Global HR Lawyers
Ius Laboris

Pay Transparency Directive Webinar Series

Worker representatives and employee consultation

Role, access to information and engagement strategy

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Speakers



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Agenda

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Part 1

The Pay Transparency Directive and its implementation

- What employers must do: pay structures, information rights, reporting, joint pay assessment
- Where workers' representatives come in
- Themes from transposition so far

Part 2

Case study: a first pay structure in a multinational group

- Who are the "worker representatives" in each country?
- What must be negotiated, co-decided or consulted?
- Sequencing the roll-out

Part 3

Day-to-day: involvement in ongoing operations

- Pay rounds, classification, individual requests, reporting
- Access to information, HR tech and AI
- An engagement strategy for international HR & legal

PART 1

The Pay Transparency Directive and its implementation

Directive (EU) 2023/970

- What employers must do
- The role of workers' representatives
- Transposition: EU, UK, France, Germany

Directive (EU) 2023/970 at a glance

Before hiring
Art. 5

- Starting pay or range for applicants
- No questions on pay history
- Gender-neutral vacancy notices

Pay-setting criteria
Arts. 4, 6

- Pay structures for equal work or work of equal value
- Objective, gender-neutral criteria
- Criteria easily accessible to workers

Right to information
Art. 7

- Own pay and average pay by sex for comparable work
- Reply within two months
- Employer reminds workers annually

Pay gap reporting
Art. 9

- Seven indicators
- Employers with 100+ workers
- First reports from 7 June 2027

Joint pay assessment
Art. 10

- Triggered by an unjustified gap of 5% or more in a worker category
- Not remedied within six months
- Carried out with workers' representatives

Enforcement

Full compensation incl. back pay, no upper limit (Art. 16) · Burden of proof shifts to the employer (Art. 18), also where transparency duties were breached · Comparators beyond the single employer (Art. 19) · Effective, dissuasive penalties (Art. 23)

Pay structures: criteria agreed with representatives

Arts. 4 and 6 – what the text requires

- Employers must have pay structures ensuring equal pay for equal work or work of equal value (Art. 4(1)).
- **Whether workers are in a comparable situation is assessed on "objective, gender-neutral criteria agreed with workers' representatives where such representatives exist" (Art. 4(4)).**
- Criteria include skills, effort, responsibility and working conditions, and other relevant factors; relevant soft skills must not be undervalued.
- Member States must make analytical tools available to support gender-neutral job evaluation and classification, for employers and/or the social partners (Art. 4(2)).
- Employers must make the criteria for pay, pay levels and pay progression easily accessible to workers (Art. 6(1)). Member States may exempt employers with fewer than 50 workers from the progression part (Art. 6(2)).

Why this matters for our case study

A first-time pay structure is, in substance, a job evaluation and classification exercise.

The Directive expects its criteria to be agreed with representatives. Whether that is a right to consultation, negotiation or co-determination depends on national law.

Not covered by the Directive

The level of pay itself. The Directive regulates how pay is structured and disclosed, not how much is paid.

Information rights: from request to answer

1 Request	2 Answer	3 Annual notice	4 Use of the data
Worker asks in writing – directly, through workers' representatives or through an equality body (Art. 7(1)–(2))	Within two months: own pay level and average pay, by sex, for workers doing the same work or work of equal value (Art. 7(4))	Employer informs all workers once a year of the right and how to use it (Art. 7(3))	Workers may disclose their pay to enforce equal pay; the employer may restrict use of colleagues' data to that purpose (Art. 7(5)–(6))

Before hiring (Art. 5)

- Applicants may receive the starting pay or range and the relevant collective-agreement provisions.
- No questions about pay history; vacancy notices and job titles gender-neutral.

Where representatives come in

- Workers can route a request through their representatives (Art. 7(2)).
- Practical question for HR: who receives, checks and answers the request – and who sees the underlying data?

Reporting and joint pay assessment: the 2027 clock

7 June 2026

Transposition deadline (Art. 34)

7 June 2027

250+ workers: first report, then annually

150–249 workers: first report, then every 3 years

7 June 2031

100–149 workers: first report, then every 3 years

Art. 9 – what is reported

- Gender pay gap; gap in complementary or variable pay
- Median gap; median gap in complementary or variable pay
- Share of women and men receiving variable pay
- Share of women and men in each pay quartile
- Gap by category of workers (same work or work of equal value)

Management confirms accuracy after consulting workers' representatives, who have access to the methodology (Art. 9(6)).

Art. 10 – joint pay assessment

Trigger: gap of at least 5% in any category of workers, not justified by objective, gender-neutral criteria and not remedied within six months of reporting.

Conducted "in cooperation with workers' representatives": analysis by category, reasons established jointly, measures and review of earlier measures.

Remedies within a reasonable period, "in close cooperation" with the representatives (Art. 10(4)).

Where the Directive involves workers' representatives

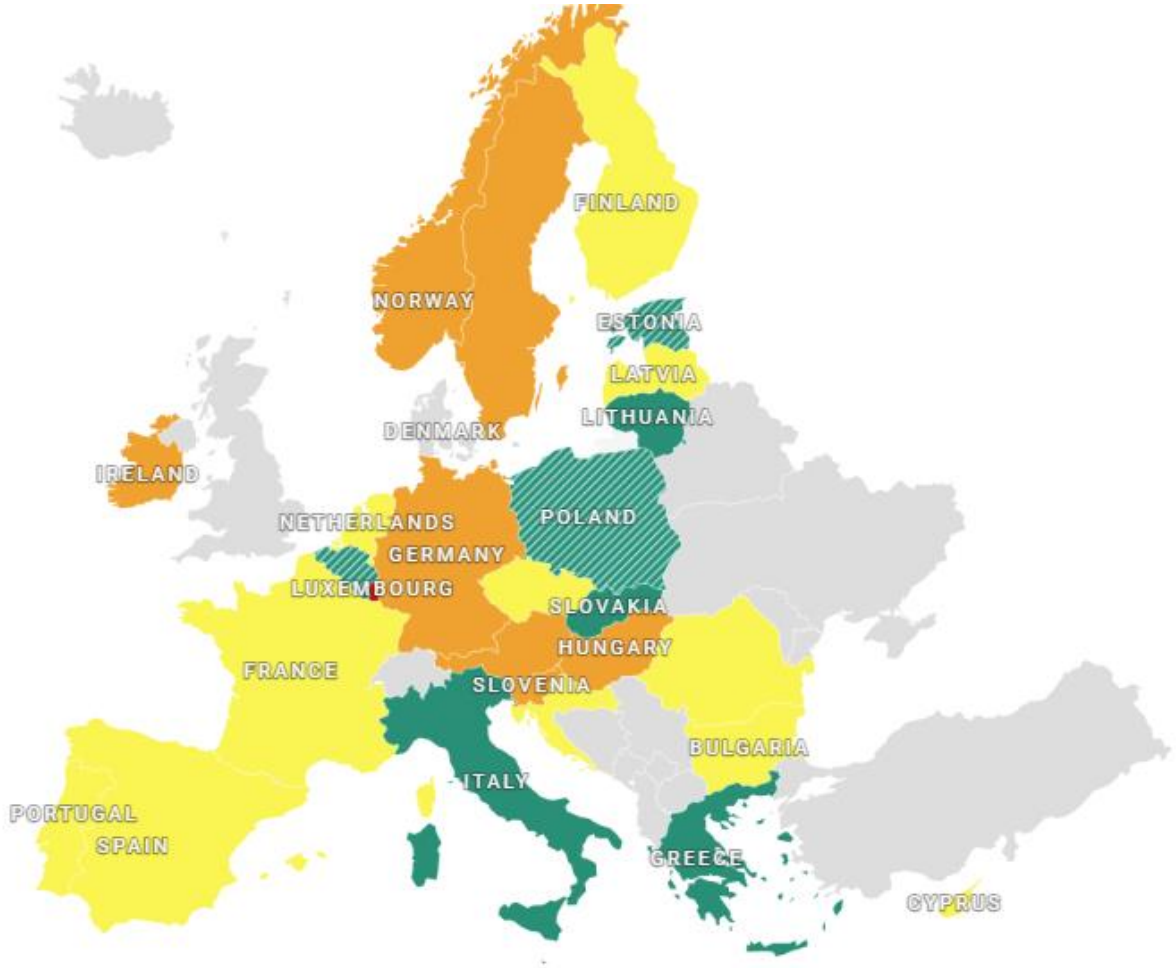
Provision	Role of workers' representatives
Art. 3(1)(m) and (h)	Defined "in accordance with national law and/or practice" – no EU-wide model Categories of workers to be grouped by the employer in **cooperation** with workers' representatives (where applicable).
Art. 4(4)	Job evaluation criteria are agreed with them, where they exist
Art. 7(2)	Can submit information requests on behalf of workers
Art. 9(6)	Consulted before management confirms the report; access to the methodology
Art. 10(1), (4)	Joint pay assessment and remedies in cooperation / close cooperation
Art. 16	May engage in administrative or court proceedings, on behalf of or in support of a worker, with that person's approval
Arts. 11, 13	Support for representatives of employers with fewer than 250 workers; effective involvement of the social partners; promotion of collective bargaining against pay discrimination

Key message

The Directive tells us what representatives do, not who they are.

For an international group this means (i) identification of reps is the first challenge; and (ii) three different answers on engagement – from no standing body / no need to create (e.g. likely Ireland), to consultation and bargaining (France), to co-determination (Germany).

Transposition



Further details on our implementation map:

EU Pay Transparency Directive: which countries have transposed

The information provided is of a general nature and does not constitute legal advice.

Transposition: the deadline passed on 7 June 2026

EU overview

- In force from 7 June 2026 (as reported): Italy, Slovakia, Lithuania, Malta.
- In force from 1 November 2026: Greece.
- Likely next to implement: Spain and Portugal.
- Delayed to 1 January 2027 (as reported): Netherlands, Sweden, Czechia, Denmark.
- Most other Member States are still in the legislative process, including Germany and France.
- **Follow the Ius Laboris country tracker for updates.**

Themes So Far

- Italy: existing representatives engaged in low-touch way
- Lithuania and Slovakia: right of veto over evaluation and structures?
- Spain: likely extension of pronounced role around equality plans
- Netherlands: expansion of requirement for consent / co-determination

France

- Bill no. 944 filed in the Senate on 10 September 2026, accelerated procedure; not yet adopted.
- Scope kept at 50+ employees; 7 indicators; CSE consulted from 100 employees.
- Mostly effective by decree
- Implementation unlikely before 2028!

Germany

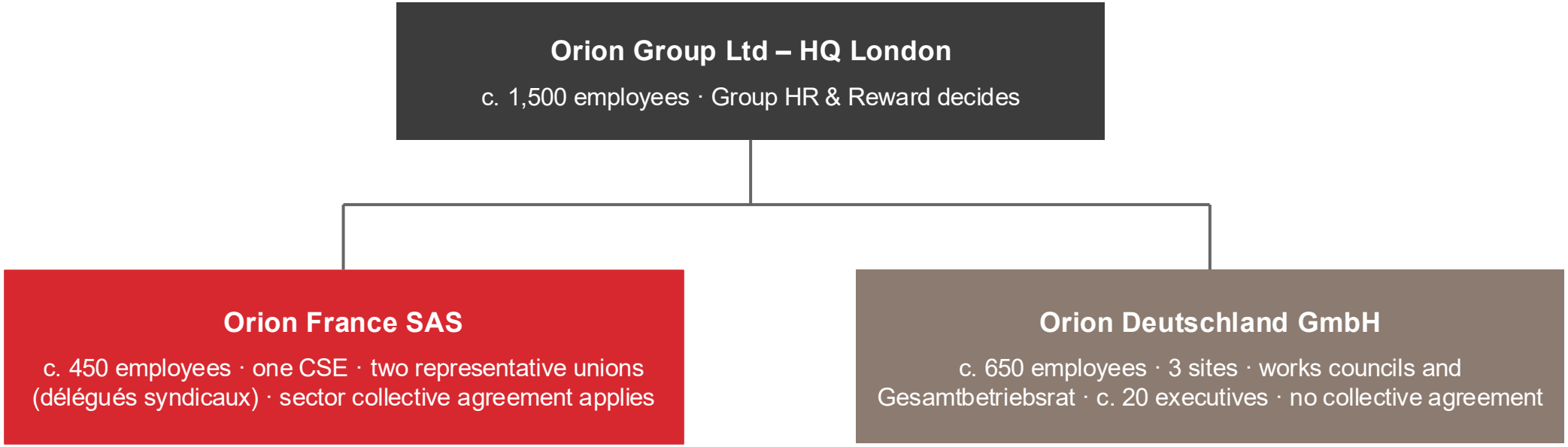
- Deadline missed; no draft bill published as at the last reports.
- Entgelttransparenzgesetz (2017) continues to apply.
- BAG, 23.10.2025 – 8 AZR 300/24: one comparator suffices to raise the presumption of pay discrimination.

PART 2

Case study: a first pay structure in a multinational group

- Who are the “worker representatives”?
- What has to be negotiated, co-decided, consulted?
- In which order?

The case: Orion Group's first group-wide pay structure



The project

Job architecture with gender-neutral job evaluation · grades and pay bands · annual pay-review process · annual bonus plan · new cloud-based reward platform

Three questions per country

1 Who are the worker representatives?

2 Which right applies: negotiate, co-decide, consult, inform?

3 What happens if we skip or rush it?

Three structural points before we look at the countries

1

Involvement is national and employer-specific

The duty sits with each legal employer. Orion France SAS must negotiate with its unions delegates and failing to have an agreement consult its CSE; Orion Deutschland GmbH must reach agreement with its works councils. A decision taken in London does not bypass either.

2

There is no group-level shortcut

Germany: no Konzernbetriebsrat where the group parent is abroad (BAG, 23.05.2018 – 7 ABR 60/16). A European Works Council, where one exists, covers transnational information and consultation only – it does not replace national rights.

3

Design the group framework to survive consultation

Present the HQ design as a framework with local room for manoeuvre. Whatever representatives can change in France or Germany must be changeable without re-opening the whole system.

UK: possibly nobody to co-decide with – but real legal risk

Who are the worker representatives?

- **No standing works council by default.**
- Recognised trade union (if any): collective bargaining on terms and conditions, including pay. Statutory recognition became easier on 6 April 2026
- ICE representatives: rare in practice - only where the employer has 50+ employees and 2% of employees (min. 15, max. 2,500) request an arrangement, or the employer initiates one. Standard provisions: consult on decisions likely to lead to substantial changes in work organisation or contractual relations, with a view to reaching agreement.
- With no body of representatives: may need to consult with elected representatives if the introduction represents a change to terms and conditions and there is no valid variation right.

What this means for the new pay system

- Changes to pay are contractual: employee consent or a valid variation mechanism is needed.
- From March 2027 (TBC), dismissing an employee to impose a "restricted variation" to employment terms – including pay calculate it – is will be automatically unfair, with a very narrow financial-difficulty exception.

Equality framework

Equal pay (Equality Act 2010) · gender pay gap reporting at 250+ employees · equality action plans · pay secrecy terms unenforceable for pay disclosures aimed at equality (s. 77)

France: consult the CSE, negotiate with unions, then implement

Who are the worker representatives?

- CSE (comité social et économique): elected body; with 50+ employees full information-consultation powers on the organisation, management and general running of the company (Art. L2312-8 Labour Code).
- Délégués syndicaux (union delegates): appointed by representative unions in units of 50+; they negotiate collective agreements. The CSE does not negotiate – except where there are no union delegates.
- Sector collective agreement: classifications and minimum pay grids already apply – the new grading must fit.

What applies to the new pay system

- Legal rules regarding salaries: NAO (annual mandatory bargaining) with union delegates: effective salaries, working time, profit-sharing; gender equality (Arts. L2242-15, -17). Failing to have an agreement, the employer may take unilateral decision after consultation of the CSE
- New pay system to be negotiated with union delegates (methods can be set by the branch). Failing to reach an agreement, CSE information and consultation on the project and on the new reward platform before the decision is final. Time limit: one month, two with an expert; silence counts as a negative opinion (Art. R2312-6).
- Draft bill 944: from 100 employees the CSE is consulted on data, methods and results of the pay-gap indicators (information only between 50 and 99 employees.

If skipped or rushed

Délit d'entrave: €7,500 fine for obstructing the CSE's functioning, €37,500 for a legal entity; damages; risk of a court order suspending implementation.

Germany: co-determination decides whether the system can go live

Who are the worker representatives?

- Betriebsrat (works council) per establishment; Gesamtbetriebsrat for company-wide matters. Local council competence is the rule; the Gesamtbetriebsrat is competent where a company-wide rule is objectively necessary (§ 50 BetrVG).
- No Konzernbetriebsrat with a UK parent (BAG, 23.05.2018 – 7 ABR 60/16).
- Sprecherausschuss for leitende Angestellte: information and consultation on changes to pay structures and appraisal principles (§ 30 SprAuG).
- Trade unions: only relevant if Orion is bound by a collective agreement (Tarifvorrang). Assumed not.

What applies to the new pay system

- § 87(1) no. 10 BetrVG: co-determination on pay structure – grading system, criteria, relative values, distribution rules. The employer decides the total budget. Initiative right; the Einigungsstelle can decide if the parties disagree.
- No. 11: performance-related pay and bonus mechanics. No. 6: reward platform capable of monitoring behaviour or performance. § 94: appraisal principles.
- § 99: consent to each individual classification (Eingruppierung).

If skipped or rushed

Unilateral measures to employees' detriment are ineffective; works council can seek injunctive relief.

Side by side: three systems, three levels of involvement

	UK	France	Germany
Representatives	Recognised union (if any); appointed / elected reps (if needed); ICE body on request	CSE; union delegates	Betriebsrat / Gesamtbetriebsrat; Sprecherausschuss for executives
Right on the pay system	Bargaining (if recognised); consultation (appointed reps / ICE); employee consent to contract change	Company agreement. Failing to reach an agreement: consultation (CSE)	Co-determination on structure; consent to each classification
Can they block?	No veto; but employees can refuse and dismissals to impose pay changes could be automatically unfair from March 2027	No veto of the CSE; opinion not binding but mandatory	In effect yes: no works agreement, no valid change; Einigungsstelle can decide
If skipped	Breach of contract; protective award; unfair dismissal; ICE penalties	Délit d'entrave (criminal offense); damages; suspension	Ineffective measures; injunction
Timing	No fixed periods	Consultation: 1 / 2 months, then deemed negative	Until agreement or Einigungsstelle decision

Roll-out: three processes in parallel, staggered go-live

	1 Prepare	2 Engage	3 Formalise	4 Implement
UK	Map union / ICE status / possible need for collective consultation	Inform and consult employees (and union / reps / ICE if any)	Agree variations; individual consent	Go live
FR	Map CSE, union delegates, branch agreement	Present project to CSE; open NAO item	Agreement / CSE opinion (1–3 months);	Go live
DE	Map works councils, Sprecherausschuss; competence	Negotiate Betriebsvereinbarung; inform Sprecherausschuss; Einigungsstelle if no agreement		Go live; § 99 per classification

Rule

No announcement of the new system before consultation has started. Go-live date follows the slowest process.

In parallel

Data protection assessment for the reward platform; communication plan; process for Art. 7 requests.

PART 3

Day-to-day: involvement in ongoing operations

- The pay cycle and the representatives' touchpoints
- Access to information
- HR technology and AI
- An engagement strategy for international HR

The pay cycle: where representatives are involved after go-live

Step	UK	France	Germany
Hiring and individual pay	Individual contract; no representative role	No CSE role in individual pay	§ 99 BetrVG: consent to each classification into a pay group
Annual pay round and bonus	Collective bargaining if a union is recognised	NAO each year (or per agreement up to four years)	Co-determination on distribution rules and bonus mechanics (§ 87(1) nos. 10, 11); total budget is free
Pay information requests (Art. 7)	Questionnaires ahead of Equality Act equal pay claims; Directive right not applicable	Draft bill: through union delegates or CSE members; reply within period defined by Decree (two months)	Today: requests to the works council in employers of 200+; employer may take over answering
Reporting (Art. 9)	Gender pay gap report at 250+; no consultation duty	Draft bill: CSE consulted on data, methods, results from 100 employees	Directive: consultation and access to methodology – awaiting transposition
Gaps and remedies (Art. 10)	Equality action plan; consult unions or networks as good practice	Draft bill: if no objective justification of the gap: negotiation (with joint report) or unilateral plan (with CSE consultation),	Directive: joint assessment with the works council – awaiting transposition

Access to information: what representatives can ask for

	France	Germany
Legal basis	Annual consultations on social policy; economic, social and environmental database (BDESE)	§ 80(2) BetrVG: timely and comprehensive information; Betriebsausschuss may inspect gross pay lists
Pay data	BDESE includes pay and gender equality data; CSE (as well as union delegates) can ask for explanations	Pay lists for the works council's tasks; limits where the employer has taken over the Entgelttransparenzgesetz answers (BAG, 28.07.2020 – 1 ABR 6/19)
Experts	Expert for recurring and ad hoc consultations	External expert on agreement (§ 80(3)); deemed necessary for AI
Limits	Confidentiality; data protection	Confidentiality; data protection (GDPR)

Directive Art. 9(6): representatives "shall have access to the methodologies applied by the employer".

HR technology and AI: representatives have a say in the tools

UK	France	Germany
• No statutory works council involvement by default. • Union or ICE body, if present: consultation on substantial changes to work organisation. • Data protection impact assessment and transparency to staff remain central.	• CSE information and consultation on new technologies (Art. L2312-8). • Consultation before introducing means of monitoring employees' activity (Art. L2312-38). • Case law: risk of suspension of tools introduced without consultation.	• § 87(1) no. 6 BetrVG: co-determination on technical systems capable of monitoring behaviour or performance. • § 80(3) BetrVG: expert for AI-related matters; § 95(2a): selection guidelines using AI. • Works agreement on the reward and HR analytics platform.

EU AI Act

AI systems used in employment are "high-risk"; the Digital Omnibus defers the high-risk obligations to December 2027. National involvement rights already apply today.

An engagement strategy for international HR & legal

1

Map early

Who represents the workforce in every entity? Keep one register, including executive bodies and unions.

2

One framework, local processes

Global principles and criteria, local annexes. Design for changes after consultation.

3

Share methodology before data

Transparent job evaluation criteria make agreement easier and are what Art. 4(4) and 9(6) will require.

4

Sequence and synchronise

Parallel timelines; no announcement before consultation; go live country by country.

5

Build capacity

Brief representatives, budget for experts, train managers for pay conversations and Art. 7 requests.

6

Document and review

Record objective, gender-neutral justifications for gaps; review with representatives each cycle.

Key takeaways

1	The Directive writes representatives into pay-setting, reporting and remedies – but national law defines who they are.
2	Member states will take different approaches: contract and equality law, consultation and negotiation, co-determination.
3	A group pay system is implemented entity by entity – plan sequencing, not announcements.
4	Transposition is incomplete, but reporting dates (from 7 June 2027) and case law are already moving.
5	Engage early and share methodology: it is the best investment for the joint pay assessment.

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- **24/11**

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