



Federal Ministry for
Family Affairs, Senior Citizens,
Women and Youth

Report by the Federal Govern- ment on the effectiveness of the Act to Promote Transparency in Wage Structures among Women and Men

and on the state of implementation of the principle of equal pay in establishments
with less than 200 employees (excerpt)

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Preamble

The right to equal pay for women and men for equal work or work of equal value (principle of equal pay) is a matter of justice and is indispensable for the cohesion of our society. This principle is simultaneously an expression of the constitutionally protected equality between women and men.

Furthermore, equal pay is also mandated by good economic sense as equal opportunities and fair pay support companies' competitiveness and contribute to better tapping into employees' potential. The Federal Government is pursuing the objective of eliminating pay differences between women and men and has already initiated a series of measures to do so.

In Germany, the statistical pay gap between women and men, in terms of the average gross hourly wage, still lies at around 21 per cent (East: 7 per cent; West: 22 per cent, according to the German Federal Statistical Office 2019, based on surveys carried out in 2018). This so-called non-adjusted pay gap is due to structural factors and differences in the employment biographies of women and men. Particularly gender-specific career choices, the lower presence of women in decision-making positions, family-related career breaks, prolonged periods of part-time work and, not least, the historically lower remuneration of "typical female occupations" lead to differences in the average wages earned by women and men. The reasons for this are persistent role stereotypes, structural obstacles and (dis)incentives as well as differing promotion opportunities for women and men.

But even with the same formal qualifications and otherwise identical characteristics, the statistically measurable pay gap, according to the German Federal Statistical Office's records for 2016, still stands at six per cent (the so-called adjusted pay gap, based on 2014 surveys). Even if this statisti-

cally unexplained portion of the pay gap cannot be ascribed to pay inequity of this amount, it is a clear indication that, due to what is most often indirect pay discrimination, the practical application of the principle of paying women and men equal remuneration for equal work or work of equal value has not been achieved in practice.

To eliminate pay inequality between women and men, the Federal Government is pursuing a holistic policy approach that tackles the different underlying factors. Important measures that the Government has undertaken to eliminate the pay gap between women and men are: The introduction of the statutory minimum wage, from which women in low-paid jobs and sectors benefit, the introduction of the Act on the Equal Participation of Women and Men in Leadership Positions in the Private and the Public Sector (FüPoG), the introduction of part-time work for a limited period between periods of full-time employment ('bridge-part time'), the new regulation on caregiver leave and family caregiver leave, the improvement in the framework conditions to enable mothers and fathers to help reconcile work and family life using parental allowance and 'parental allowance plus' as well as the expansion and qualitative improvement of child day care. Activities boosting the status of social professions, such as the Care Professions Act, for instance, as well as the various initiatives to promote stereotype-free career choice, i.e. choosing a career according to one's interests and abilities, must also be mentioned.

The Act to Promote Transparency in Wage Structures among Women and Men (Transparency in Wage Structures Act) addresses another important cause of pay inequality: the lack of transparency in company pay structures. This Act improves the legal framework to enforce in practice the principle of equal pay for women and men.

To this end, it introduces the following new instruments:

- an individual entitlement to disclosure for employees in the private and public sector, if the establishment or department has more than 200 employees,
- the calling upon private sector employers with more than 500 employees to conduct internal company evaluation procedures, and
- new reporting obligations for employers who are required to file management reports and have more than 500 employees.

At the same time, the Act takes into consideration that the existence of collective wage agreements and participation in decision-making by works and staff councils leads to a lower pay gap between women and men. Accordingly, it promotes the social partnership and collective wage agreement coverage, and also makes a presumption of appropriateness, for instance, on collectively agreed remuneration provisions. The Transparency in Wage Structures Act entered into force on 6th July 2017.

II.

Mandate for the evaluation
pursuant to section 23 (1) of the
Transparency in Wage Structures
Act and for the report pursuant to
section 23 (2) of the Transparency
in Wage Structures Act

Pursuant to section 23 (1) of the Transparency in Wage Structures Act, the Federal Government has been given the mandate, following the Act's entry into force, to continuously evaluate its effectiveness and report on its findings every four years, beginning two years after the Act's entry into force. Pursuant to section 23 (2) of the Transparency in Wage Structures Act, the Federal Government also has the mandate to report on the development of the principle of equal pay for women and men performing equal work or work of equal value in establishments that usually count less than 200 employees, this reporting is also due every four years, beginning two years after the Act's entry into force. The Federal Government shall include the statements of the social partners (section 23 (3) of the Transparency in Wage Structures Act) in the evaluation pursuant to section 23 (1) of the Transparency in Wage Structures Act and in the report pursuant to section 23 (2) of the Transparency in Wage Structures Act.

In May 2018, following a public tender, the Federal Government tasked Kienbaum Consultants International GmbH, in a consortium of partners Flick Gocke Schaumburg and UZBONN (a company that conducts empirical social research and evaluation), with the evaluation. The evaluation report and the statements by the social partners will be submitted to the German Bundestag and the Bundesrat as parts of the Federal Government's report (Chapters IV to VI).

This evaluation report contains the first evaluation pursuant to section 23 (1) and the first report pursuant to section 23 (2) of the Transparency in Wage Structures Act. The objective of the Evaluation was to assess the effectiveness of the Act and the development of the principle of equal pay in establishments with less than 200 employees. This involved the combination of various quantitative and qualitative examination methods. It should be noted that, besides the data and legal analysis, extensive surveys of companies, public-sector institutions, interest groups and employees from the private and public sector were conducted.

Due to the comparatively short time period during which the Transparency in Wage Structures Act has been in force, the present evaluation report can only offer initial pointers regarding the impact and effectiveness of the Act, as well as any further steps needed. The longer-term trends and impact can only be monitored and comprehensively assessed during the next evaluation.



Statement by the Federal Government on the Evaluation's findings and recommendations for action on the effectiveness of the Transparency in Wage Structures Act and on the state of implementation of the principle of equal pay in establishments with less than 200 employees

The present statement by the Federal Government seizes on the evaluation report's recommendations for action and inspection mandates and illustrates, above all, the measures that have since been implemented or are being implemented.

With regard to the effectiveness of the Act, the findings of the evaluation report point in different directions. While the entitlement to disclosure, which can be asserted since 6th January 2018, has to date been used rather conservatively, many companies have reviewed their wage structures since the Act's entry into force. All in all, the Transparency in Wage Structures Act and its instruments are still insufficiently known, which compromises the Act's effectiveness.

The Federal Government recognises the necessity to further increase awareness of the Transparency in Wage Structures Act and its instruments. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) already provides extensive information and advice in digital and printed formats.

In addition to information on statutory regulations, the BMFSFJ also provides information materials for specific target groups such as employers, interest groups and employees. This is to be developed further in a targeted manner to increase awareness of the Act among individual target groups and to facilitate the law's application.

In particular, the BMFSFJ will be providing explanatory materials to more precisely define the terms contained in the general section of the Act, for instance the term "remuneration".

The evaluation report reveals that thus far two per cent of employees surveyed have filed a request for disclosure, compared with four per cent of

employees surveyed in companies with more than 200 employees. In seven per cent of the public-sector institutions surveyed and 14 per cent of the companies surveyed with more than 200 employees, at least one request for disclosure was made. The Federal Government will continue to support the application of this instrument by providing information and guidance in a targeted manner. This is also stipulated in the Coalition Agreement.

Furthermore, the Federal Government welcomes the approach by the evaluation report to simplify the entitlement to disclosure procedure and enhance the meaningfulness of the response. Thus the report recommends, for instance, that the responsibility for responding to disclosure requests be generally assigned to the employer and that the term "remuneration" be more closely defined.

According to the report, the legal literature takes the position, inter alia, that expanding the information to be provided on reference remuneration could enhance that information's usefulness.

The Federal Government will examine the central role of the entitlement to disclosure, as well as suggestions for concrete simplification and improvement of the disclosure procedure, taking into account the experience of European states with comparable regulations.

With regard to the conduct of internal company evaluation procedures, the evaluation report has reached the following conclusion: Survey findings show that, since entry into force of the Transparency in Wage Structures Act, 45 per cent of companies with more than 500 employees and 43 per cent of companies with between 201 and 500 employees have conducted a review of their pay structures. As much as 25 per cent of the

public sector employers surveyed have reviewed their pay structures, even though the Act does not expressly require them to do so.

To continue to support employers in carrying out internal company evaluation procedures and having regard to the provisions of the Transparency in Wage Structures Act, the BMFSFJ will provide information on all available evaluation instruments that meet the legal requirements. In addition, the Federal Government will examine whether, as suggested in the evaluation report, incentives are a suitable means of increasing companies' willingness to perform internal evaluations.

With regard to the reporting obligation, the evaluation report reveals the following: Of the companies that are required to report, 44 per cent of those surveyed state that they comply with the reporting obligation and 40 per cent plan to do so. A sample evaluation of 100 management reports demonstrates that 24 out of 30 DAX companies do, in fact, produce reports (roughly 80 per cent), compared with only 16 of the remaining 70 companies (roughly 23 per cent). The evaluation report does not resolve this contradiction. At any rate, the surveys indicate uncertainty among the companies regarding the information required. In a first step, the BMFSFJ will therefore provide information material that facilitates application of the law and enhances reporting quality. The Federal Government will continue to monitor adherence to the reporting obligation and, if applicable, consider additional measures.

The surveys indicate that, in the case of companies with less than 200 employees, pay inequality between women and men plays only a secondary role. Nonetheless, 50 per cent of the surveyed companies of this size have examined the Transparency in Wage Structures Act and some have even applied instruments, such as the individual entitlement to disclosure, without a legal obligation to do so. In order to expand the discussion on pay equity in smaller and medium-sized companies, the BMFSFJ is supporting the development and provision of evaluation instruments specifically tailored to companies of this size, following the gb-check (equal treatment check) and the eg-check (equal pay check) tools.

In summary, the Federal Government will evaluate the recommendations for action and continue to support the application of the Act. At the same time, the Federal Government is committed to clamping down on all primary causes of the gender pay gap and further promoting suitable measures to eliminate the gender pay gap within the framework of federal budget and finance planning. Furthermore, the Federal Government will conduct a broad discussion of the suggestions put forward in the evaluation report, together with the specialist community and the social partners.

IV.

Kienbaum evaluation report (excerpt):

Evaluation pursuant to
section 23 (1) of the Transparency
in Wage Structures Act and report
pursuant to section 23 (2) of
the Transparency in Wage
Structures Act

Summary

Background and objective

The objective of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) is to close the gender pay gap. The Act to Promote Transparency in Wage Structures among Women and Men (Transparency in Wage Structures Act) addresses a major cause of the pay gap: the lack of transparency in pay structures. The Act, which entered into force on 6th July 2017, improves the legal framework to enforce the principle of equal pay. It encompasses the private and the public sectors and introduces a series of new instruments:

- an individual entitlement to disclosure for employees in establishments or departments with more than 200 employees,
- the requirement for private sector employers with a workforce of more than 500 employees to conduct internal procedures to verify and establish equal pay,
- a reporting obligation for employers with more than 500 employees.

In a consortium with additional partners, Kienbaum Consultants International GmbH was tasked with conducting an initial evaluation and reporting on the Act.

Methodology and data basis

The objective of the evaluation pursuant to section 23 of the Transparency in Wage Structures Act was to assess the effectiveness of the Act and the development of the principle of equal pay. This involved a combination of quantitative and qualitative methods:

- ✓ Preliminary talk with the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth
- ✓ Interviews with representatives of other federal ministries as well as additional political and technical experts
- ✓ Analysis of data, documents and legal provisions
- ✓ Telephone survey of companies
- ✓ Online survey of public-sector institutions
- ✓ Online survey of interest groups in the private sector and the public sector
- ✓ Online survey of employees in the private and public sectors
- ✓ Analysis of management reports
- ✓ In-depth case studies in companies and public-sector institutions
- ✓ Workshops with political and technical experts
- ✓ Analysis and synthesis of all collected data

Key findings

Most of the stakeholders surveyed generally supported the objectives of the Transparency in Wage Structures Act and welcomed the pursuit of the principle of equal pay within this framework. This high level of acceptance of the objectives of the Act can be regarded as a solid basis for an expedient implementation. However, numerous challenges emerge in the endeavour to actually implement the Act in practice.

Thus an analysis of companies and public-sector institutions with more than 200 employees demonstrates that the topic of pay equity plays a rather subordinate role.

Often this lack of relevance is sweepingly explained using one of two arguments: the absence of a pay gap or the application of a collective wage agreement. Only the employees in the group concerned view equal pay as an important topic.

At the same time, the results indicate that the Transparency in Wage Structures Act is thus far relatively unknown, particularly among the employees but also among the other groups surveyed. The individual entitlement to disclosure is the most well-known of the three legal instruments. Preparations for this Act were undertaken primarily in companies, and less so in public-sector institutions. In general, human resources departments were entrusted with the research and perusal of relevant documents. External support, for instance from individual sector associations, solicitors or consulting firms, was utilised by a third of the companies.

With respect to the individual entitlement to disclosure, roughly one in seven companies thus far have acknowledged receiving at least one such

request. Among public-sector institutions, this proportion is significantly lower at only seven per cent. In the vast majority of cases, queries are handled by the employer. Often, as no request has been received thus far, no specific procedure has yet been determined. Two percent of employees have reported having submitted a request for disclosure to their employer thus far.

Slightly less than half of the companies surveyed indicated they had reviewed their pay structures since the Act's entry into force. However, the majority argue that the Act did not in fact trigger that review.

In the public sector, which is not explicitly called upon by the Act to perform such a review, the proportion having used the instrument is significantly lower (around a quarter of the institutions surveyed).

The vast majority of companies bound by the Act and surveyed, volunteered that the new statutory reporting obligations have led to reporting on gender equality and equal pay. Nonetheless, 16 per cent of companies still indicate they have no plans to do so in the future, despite their legal obligation.

On the other hand, an evaluation conducted specifically on management reports showed that 24 out of 30 DAX companies were able to demonstrate reporting activity. By contrast, only 16 (around 20 per cent) of the 70 other companies evaluated that were under obligation to report pursuant to section 21 of the Act, were able to produce a report published either by them or their parent company.

With a view to overall goal achievement and impact, it can be said that most notably employees

in companies and public-sector institutions of this size perceive their rights and wage transparency as having been strengthened by this Act.

Employers and interest groups, on the other hand, view the impact of the Act with greater reservation. Particularly among the companies, the initial added administrative burden and sporadic ambiguities regarding individual definitions (e.g. “equal activity or activity of equal value”) are seen as challenges.

Similar findings are also reached with regard to companies and public-sector institutions with less than 200 employees.

At this time, the topic of equal pay is also still of secondary importance among this group, which is justified as being due to a lack of a gender pay gap and/or the existence of a collective wage agreement. Even if, within this group, it is assumed that the topic’s relevance will increase in the future, a discussion frequently fails to materialise on account of its sensitive nature.

Even though the instruments provided for in the Transparency in Wage Structures Act are not binding on companies and institutions of this size, almost half of the companies surveyed have at least examined the Act internally. Sporadically, individual instruments within the Act (particularly the individual entitlement to disclosure) are voluntarily implemented by the companies. In these smaller companies and public-sector institutions, too, employees believe that the Act’s entry into force strengthens their rights.

As far as private and public sector employers are concerned, the view is that the Act will not lead to increased transparency or equal pay.

Conclusion and recommendations

In summary, it can be concluded that, as yet, the application of the Transparency in Wage Structures Act has only been able to make minor contributions towards the objectives that had initially been set. It should be noted, however, that the evaluation only spans the Act’s comparatively short period of application.

Nonetheless, from the perspective of the authors of this evaluation, a series of possible recommendations have emerged with which to introduce sub-legislative measures and/or amend the Act. They are summarised in the chart below. Detailed explanations of recommendations for action can be found in Chapter 7.

Recommendations for action:

Sub-legislative measures

- Raising awareness of the Act overall
- Counselling and information on the individual entitlement to disclosure
- Requirements/examples of report content
- Promotion of internal company evaluation procedures

Individual entitlement to disclosure

- Review of the central role of the individual entitlement to disclosure
- Simplification of the disclosure procedure
- Enhancement of the meaningfulness of information by expanding the information to be disclosed
- Clear regulations on legal consequences

Internal company evaluation procedures

- Internal evaluation procedures to be made more binding by introducing an incentive system or making them obligatory

Reporting obligations for employers

- Sanctions in case of non-compliance with reporting obligations
- Removal of ambiguities regarding the scope of sections 21 ff.
- Specification of the requirements regarding report content
- Lower the threshold of 500 employees
- Broaden visibility of the reports

General provisions

Specification of criteria to determine “equal” work and work of “equal value”/the term activity

Review of presumption of appropriateness for collective bargaining remuneration provisions and the definition of employers bound by/ applying collective wage agreements

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