A&O SHEARMAN

EU Pay Transparency Countdown:

ARE YOUR PAY STRUCTURES READY?

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EU Pay Transparency meets new case law and federal tender reform

Seven months may sound like plenty. For Germany, it may not be enough. The EU Pay Transparency Directive must be implemented by June 7, 2026 and will set the frame for pay governance across recruitment, employee information rights, reporting, audit obligations, and enforcement.

At the same time, German courts and policymakers have moved first: the Federal Labor Court (*Bundesarbeitsgericht—BAG*) has tightened equal-pay litigation risk, and the proposed Federal Tariff Compliance Act (*Bundestariftreuegesetz—BTTG*) could condition eligibility for federal public contracts on tariff-level employment standards.

The message is clear: in Germany, pay and equal pay are clearly moving into the regulatory spotlight. For employers, waiting could be risky. Structures should be reviewed now and documented in a legally robust way. In practice: act now—document, justify, and stress-test pay structures to manage tender eligibility, litigation risk, budgets, and reputation.

EU Pay Transparency Directive: Implementation by June 7, 2026

Just recently, we at A&O Shearman conducted our extensive EU Pay Transparency Readiness Study 2025 to get a better understanding of how prepared employers in the German and European market are for what is to come (see here for the study: A&O Shearman Pay Transparency Readiness Study 2025: what employers need to know). The study showed what was to be expected: generally, larger organizations are more likely to have taken steps in preparation for the regulatory changes than smaller organizations. But overall, we can see that within those organizations, there is a lack of assigning clear accountability for enacting a process to ensure readiness and compliance.

A recent ruling by the German Federal Employment Court highlights the need to set up internal protocols to avoid costly litigation resulting from violations of pay transparency and equal pay requirements.

BAG decision of October 23, 2025 (8 AZR 300/24):
A single comparator can trigger equal-pay presumption

Men and women are entitled to equal pay for the same or equivalent work. That principle is familiar – but the evidentiary threshold has shifted materially.

According to the BAG's press release on its October 23, 2025 decision, the claim of a female executive who was paid below even the female median succeeded in establishing a presumption of discrimination by pointing not to the male median or average, but to a single male top earner significantly above the median. The BAG held that even one higher-paid comparator of the other sex performing comparable work can trigger the rebuttable presumption of gender-based pay discrimination. If the employer cannot rebut the presumption, the consequence is alignment to the comparator's pay.

This sharpens prior jurisprudence. In 2021 (8 AZR 488/19), the BAG accepted a burden shift where pay was below the male median. The new ruling goes further: even a single top earning comparator may suffice to establish a presumption. If the presumption is not rebutted, "top-up to the top" may be required, not just to the median.

Bottom line: the evidentiary bar tightens. Companies should act immediately on three fronts—with particular vigilance in variable pay:

- **Review pay systems for equal treatment, evaluation criteria, and traceability**. Where individual reasons drive pay differences—which remains permissible—scrutinize and contemporaneously document them with care. Examples include market scarcity, retention or recruitment imperatives, or objectively demonstrable qualifications and performance. A higher "negotiation skill" alone is not a legitimate justification (BAG, February 16, 2023—8 AZR 450/21).
- **Fortify documentation**. The best business-case justification is toothless if it cannot be proved. Build a defensible record now—anticipating both Directive-era audits and litigation.
- **Expand the comparison lens**. Do not rely only on medians or averages. Assess direct pairwise comparisons across individual employees performing comparable work.

The practical bottom line: if employers cannot courtroom-proof the reasons for pay gaps, they risk paying the top of the band in the worst case—and may trigger a chain reaction of claims if others seek matched adjustments.

Proposed Federal Tariff Compliance Act (*Bundestariftreuegesetz—BTTG*): New conditions for federal contracts

Separately, the proposed Federal Tariff Compliance Act has passed its first legislative hurdle and—though specifics remain contested—could enter into force in 2026. Its aim is to level the playing field for tariff-bound employers in federal procurement and concessions.

In practical terms, federal contracts and concessions from €50,000 net (with defined exceptions, e.g., defense/security) would be awarded only to companies that grant workers assigned to those contracts binding employment conditions at tariff levels. These include remuneration (with tariff supplements), paid minimum annual leave, maximum working hours, minimum rest periods, and rest breaks.

Compared to existing state-level tariff compliance laws (some sector-limited), the draft Federal Tariff Compliance Act goes further: it would cover federal awards generally, establish an individual, enforceable right for employees to these conditions, and impose principal contractor liability for net wages due by subcontractors. The sanctions regime includes contractual penalties up to 1% of contract value and up to 10% for repeat violations, extraordinary termination, and nationwide exclusion from federal tender processes.

For bidders on federal contracts, tender eligibility could hinge on demonstrable compliance with tariff-level employment conditions and robust subcontractor oversight. Procurement teams, HR, and compliance should align early to map exposure and controls.

Conclusion: don’t wait for June 2026

The combination of immediately effective case law and impending EU implementation raises the temperature for employers. Now is the time to sharpen pay architectures, widen comparator analysis beyond aggregates, and build contemporaneous, objective, gender-neutral justifications that can withstand audit and litigation. Waiting until June 2026 will be too late.

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