As of 1 July 2017, the Remuneration Transparency Act (Entgelttransparenzgesetz) establishes new employee rights to compensation information for companies employing 200 or more employees as well as new reporting obligations for those with 500 or more employees. Employees of companies subject to the act are entitled to request salary information (using the statistical median salary) for a comparable group of at least six employees of the opposite sex. Additionally, two other compensation components of the employee’s choosing may be included per inquiry.

Background

The principle of “equal pay for equal work” has been anchored in German and European Union law for many years. However, the pay gap between men and women has persisted in Germany. The Remuneration Transparency Act, which entered into force 1 July 2017, is intended to allow employees to objectively compare their own remuneration to comparably employed individuals of the opposite sex, thereby furthering the goal of pay equality.

In the case of occupational benefits, moreover, men and women in comparable groups must already be treated equally in accordance with the General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz).
Employee’s Individual Right to Compensation Information

Employees of companies with 200 or more employees have an individual right to comparative compensation data on their peers of the opposite sex. This right to information does not allow employees to obtain details on the exact pay of individual coworkers. Instead, the act specifically requires that the salary data be presented using the statistical median salary of at least six employees of the opposite sex who are identified by the requesting employee and perform the same or similar duties. An employee’s right to information covers both the basic salary of the comparable group and up to two other compensation components. Employees can select the other compensation components according to their area of interest. For example, contributions to occupational pension schemes, bonuses, and company cars are remuneration components that are subject to this right to information.

A request for information can be made in writing every two years, for the first time on 1 January 2018. If the inquiry is initiated before 1 July 2020, a three-year (instead of two-year) waiting period will apply until the next inquiry. The information must be provided within three months of the request. If an employer refuses to provide the required information, the employer bears the burden of proof in the event of legal action.

Gender equality rules already apply through the Anti-Discrimination Act, and employees who suffer from pay discrimination are able to claim damages. If an unjustified pay difference exists, the employee will be entitled to up to three years of retroactive compensation and a commensurate salary adjustment.

Reporting Recommendations and Requirements

The new law also requires that companies with 500 or more employees implement regular review procedures that include reporting on wage inequality. This report must include the measures that were adopted to promote gender equality and equal pay during the previous period and their impact. If a company is subject to reporting requirements under the German Commercial Code (Handelsgesetzbuch), it must publish a report on equal pay every three years as an appendix to its management report. This reporting obligation increases to every five years for companies subject to, or applying, collective bargaining agreements. The first report must be published within one year after the act has come into force and shall cover only the preceding year.
Next Steps

The new requirements of the Remuneration Transparency Act will gradually lead to additional costs and greater administrative burden for companies, as they will be required to respond within three months to properly requested comparative compensation data. The act complements the existing ban on discrimination contained in the General Act on Equal Treatment and, therefore, also affects occupational pension schemes and other remuneration components. Employers are encouraged to review their pay structures and collect the required information in order to be prepared for potential employee requests.