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## **The Act to promote Transparency in Wage Structures among Women and Men**

### **(Transparency in Wage Structures Act)**

### **(Entgelttransparenzgesetz, EntgTranspG)**

Transparency in Wage Structures Act of 30 June 2017 (Federal Law Gazette I p. 2152)  
The Act was passed by the Bundestag as Art. 1 of the Act of 30 June 2017 I, 2152. Pursuant to Art. 3 of that Act, it came into force on 6 July 2017.

#### **Part 1**

#### **General provisions**

##### **Section 1**

##### **The purpose of the Act**

The purpose of the Act is to enforce the right to equal pay for women and men for equal work or work of equal value.

##### **Section 2**

##### **Scope of application**

- (1) The present Act shall apply to the remuneration of employees pursuant to Section 5 subsection 2, who are employed with employers pursuant to Section 5 subsection 3, unless otherwise provided in the present Act.
- (2) This shall be without prejudice to the provisions contained in the General Act on Equal Treatment. It shall also be without prejudice to other prohibitions of discrimination and rights to equal treatment, as well as provisions under public law that serve to protect or promote the interests of specific groups of persons.

##### **Section 3**

##### **Prohibition of direct or indirect remuneration discrimination based on gender**

- (1) In the case of equal work or work of equal value, direct or indirect gender-based discrimination, with regard to all elements of remuneration and conditions of remuneration, is prohibited.
- (2) Direct remuneration discrimination shall be deemed to exist if an employee receives less pay based on his/her gender than an employee of the other gender receives, has received or would receive for equal work or work of equal value. Direct discrimination shall also be deemed to exist if a woman receives less pay because of pregnancy or maternity.
- (3) Indirect remuneration discrimination shall be deemed to exist where apparently neutral provisions, criteria or practices would, on the grounds of gender, put employees at a particular disadvantage compared with employees of the other gender, with regard to remuneration, unless those provisions, criteria or practices are objectively justified by a

legitimate aim and the means of achieving that aim are appropriate and necessary. In particular criteria related to the labour market, to performance and to work results can justify different pay, if the principle of proportionality is observed.

(4) This shall be without prejudice to Sections 5 and 8 of the General Act on Equal Treatment.

#### **Section 4** **Determination of equal work or work of equal value, discrimination-free remuneration systems**

(1) Female and male employees perform equal work if they carry out an identical or similar activity at different workplaces or successively at the same workplace.

(2) Female and male employees perform work of equal value, as defined by the present Act, if, taking into consideration the totality of factors, they can be seen as being in a comparable situation. The factors to be taken into consideration include, among other things, the type of work, the training requirements and the working conditions. The basis shall be the actual requirements that are essential for the specific activity and which are independent of the employee carrying out the activity and his/her level of performance.

(3) Employees in different legal relationships pursuant to Section 5 subsection 2 may not be seen as comparable to one another pursuant to subsection 1 or as being in a comparable situation pursuant to subsection 2.

(4) If the employer utilises a remuneration system to determine the remuneration to which the employee is entitled, said remuneration system must be designed, both as a whole and in its individual remuneration components, in such a way as to exclude any discrimination based on gender. To this end, it must, in particular:

1. objectively take into consideration the type of activity to be carried out,
2. be based on common criteria for female and male employees,
3. weight the individual differentiation criteria in a discrimination-free manner, as well as
4. be transparent on the whole.

(5) Remuneration provisions based on collective agreements, as well as remuneration provisions based on a binding determination pursuant to Section 19 subsection 3 of the Act on Homeworking shall be subject to a presumption of appropriateness. Activities that are assigned to different remuneration brackets, based on these provisions, shall be seen as not being of equal value, as long as the provisions are not in breach of a higher-ranking principle of law.

(6) Subsection 5 shall be applied *mutatis mutandis* to statutory remuneration provisions.

#### **Section 5** **General definition of terms**

(1) Remuneration within the meaning of the present Act comprises all basic or minimum wages as well as all other compensation that is directly or indirectly disbursed, in cash or in the form of benefits in kind, based on an employment relationship.

(2) For the purpose of this Act, 'employee' shall refer to:

1. persons in dependent employment,
2. public officers of the Federal Government, as well as of other bodies, institutions and foundations under public law placed under the supervision of the Federal Government,
3. federal judges,
4. servicewomen and men,

5. persons employed in the context of vocational training,

6. home workers and those equated with them,

(3) For the purposes of this Act, 'employer' shall refer to natural and legal persons as well as business partnerships with legal capacity employing persons pursuant to subsection 2, unless otherwise provided under the present Act. In the case of home workers and those equated with them, the client or intermediary shall take the place of the employer.

(4) For the purpose of this Act, 'employers who are bound by collective wage agreements' shall refer to employers who utilise a collective wage agreement or a collective wage framework agreement based on Section 3 subsection 1 of the Collective Agreements Act. Sentence 1 shall also include employers who utilise a collective wage agreement that is generally binding based on a declaration that the collective agreement is applicable across an entire sector pursuant to Section 5 of the Collective Agreements Act or who apply remuneration provisions based on a binding determination pursuant to Section 19 subsection 3 of the Act on Homeworking.

(5) For the purpose of this Act, 'employers who apply collective wage agreements' shall refer to employers who, within the purview of a collective wage agreement or a collective wage framework agreement, have adopted the provisions of the collective agreement bindingly, by means of a written agreement between the employer and employees, with the same content for all activities and employees to whom these collective wage agreement provisions apply.

#### **Section 6**

##### **Responsibilities of employers, parties to the collective wage agreement and employee or worker representatives**

(1) Employers, parties to the collective wage agreement and the employee or workers representatives are called upon, within the framework of their responsibilities and opportunities for action, to collaborate in achieving the goal of equal pay among women and men. The competent parties to the collective wage agreement shall appoint representatives to enforce the principle of equal pay within the meaning of the present Act and to fulfil the tasks defined in Section 14 subsection 3.

(2) Employers are under obligation to take the necessary measures to protect employees from discrimination based on gender with respect to remuneration. Such protection shall also include preventive measures.

#### **Section 7**

##### **Principle of equal pay**

In employment relationships, it is prohibited for less pay to be agreed upon or paid to any employee based on their gender, for equal work or work of equal value, than is paid to an employee of the other gender.

#### **Section 8**

##### **Invalidity of agreements**

(1) Provisions contained in agreements that violate Section 3 or Section 7 shall be invalid.

(2) The use of information obtained by means of a request for information is restricted to the enforcement of rights within the meaning of the present Act. The publication of personal salary details and the transmission of such data to third parties shall not be covered by the right of use.

#### **Section 9**

##### **Prohibition of victimisation**

Employers may not discriminate against employees for asserting their rights based on the present Act. The same applies to persons who support employees in this respect or provide testimony as witnesses. This shall be without prejudice to the provisions contained in Section 16 of the General Act on Equal Treatment.

## **Part 2**

### **Individual procedures to verify equal pay**

#### **Section 10**

##### **Individual entitlement to disclosure**

- (1) So as to verify compliance with the principle of equal pay within the meaning of the present Act, employees shall possess an entitlement to disclosure in accordance with Sections 11 to 16. To this end, employees are to name, as far as can be reasonably expected, a similar activity or one of equal value (reference activity). They can demand information on the average monthly gross remuneration pursuant to Section 5 subsection 1 and on no more than two individual remuneration components.
- (2) The request for information shall take place in text form. Before a period of two years has elapsed after submitting the last request for information, employees may only make a repeat demand for information if they demonstrate that the prerequisites have changed substantially.
- (3) The request for information shall be considered met when the response pursuant to Sections 11 to 16 is given.
- (4) The provisions contained in the present Act shall be without prejudice to other entitlements to disclosure.

#### **Section 11**

##### **Information on reference activity and reference remuneration**

- (1) The duty to disclose shall extend to information regarding the criteria and practices used to establish the level of remuneration pursuant to subsection 2 as well as to the information regarding the reference remuneration pursuant to subsection 3.
- (2) The duty to disclose information on the criteria and practices used to establish the level of remuneration shall extend to the information on the determination of the individual's own remuneration, as well as to the information regarding the remuneration of the reference activity. Insofar as the criteria and practices used to establish the level of remuneration are based on statutory provisions, collective bargaining remuneration provisions or a binding determination pursuant to Section 19 subsection 3 of the Act on Homeworking, it shall be sufficient, in response to a request for information, to name these regulations and to state where they can be found.
- (3) With regard to the reference remuneration, the duty to disclose shall extend to information on the remuneration for the reference activity (reference remuneration). The reference remuneration shall be given as the full-time equivalent, projected, statistical median of the average monthly gross remuneration, as well as of the remuneration components mentioned, based on one calendar year in each case, according to the following guidelines:
1. in the cases covered by Section 14, as well as in the cases of a statutory remuneration provision, the reference remuneration of the employees of the other gender, who are classified in the same remuneration or pay bracket as the employee requesting information, is to be given;
  2. in the cases covered by Section 15, the reference remuneration of all employees of the other gender, who carry out the reference activity enquired after, or the reference activity determined on the basis of Section 15 subsection 4, is to be given.
- (4) Subsection 2 sentence 2 and subsection 3 number 1 shall be applied *mutatis mutandis* to collective labour law remuneration provisions agreed by churches or by public law religious communities.

#### **Section 12**

##### **Scope**

(1) The entitlement pursuant to Section 10 exists for persons employed pursuant to Section 5 subsection 2 in establishments with a workforce that usually counts more than 200 employees under the same employer.

(2) The duty to disclose pursuant to Section 10 comprises:

1. only remuneration provisions that are applied in the same establishment and with the same employer,
2. no regionally different remuneration provisions with the same employer, and
3. no mutual comparison of the groups of employees pursuant to Section 5 subsection 2.

(3) In responding to a request for information, the protection of the personal data of the employee requesting information, as well as those of the employees affected by the requested information, is to be upheld. In particular, the reference remuneration shall not be disclosed if the reference activity is carried out by less than six employees of the other gender. Steps must be taken to ensure that only persons entrusted with responding to the request have access to the data necessary for this purpose.

### **Section 13**

#### **Tasks and rights of the works council**

(1) Within the framework of its duties pursuant to Section 80 subsection 1 number 2a of the Works Constitution Act, the works council shall promote the implementation of equal pay between women and men in their place of work. In the process, the works council shall, in particular, fulfil the tasks set out in Section 14 subsection 1 and Section 15 subsection 2. This shall be without prejudice to procedures that are regulated under the Works Constitution Act, in collective wage agreements or at establishment level.

(2) In order to fulfil its tasks pursuant to subsection 1, the works committee pursuant to Section 27 of the Works Constitution Act, or a committee set up pursuant to Section 28 subsection 1 sentence 3 of the Works Constitution Act, shall be entitled to inspect and evaluate the payroll showing the gross wages and salaries of the employees within the meaning of Section 80 subsection 2 sentence 2 of the Works Constitution Act. It shall be entitled to combine several requests for information and handle them collectively.

(3) The employer shall grant the works committee access to the payroll showing employees' gross wages and salaries and break these down. The payrolls must be broken down by gender and must contain all remuneration components, including extra benefits not contained in the collective wage agreement and such payments as are individually negotiated and disbursed. The payrolls must be prepared in such a way that the works committee can meet the request for information properly, within the framework of its inspection rights.

(4) By way of derogation from Sections 14 and 15, executive staff members shall approach their employer with their request for information pursuant to Section 10.

(5) The employer shall declare in writing or in text form, to the works council for the latter's response to the request for information, whether the provisions of the collective wage agreement pursuant to Section 5 subsection 5 are being correspondingly applied. The works council shall confirm to the employee in writing or in text form that this declaration has been made. Sentences 1 and 2 shall apply *mutatis mutandis* to the cases referred to in Section 14 subsection 3 sentence 3.

(6) This shall be without prejudice to participation rights of the works council that are governed by statutory or collective labour law provisions.

### **Section 14**

#### **Procedures in the case of employers bound by and applying collective wage agreements**

(1) Employees working for employers bound by and applying collective wage agreements shall approach the works council when requesting information pursuant to Section 10.

Section 13 shall determine the requirements. The works council shall inform the employer regarding incoming requests for information, comprehensively and in an anonymized form. By way of derogation from sentence 1, the works council can demand that the employer assume the obligation to provide information.

(2) By way of derogation from subsection 1 sentence 1, the employer can assume the fulfilment of the obligation to provide information generally, or in specific cases, if he/she has given explanation to the works council in advance. The assumption of the obligation may last no longer than the period for which the current works council is in office. If the employer assumes the obligation to provide information, he/she shall inform the works council comprehensively and in good time of incoming requests for information, as well as of the responses given. In each case, the employees shall be informed as to which party will be providing the information.

(3) In the event that no works council exists, employees shall approach their employer. The employer shall inform the representatives of the competent parties to the collective wage agreement pursuant to Section 6 subsection 1 sentence 2 of his/her response to the submitted requests for information. The employer, as well as the representatives of the competent parties to the collective wage agreement, may agree that the representatives of the competent parties to the collective wage agreement shall assume the task of responding to requests for information. In such a case, the employer shall inform the latter comprehensively, and in good time, of the incoming requests for information. In each case, the employees shall be informed as to which party will be providing the information.

(4) If the representatives of the competent parties to the collective wage agreement pursuant to Section 3 sentence 3 respond to the request for information, the employer shall provide, upon request, the information needed for the fulfilment of their tasks. Within the framework of their tasks, the representatives shall be bound to maintain confidentiality.

### **Section 15**

#### **Procedures in the case of employers not bound by and not applying collective wage agreements**

(1) Employees working for employers who are not bound by and do not apply collective wage agreements shall approach their employer when requesting information pursuant to Section 10.

(2) If a works council exists, Section 14 subsections 1 and 2 shall apply *mutatis mutandis*.

(3) The employer or the works council shall be under obligation to provide the information requested pursuant to Section 10, in text form, within three months after receipt of the request for information. In the event of a risk of failure to meet the deadline, the employer or the works council shall inform the employee requesting information to this effect and give the response without further delay.

(4) The employer or the works council shall state whether the specific reference activity is carried out predominantly by employees of the other gender. If the employer or the works council considers the specific reference activity, according to the standards applied in the establishment, not to be equal or of equal value, he/she must provide comprehensible reasons for this opinion, based on said standards. In the process, the criteria named in Section 4 shall be taken into account. In such a situation, the employer or the works council shall make reference, in meeting the request for information, to an activity that, in his/her opinion, is equal or of equal value. If the works council is responsible for responding to the request for information, the employer shall make available to the works council, upon request, the information necessary to fulfil its tasks.

(5) Should the employer fail to fulfil his/her obligation to provide information, in the event of a dispute he/she shall bear the burden of proof that there has been no violation of the principle of equal pay within the meaning of the present Act. This shall also apply if the works council was unable to disclose the information on grounds for which the employer is to blame.

### **Section 16**

#### **The public service**

The entitlement pursuant to Section 10 exists also for public service employees pursuant to Section 5 subsection 2 numbers 1 to 5 in offices with a workforce that usually counts more than 200 employees. Sections 11 to 14 shall apply *mutatis mutandis*.

### **Part 3**

#### **Internal company procedures to verify and establish equal pay**

##### **Section 17**

###### **Internal company evaluation procedures**

(1) Private employers with a workforce that usually counts more than 500 employees are called upon to use internal company evaluation procedures to assess their remuneration provisions and the various remuneration components disbursed, as well as the way in which they are applied, on a regular basis, to determine compliance with the principle of equal pay as laid down by the present Act. If, within a corporate group, the controlling company has a decisive influence on the remuneration conditions of at least one enterprise within the group, the controlling company can conduct the internal company evaluation procedure pursuant to sentence 1 for all of the companies within the corporate group.

(2) If an internal company evaluation procedure is conducted, it shall take place under the employer's own responsibility with the assistance of the procedures pursuant to Section 18 and with the participation of the employee or worker representatives.

##### **Section 18**

###### **Conducting internal company evaluation procedures**

(1) The internal company evaluation procedure shall include the activities that belong to the same remuneration system, regardless of which legal principles from the fields of individual law, collective agreement and internal company agreements are involved.

(2) Internal company evaluation procedures shall consist of a fact-gathering procedure, an analysis and a report of findings. Subject to internal company participation rights, the employer shall be free to choose the analysis methods and job evaluation procedures. Valid statistical methods shall be used. The data are to be broken down by gender. In the process, the protection of personal data is to be ensured.

(3) The fact-gathering procedure and the analysis shall cover the current remuneration provisions, remuneration components and the job evaluation procedures and shall evaluate these and their application with a view to compliance with the principle of equal pay within the meaning of the present Act. In the process, Section 4 shall be observed. Section 12 subsections 1 and 2 shall apply *mutatis mutandis*. In the case of remuneration provisions based on statutory regulations and on collective wage agreements, as well as those based on a binding determination pursuant to Section 19 subsection 3 of the Act on Homeworking, there shall be no obligation to verify whether activities are of equal value. Sentence 4 shall be applied *mutatis mutandis* to collective labour law remuneration provisions agreed by churches or by public law religious communities.

(4) The results of the fact-gathering procedure and the analysis shall be summed up and can be published within the establishment.

##### **Section 19**

###### **Elimination of remuneration discrimination**

In the event that an internal company evaluation procedure reveals remuneration-related discrimination based on gender, the employer shall take the necessary measures to eliminate such discrimination.

##### **Section 20**

###### **Cooperation and information**

(1) The employer shall inform the works council of the planning of the internal company evaluation procedure and make the necessary documents available in time.

(2) The employees shall be informed of the results of the internal company evaluation procedure. Section 43 subsection 2 and Section 53 subsection 2 of the Works Constitution Act shall be observed.

#### **Part 4 Reporting obligations for employers**

##### **Section 21 Report on gender equality and equal pay**

(1) Employers with a workforce that usually counts more than 500 employees, who are required to file a management report pursuant to Sections 264 and 289 of the German Commercial Code, shall file a report on gender equality and equal pay describing the following:

1. their measures to promote equality between women and men and the impact of the former, as well as
2. their measures to create equal pay for women and men.

Employers who apply no measures within the meaning of sentence 1 number 1 or 2 shall give the grounds for this in their report.

(2) The report shall also contain statistics disaggregated by gender on:

1. the average total number of employees, as well as
2. the average number of full-time and part-time employees.

##### **Section 22 Reporting period and publication**

(1) Employers pursuant to Section 21 subsection 1 who are bound by collective wage agreements pursuant to Section 5 subsection 4, or who apply collective wage agreements pursuant to Section 5 subsection 5 and who have declared pursuant to Section 13 subsection 5 that they will apply the remuneration provisions of the collective wage agreement pursuant to Section 5 subsection 5, shall file the report every five years. The reporting period shall cover the previous five years.

(2) All other employers pursuant to Section 21 subsection 1 shall file the report every three years. The reporting period shall cover the previous three years.

(3) The statistics pursuant to Section 21 subsection 2 shall refer only to the last calendar year of the reporting period. From the second report onwards, changes in the previously mentioned statistics are to be indicated by way of comparison with the previous report.

(4) The report pursuant to Section 21 is to be attached to the next management report pursuant to Section 289 of the German Commercial Code that is filed after the reporting period in question, and is to be published in the Federal Gazette.

#### **Part 5 Evaluation, responsibility of the equal opportunities officer, transitional provisions**

##### **Section 23 Evaluation and reporting**

(1) Following the entry into force of the present Act, the Federal Government shall continuously evaluate its effectiveness and shall report on its findings every four years, beginning two years after entry into force. The evaluation shall describe the implementation of the principle of equal pay for women and men performing the same work or work of equal value in establishments and companies of all forms and sizes that fall under the scope of application of Part 2 of the present Act.

(2) The Federal Government shall report on the development of the principle of equal pay for women and men performing the same work or work of equal value in establishments with a



workforce that usually counts less than 200 employees, every four years, beginning two years after the entry into force of the present Act.

(3) The Federal Government shall include the statements of the social partners in the evaluation pursuant to subsection 1 and in the filing of the report pursuant to subsection 2.

#### **Section 24**

##### **Responsibility of the equal opportunities officer**

It shall be the task of the equal opportunities officers of the federal administration and of the federal establishments and the federal courts, as well as the officers responsible for gender equality in companies, to promote the implementation of the present Act with respect to the enforcement of the right to equal pay for women and men for equal work or work of equal value.

#### **Section 25**

##### **Transitional provisions**

(1) The entitlement to disclosure pursuant to Section 10 can be applied for the first time six calendar months after 6 July 2017. If the entitlement to disclosure pursuant to sentence 1 is then claimed for the first time within three calendar years, employees can make a subsequent request for information, by way of derogation from Section 10 subsection 2 sentence 2, only after three calendar years have elapsed. Sentence 2 shall not apply if the employees demonstrate that the prerequisites have changed substantially.

(2) The report pursuant to Section 21 shall be filed for the first time in 2018.

(3) By way of derogation from Section 22 subsection 1 sentence 2 and subsection 2 sentence 2, the reporting period for the first report shall include only the last completed calendar year that precedes the year 2017.