has not remedied the difference within six months of the pay reporting date, then it will be required to conduct a joint pay assessment in cooperation with the workers' representatives. This joint pay assessment will have to comply with strict and burdensome requirements and then be made available to workers and their representatives.

As the UK is no longer a member of the EU, it will not be required to implement the Directive. To the extent UK companies have operations in continental Europe, however, it will, of course, still be relevant. Greater transparency in pay practices and procedures in EU member states is also likely to raise the profile of this issue in the UK and potentially trigger demands from UK staff for similar information.

To help employers understand the potential scope of these new obligations, in our latest "snapshot" guide we have collaborated with our Global Edge contributors to set out the current state of play in 16 key EU member states, including an indication of the likely scale of change in different jurisdictions.



The EU Pay Transparency Directive – What Global Companies Should be Thinking About Now

“It is high time that work pays. And, actually, work must pay for everyone: for men and women alike. There is not a single argument why – for the same type of work – a woman should get paid less than a man. Not a single argument is out there. So this is why we now have the Directive on pay transparency. It is a basic principle of equality, it is finally cast into law. Equal work deserves equal pay.”

These are the words of Ursula von der Leyen, European Commission President, speaking at the European Trade Union Confederation (ETUC) in Berlin in 2023 about the Pay Transparency Directive.

A lack of pay transparency has been identified as one of the main obstacles to closing the gender pay gap in the EU. This currently stands at around 13%, with significant variations across individual member states. The EU has therefore adopted the Pay Transparency Directive, which obliges member states to introduce legislation that will:

- Require employers to provide job applicants and workers with greater information about starting salaries and pay bands
- Require large employers to report regularly on their gender pay gap and conduct a joint pay assessment with workers’ representatives where the gender pay gap is 5% or more
- Ensure there are appropriate measures in place to empower individuals to bring claims for equal pay for equal work or work of equal value

Local implementing legislation must be introduced by EU member states by 7 June 2026, with the new gender pay gap reporting obligations applying from 7 June 2027, at the earliest.

Below we set out an overview of the key provisions of the Directive so that companies can see what the new legislation is seeking to achieve. Global businesses with operations in continental Europe should start planning now for how they will meet these new and potentially onerous obligations. While a number of member states already have some pay transparency rules in place, these are unlikely to be wholly compliant with the Directive and further local changes are expected across the EU. The Directive does not fall into the common trap of assuming that a material gender pay gap is evidence of unlawful sex discrimination. It remains possible to justify such a differential at both individual and collective levels, and the Directive does not alter any national laws in that respect. What it does do is force the pay gap to the surface and oblige employers to confront the question of whether it can indeed be justified. We expect a great deal of internal debate in companies and countries new to pay gap reporting, and the revisiting of old practices and assumptions around who gets paid what and why. If we are right on that, then the Directive will have gone a long way towards achieving its aims.

How We Can Help

We are currently working with a number of international companies to ensure that their pay practices and procedures will be compliant with the minimum requirements of the Directive and any likely changes under local legislation. If you would like to discuss the implications of the Pay Transparency Directive for your business, please speak to your usual contact in the Labour & Employment team.




Please note that this guide is intended as a high-level overview only and should not be regarded as a substitute for legal advice. It sets out the position as of May 2024. We recommend that you always check the latest position with your local labour and employment lawyer. Where “✓/x” responses are given, they may be dependent on the facts and specific advice should always be taken.

Global Edge

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Key Provisions of the Directive

 Pay Transparency	 Remedies and Enforcement of Rights	 Pay Gap Reporting
<p>Employers must provide job applicants with information about their starting salary (or pay range) for the position applied for. Such information must be provided prior to any job interview, e.g. in a job advert. The aim here is to ensure an informed and transparent negotiation about pay.</p> <p>Employers will be prohibited from asking job applicants about their previous pay history. The thinking behind this is that candidates should have salary offers based on their suitability for the role and not on what they may have been willing to work for at another employer, since that could have the effect of perpetuating lower salaries for women. Similar provisions already exist in the US.</p> <p>Employers must make available to workers the criteria used to determine their pay, pay levels and pay progression. These criteria must be objective and gender neutral.</p> <p>Workers will have the right to request information in writing 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. The information must be provided within a reasonable period of time, but no later than two months after the request is made. Furthermore, employers will be required to inform their workers on an annual basis of their right to receive this information and how they can exercise their rights.</p> <p>Employers will be prohibited from including contractual terms that restrict workers from disclosing information about their pay for the purposes of enforcing equal pay rights.</p>	<p>To strengthen the principle of equal pay for equal work or work of equal value, the Directive also contains robust enforcement mechanisms.</p> <p>EU member states will be required to ensure that effective, proportionate and dissuasive penalties are in place relating to the principle of equal pay, including potential exclusion from public contracts where there has been a failure to comply with the pay transparency obligations or there is a pay gap of more than 5% in any category of workers that is not justified by objective, gender-neutral criteria.</p> <p>The Directive contains provisions on compensation for individuals who have faced pay discrimination.</p> <p>Where an employer has not implemented the pay transparency obligations and proceedings are brought alleging pay discrimination, the burden of proof will be on the employer to prove that there has been no such discrimination.</p>	<p>Large employers will be obliged to report on their gender pay gap – see tables below for the specific information that employers will be required to provide and the deadlines for doing so. The accuracy of the information will have to be confirmed by management, after consulting workers’ representatives.</p> <p>Workers’ representatives will have access to the methodologies applied by the employer and certain information must be provided to the workers and their representatives. Certain information must also be shared with the relevant national body in charge of compiling and publishing such data.</p> <p>Workers, workers’ representatives, labour inspectorates and equality bodies will have the right to request further information, including explanations concerning any gender pay differences. Employers must respond to such requests within a reasonable period and where gender pay differences are not justified based on objective, gender-neutral criteria, employers must remedy the situation within a reasonable period of time in close cooperation with those bodies.</p> <p>If (i) the pay reporting demonstrates a difference in the average pay level between male and female workers of at least 5% in any category; and (ii) the employer cannot justify such a difference on the basis of objective, gender-neutral criteria; and (iii) it has not remedied the difference within six months of the pay reporting date, it will be required to conduct a joint pay assessment in cooperation with the workers’ representatives. This joint pay assessment will have to comply with various requirements imposed with the purpose (or at least effect) of representing a process to be avoided if at all possible, and then be made available to workers and their representatives.</p>



Pay Gap Reporting

This is the most important obligation for global companies to be aware of. Affected employers will be obliged to provide the following information concerning their organisation under their gender pay gap reporting obligations:

- The gender pay gap, i.e. the difference in average pay levels between female and male workers of the employer expressed as a percentage of the average pay level of male workers
- The gender pay gap in complementary or variable components, e.g. certain bonuses
- The median gender pay gap, i.e. the difference between the median pay level of female and male workers of an employer expressed as a percentage of the median pay level of male workers
- The median gender pay gap in complementary or variable components
- The proportion of female and male workers receiving complementary or variable components
- The proportion of female and male workers in each quartile pay band, i.e. each of four equal groups of workers into which they are divided according to their pay levels, from the lowest to the highest.
- The gender pay gap between workers by categories of workers (meaning workers performing the same work or work of equal value) broken down by ordinary basic wage or salary, and complementary or variable components – this obligation is the one most likely to cause difficulties for employers, as it will require them (possibly for the first time) to “group” together workers who are performing the same work or work of equal value, i.e. akin to an equal pay audit, to allow them to produce the relevant statistics. Since conducting this exercise is the foundation of the rest of the Directive’s reporting obligations, employers will need to be very careful about how the question of like work or work of equal value is assessed. If they band together roles which are not currently paid equally, they impose an immediate obligation on themselves to justify the difference. However, if they seek to maintain that certain roles are not like work or work of equal value, they risk an attack on the whole structure, potentially driven by worker representatives, labour inspectorates or equality bodies. The expectation must therefore be that even just the process of determining which roles should be treated together will flush out discrepancies which employers will seek to address before these obligations bite in full.

It is also important to note that the definition of pay for these purposes is broad and would capture benefits in kind (such as share awards) as well as basic pay and bonuses.



Number of workers	Pay Reporting Date
250+	7 June 2027 for 2026 and annually thereafter in respect of the previous calendar year
150-249	7 June 2027 and every three years thereafter in respect of the previous calendar year
100-149	7 June 2031 and every three years thereafter in respect of the previous calendar year
<100	Not applicable, unless introduced by national law

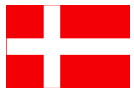
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Has local legislation been introduced to implement the Pay Transparency Directive?



Do you anticipate significant changes to existing local legislation to comply with the new obligations under the Pay Transparency Directive?



Belgium already has legislation in place that partially meets the objectives of the Pay Transparency Directive.

The Directive does, however, go further in terms of the level of detail of the reporting requirements, and in the obligation to provide information on salary ranges when applying for a job. The prohibition on enquiring about pay history is also new.

Should employers be taking steps now to ensure they are able to comply with any new legislative obligations?



Depending on the current level of pay transparency within a business, and the specific needs and goals of the company, it would be prudent to start preparing for compliance with the Directive by assessing areas of concern and preparing the necessary corrective measures.

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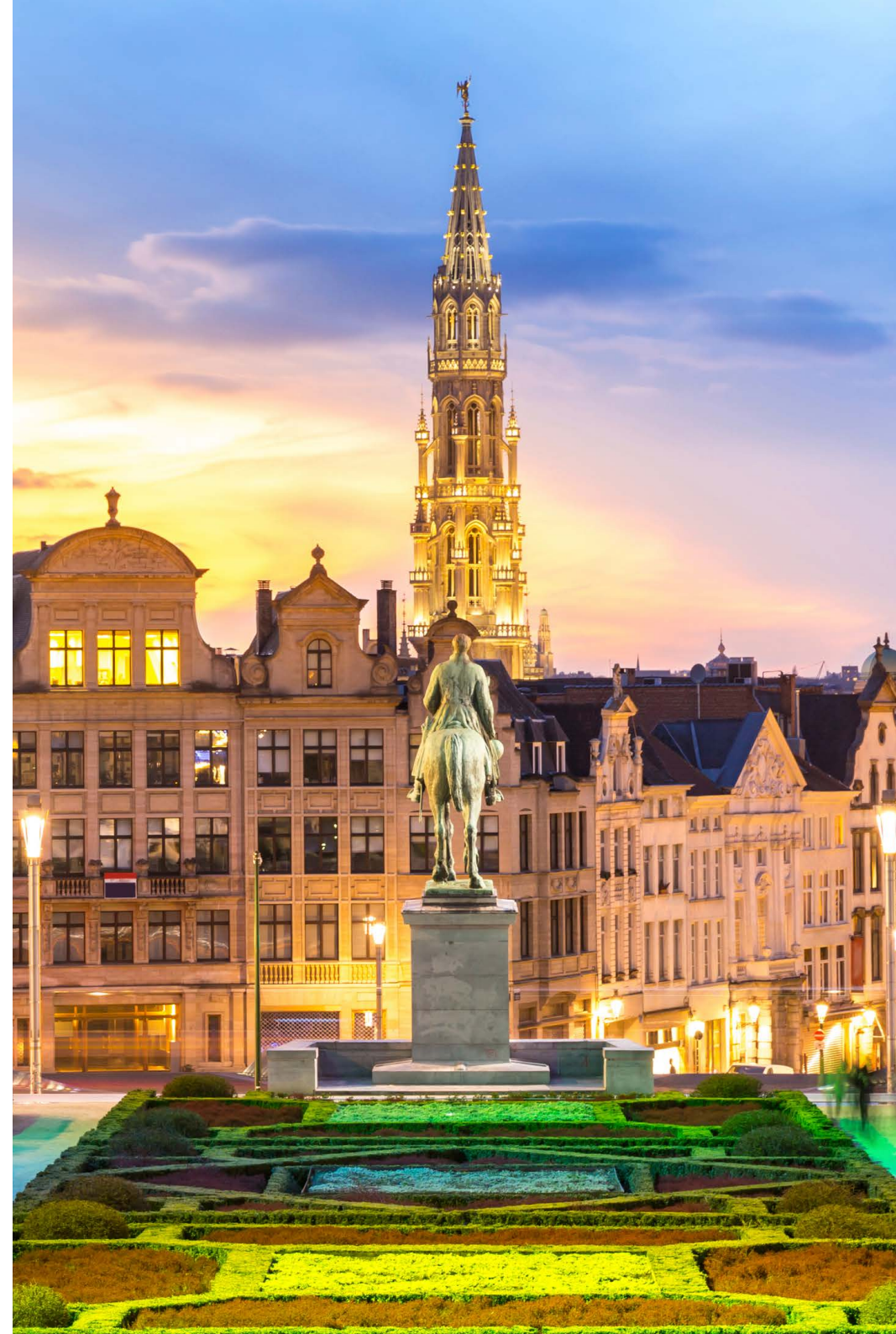


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Czech Republic

Has local legislation been introduced to implement the Pay Transparency Directive?



Do you anticipate significant changes to existing local legislation to comply with the new obligations under the Pay Transparency Directive?



Even though employers are currently required to ensure that all employees performing the same job receive equal salaries, companies currently have no reporting obligations regarding pay transparency or differences in salaries between men and women. Furthermore, there is no obligation to provide information on salary ranges when applying for a job.

Should employers be taking steps now to ensure they are able to comply with any new legislative obligations?



Since implementation of the Pay Transparency Directive into national law will introduce completely new obligations for companies, it is recommended that they begin preparations now. They should start by reviewing their existing remuneration systems to assess what changes will need to be made.

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Denmark

Has local legislation been introduced to implement the Pay Transparency Directive? 

Do you anticipate significant changes to existing local legislation to comply with the new obligations under the Pay Transparency Directive? 

Currently, companies are only obliged to report on pay and pay gaps in a very limited manner, and there is no requirement to disclose salary ranges when applying for a job. Consequently, it is anticipated that substantial amendments will be made to existing legislation to accommodate the obligations set out in the Directive.

Should employers be taking steps now to ensure they are able to comply with any new legislative obligations? 

Although it is still very early to say how the Directive will be implemented in Danish legislation, it would make sense for companies to start evaluating their existing pay structures to identify pay gaps and possible corrective measures.

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Finland

Has local legislation been introduced to implement the Pay Transparency Directive?



Do you anticipate significant changes to existing local legislation to comply with the new obligations under the Pay Transparency Directive?



Some significant changes are expected.

Finland already has legislation in place that will meet some of the new obligations imposed by the Directive. Under the Finnish Act on Equality between Women and Men, employers are obliged to promote equal pay between women and men and rectify unjustified pay gaps. Further, in accordance with the Act on Equality between Women and Men, employers that employ 30 employees or more must prepare a gender equality plan and the plan must include a pay survey which must present the classifications of jobs performed by women and men, the pay for those jobs and the differences in pay. The Directive will introduce additional requirements to this and create new obligations as well, such as the obligation to report on gender pay gaps. However, the exact changes that will be made are not yet known.

Should employers be taking steps now to ensure they are able to comply with any new legislative obligations?



It is recommended that employers begin preparations to ensure compliance with any upcoming regulations. Employers can start preparing for the obligation to report on pay gaps between female and male workers by reviewing their existing pay structure and reflecting on which job duties are to be considered similar. Further, it is recommended they review existing pay gaps and begin taking steps to eliminate them.

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France

Has local legislation been introduced to implement the Pay Transparency Directive? 

Do you anticipate significant changes to existing local legislation to comply with the new obligations under the Pay Transparency Directive? 

France already has legislation in place that partially meets the objectives of the Pay Transparency Directive. The law of 5 September 2018 created the professional equality index, which must be published each year, no later than 1 March. This tool aims to calculate the pay gaps between women and men in companies.

Should employers be taking steps now to ensure they are able to comply with any new legislative obligations? 

Depending on the current level of pay transparency within a company, we recommend starting preparations to ensure compliance with the Directive.

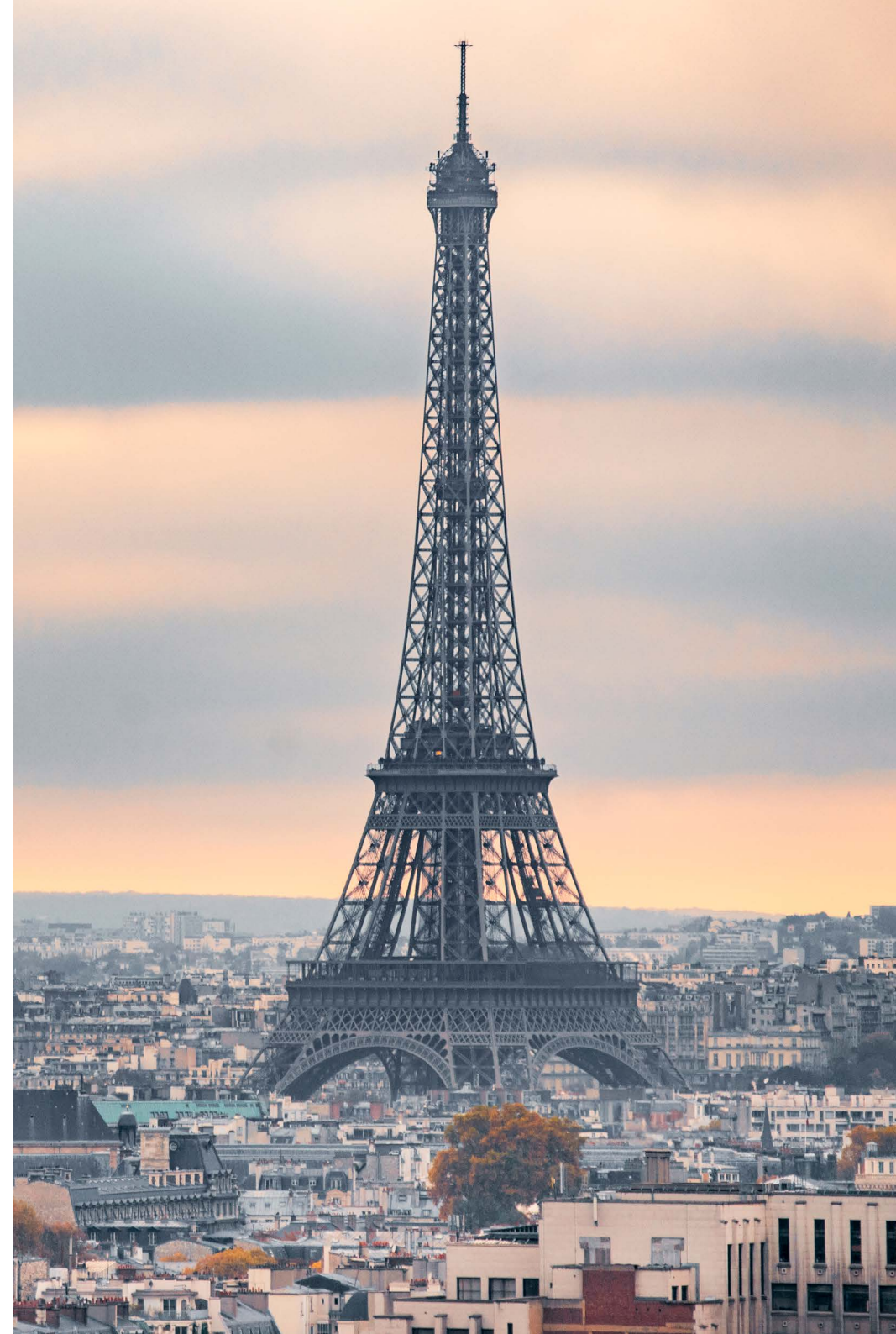
As a first step, companies should assess the availability of required data and any areas of concern. Once identified, it would be advisable for companies to take any necessary corrective measures to mitigate litigation risk relating to discrimination claims as far as possible.

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Germany

Has local legislation been introduced to implement the Pay Transparency Directive?



Do you anticipate significant changes to existing local legislation to comply with the new obligations under the Pay Transparency Directive?



The German Pay Transparency Act has been in place since 2017. The Act expressly prohibits direct or indirect discrimination on the grounds of gender with regard to all pay components and pay conditions for equal or equivalent work.

The Directive will, however, oblige Germany to establish some measures that go beyond the Pay Transparency Act, e.g. information on starting salary or salary range of the advertised position, no more exemptions for small businesses, the introduction of claims for damages and sanctions for breaches of duty.

Should employers be taking steps now to ensure they are able to comply with any new legislative obligations?



The Directive will introduce a new level of transparency in Germany and companies should be prepared for this.

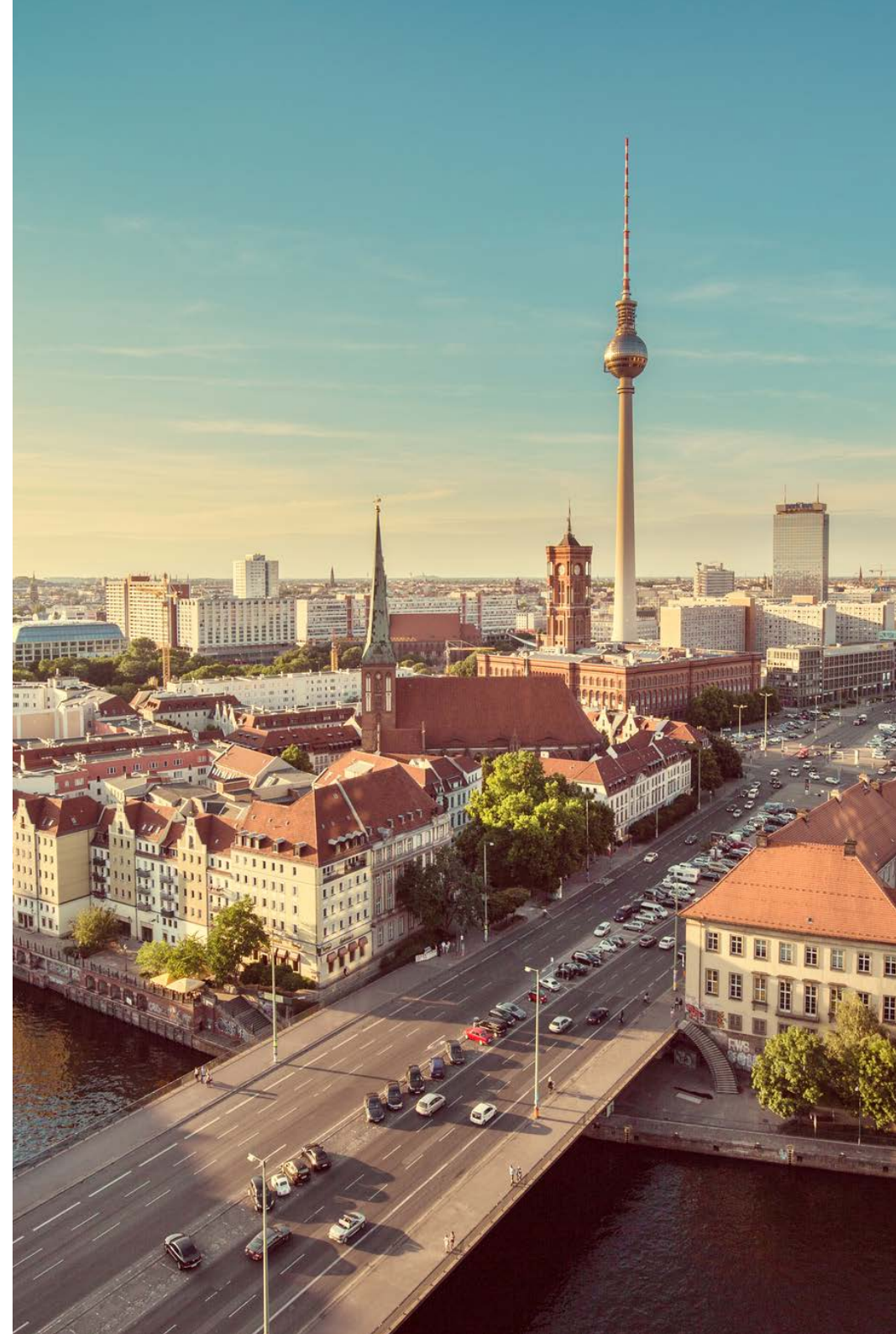
Employers, especially those without a fixed remuneration system (but with a works council), are advised to refer to the criteria for objective remuneration systems set out in the Directive and to review and adapt their company remuneration practices accordingly. The company's processes for the extended provision of information should also be reviewed.

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Italy

Has local legislation been introduced to implement the Pay Transparency Directive?



Do you anticipate significant changes to existing local legislation to comply with the new obligations under the Pay Transparency Directive?



Although Italy is already partly in line with the provisions in the Directive, some modifications may be necessary to ensure compliance.

Should employers be taking steps now to ensure they are able to comply with any new legislative obligations?



It is recommended that employers begin preparations to ensure compliance with any upcoming regulations. They will have to review and adapt their company remuneration practices in accordance with the Directive. In particular, some modifications may be necessary concerning the principle of equal pay for work of equal value (e.g., as of today, employees with similar roles may not necessarily receive the same level of compensation, since the employer has a certain degree of discretion) and pay transparency in the employment relationship and during the selection process.

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Netherlands

Has local legislation been introduced to implement the Pay Transparency Directive?



Do you anticipate significant changes to existing local legislation to comply with the new obligations under the Pay Transparency Directive?



Although the Netherlands already has legislation in place that meets some of the obligations imposed by the Pay Transparency Directive, significant changes are expected to ensure full compliance. Among others, significant changes are anticipated regarding pay transparency for applicants, the right to information for workers, the reporting obligation for employers, the joint pay assessment and the enforcement measures.

Should employers be taking steps now to ensure they are able to comply with any new legislative obligations?



At present, it is clear that the EU rules will have serious consequences for Dutch employers.

Although it is still unclear how the Netherlands will give direction to the Directive, and it is therefore difficult for employers to anticipate and take steps, employers may choose to conduct a proactive audit within their organisations in order to examine which measures should be taken. In this process, it is important to also take into account the position (and rights) of the Works Council and trade unions.

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Norway

Has local legislation been introduced to implement the Pay Transparency Directive?



Do you anticipate significant changes to existing local legislation to comply with the new obligations under the Pay Transparency Directive?



The legal ramifications for Norway are currently under review. It is probable that some legislative adjustments will be required, and the deadline for implementation has been set for 7 June 2026.

Should employers be taking steps now to ensure they are able to comply with any new legislative obligations?



At present, it is not possible to ascertain the legal ramifications that implementation will entail for Norway. Nevertheless, we recommend employers familiarise themselves with the Pay Transparency Directive and assess the potential implications for their company.

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Poland

Has local legislation been introduced to implement the Pay Transparency Directive?



Do you anticipate significant changes to existing local legislation to comply with the new obligations under the Pay Transparency Directive?



Local legislative changes are expected as currently there are no specific rules covering this topic.

Should employers be taking steps now to ensure they are able to comply with any new legislative obligations?



Now is the time to get a head start on developing transparent remuneration structures and carrying out periodic remuneration auditing procedures to benchmark any pay gaps between employees doing the same or equivalent work and, if and when identified, take reasonable measures to eliminate them.

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Portugal

Has local legislation been introduced to implement the Pay Transparency Directive?



Do you anticipate significant changes to existing local legislation to comply with the new obligations under the Pay Transparency Directive?



Despite existing rules in Portugal that prohibit employers from determining pay on discriminatory grounds related to gender, the Directive imposes new obligations, particularly regarding mandatory information and communication to candidates, employees and external entities. Such amendments, among others, will demand changes to the Labour Code, with the potential introduction of amendments to other regulations, particularly those related to public entities responsible for ensuring compliance with information duties.

Should employers be taking steps now to ensure they are able to comply with any new legislative obligations?



Following the implementation of this Directive, employers will be obliged to ensure pay transparency within their companies, not only during the execution of employment contracts, but even before hiring.

In order to get ahead, employers can start including in their job advertisements the starting salary or its range, based on objective and gender-neutral criteria.

Contact



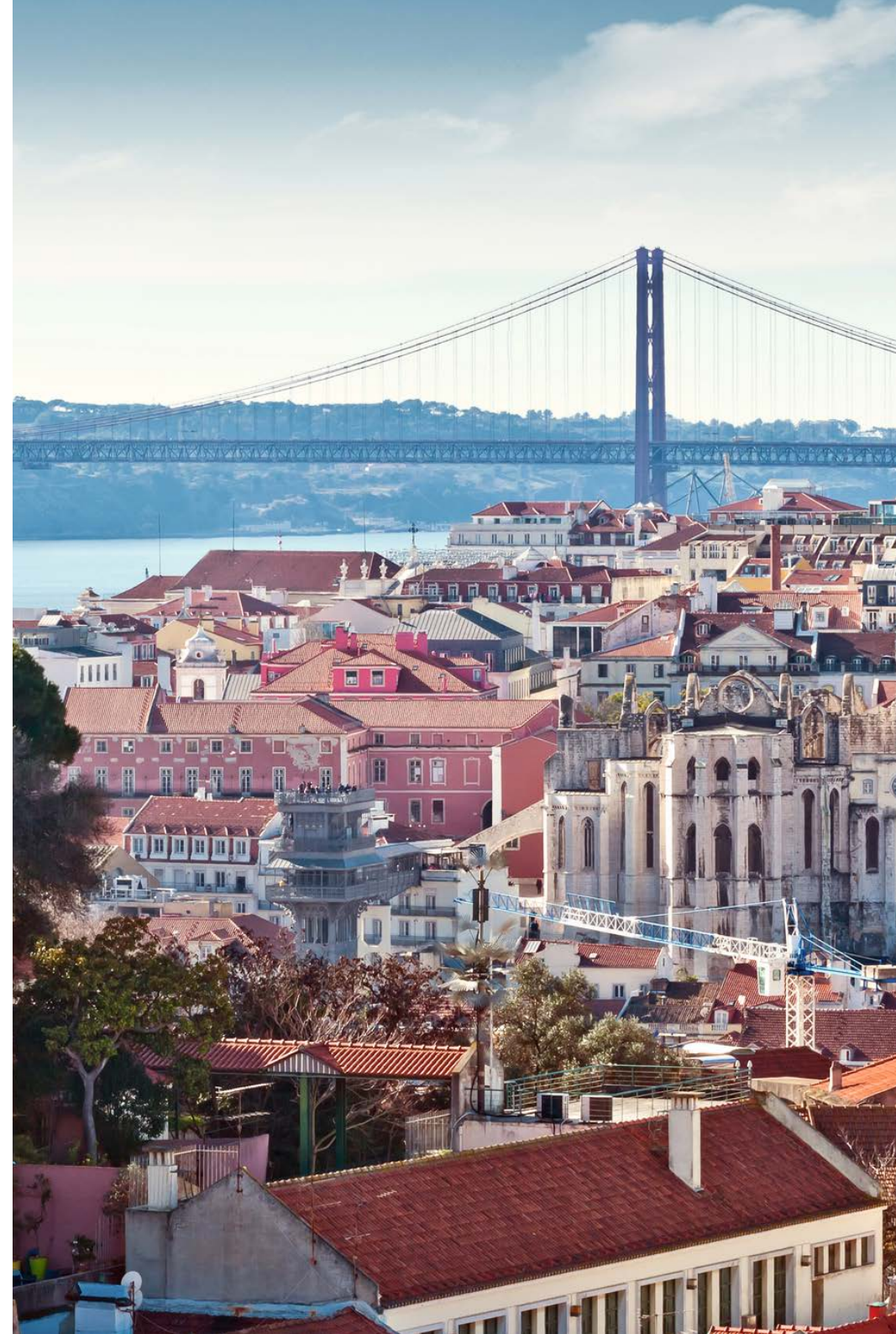
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Republic of Ireland

Has local legislation been introduced to implement the Pay Transparency Directive?



Do you anticipate significant changes to existing local legislation to comply with the new obligations under the Pay Transparency Directive?



For example, Gender Pay Gap (GPG) reporting as it currently stands will be amended under the Pay Transparency Directive. Employers will have to provide details of the GPG by employment category to employees and employee representatives. The accuracy of the GPG report will need to be confirmed by the employer's management after consulting employee representatives, which is not currently required under Irish law.

There will also be changes to equal pay claims, including a potential for greater compensation than is currently permitted under Irish law.

Should employers be taking steps now to ensure they are able to comply with any new legislative obligations?



The Directive's implementation in Ireland will have significant consequences. It has the potential to create time-consuming obligations for employers to conduct equal pay audits and assessments of work of equal value. It will likely lead to a rise in equal pay claims. Employers should take steps now to examine existing recruitment, pay transparency and GPG reporting practices and address any issues, before they are forced to.

It is also worth bearing in mind that the Directive sets out the minimum standards required. Ireland, like other EU member states, may introduce and maintain pay transparency laws that are more favourable to workers. We await draft legislation.

Contact

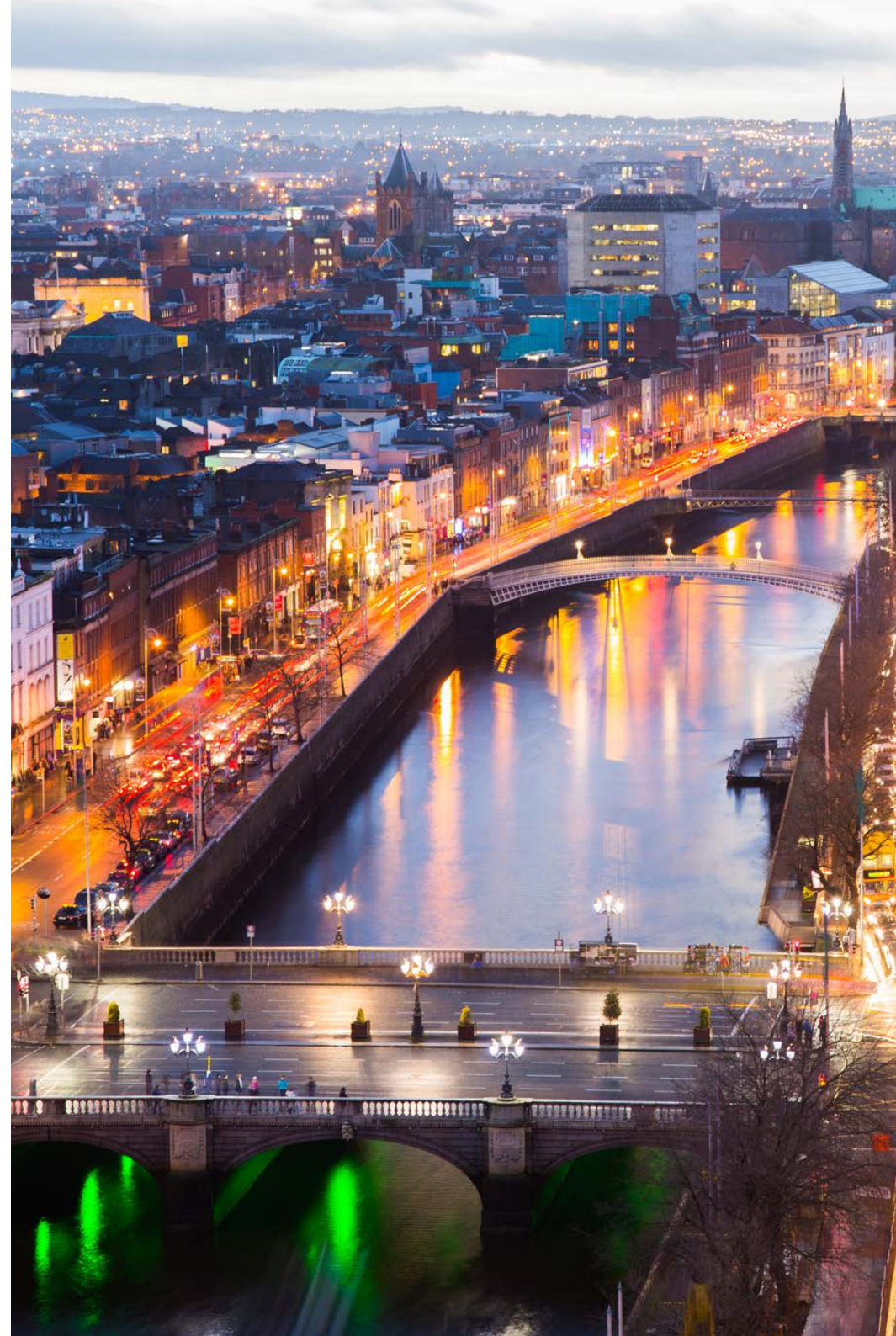


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Romania

Has local legislation been introduced to implement the Pay Transparency Directive?



Do you anticipate significant changes to existing local legislation to comply with the new obligations under the Pay Transparency Directive?



At this point Romania does not have legislation in place to comply with most of the new obligations imposed by the Pay Transparency Directive. Thus, it is expected that the current labour legislation will have to undergo significant changes to implement the obligations imposed by the Directive.

Should employers be taking steps now to ensure they are able to comply with any new legislative obligations?



Employers should consider certain preparatory steps now, such as conducting detailed audits concerning the salary system/pay practices within the company, reviewing pay policies, professional evaluation policies, internal job classifications and starting to address pay gaps and other identified issues.

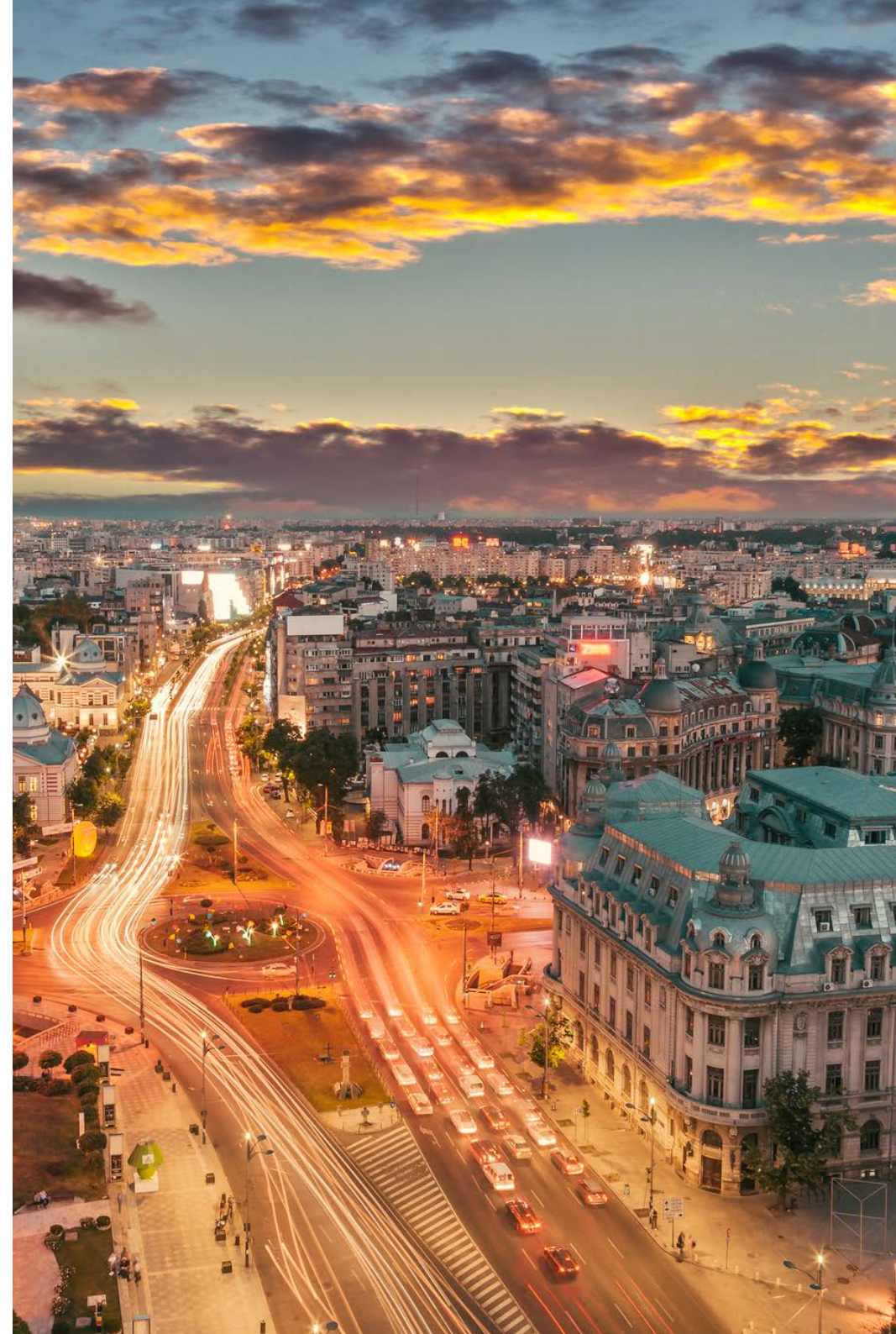
It is worth noting that under the Labor Code salaries are confidential, and employees are bound by confidentiality obligations concerning their salary. After transposition of the Pay Transparency Directive, employers will no longer be able to include in employment agreements an obligation for employees to keep their salaries confidential. Also, employers should be aware that disclosing more data than the minimum necessary to compare pay levels may constitute a breach of data protection legislation.

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Slovak Republic

Has local legislation been introduced to implement the Pay Transparency Directive?



Do you anticipate significant changes to existing local legislation to comply with the new obligations under the Pay Transparency Directive?



The current Slovak Labour Code provides only that men and women should receive equal pay for equal work but says very little about the machinery of calculating or reporting any gaps. There will be much to be done to comply with the Directive.

Should employers be taking steps now to ensure they are able to comply with any new legislative obligations?



Now is the time to get a head start on developing such transparent remuneration structures and periodic remuneration auditing procedures to benchmark any pay gaps between employees doing the same or equivalent work and, if and when identified, take reasonable measures to eliminate them.

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Spain

Has local legislation been introduced to implement the Pay Transparency Directive?



Do you anticipate significant changes to existing local legislation to comply with the new obligations under the Pay Transparency Directive?



Although this matter is already regulated by several Spanish regulations, this new Directive will strengthen some aspects.

Spain already has in place several obligations in connection with equal pay and pay transparency that apply to all employers. These include keeping a salary register of all employees indicating – broken down by gender – the mean and the median average values of salary, salary supplements and benefits, for each occupational group, professional category, level, position or any other applicable classification system.

All employees are entitled to access the register through workers' representatives.

Companies with more than 50 employees are also obliged to negotiate with the workers' representatives or unions to approve and submit an equality plan, which must include in it a salary audit carried out prior to negotiation of the plan. This must include an analysis of the salary situation in the company through the evaluation of job positions and the establishment of an action plan to correct pay inequalities (specifying actions, deadlines, people responsible for their implementation, etc.).

If the average remuneration for one gender is at least 25% higher than for the other, then a justified reason must be recorded in the salary register to explain the disparity and how this is not connected to gender.

Should employers be taking steps now to ensure they are able to comply with any new legislative obligations?



Employers should consider whether they are compliant with the existing legal requirements, particularly if their headcount is over 50 employees.

Having the relevant paperwork in place will help facilitate compliance with the Directive when it is transposed into the Spanish legal framework.

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Sweden

Has local legislation been introduced to implement the Pay Transparency Directive?

However, preparatory work for the new legislation will be published on 31 May 2024 by the Swedish Government Office, which will provide guidance on how the Directive will be implemented into Swedish law.

Do you anticipate significant changes to existing local legislation to comply with the new obligations under the Pay Transparency Directive?

The rules on gender pay gap analysis in the Swedish Discrimination Act, along with rules in most central collective bargaining agreements already fulfil most of the requirements set out in the Directive. However, there are additional requirements in the Directive which do not yet apply under Swedish law. Below are the most important changes from a Swedish legal perspective that employers should be aware of:

- Job applicants will have the right to receive information about the position's initial pay or its pay range. An employer is not allowed to ask job applicants about their current or previous salary.
- Employers should inform their employees about the criteria used to determine their pay, pay levels and pay progression (a "pay progression policy").
- Employees may request written information about their individual and average pay level and should receive such information within two months from the employer.
- Employers with 100+ employees must make a gender pay gap report annually or every third year (depending on the size of the company) and may be required to do a joint pay assessment because of the results in the report.

The requirements for compliance with the Directive risk interfering with the Swedish wage-setting model which has previously been regulated by the labour market parties (agreements between employers' organisations and unions) and not by statutory law. It is subject to national law how this will be handled in practice.

Should employers be taking steps now to ensure they are able to comply with any new legislative obligations?

National legislation needs to be proposed before detailed planning can commence. However, employers should already start reviewing what current policies and routines they have for pay setting (including if they have objective and gender-neutral criteria for setting pay) and what tools they have for collecting salary information about their employees. In this regard, it should be noted that the new legislation will likely not only cover employees but also trainees, apprentices, and staffing agency workers. Further, the word "pay" does not only involve employees' basic/minimum salary but also other remuneration which an employee receives from their employer (including complementary or variable components).

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