

What Businesses Operating in the United Kingdom and Europe Need to Know About DEI

Client Alerts

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In today's increasingly diverse and interconnected business environment, companies that operate on an international scale have often looked to implement policies – including those relating to diversity, equity, and inclusion (DEI) – that comply with the toughest standards. That levelling up approach has generally allowed global guidelines and initiatives to be implemented universally across business teams operating in different jurisdictions with certain caveats to ensure legal compliance in every jurisdiction. However, as the DEI landscape continues to evolve, particularly following the executive orders issued by the Trump administration in January 2025,^[1] it's clear that a one-size-fits-all approach will no longer suffice. Whereas in the European Union and United Kingdom, there remain positive obligations to promote and report on DEI policies; in the US, recent court decisions and actions taken by the executive branch have increased the scrutiny of diversity initiatives and in some respects, organisations now face significant legal and reputational risk, including federal and state enforcement actions, congressional scrutiny, and private lawsuits.

The most recent example of this tension surfaced last weekend with reports^[2] that the US embassies in Europe sent letters to certain European companies noting that the executive orders applied to all suppliers or service providers to the US government, regardless of where they were based. Companies in receipt of the letter were asked to complete, sign and return a form certifying that they “do not operate any programs promoting DEI that violate any applicable anti-discrimination laws and agree that such certification is material for purposes of the government’s payment decision”.^[3] The French Trade Ministry is said to have described the requests as “unacceptable”. Meanwhile the Office for Economy Minister Eric Lombard commented that whilst the letter “reflects the values of the new US government . . . , [t]hey are not ours. The minister will remind his US counterparts of that.”^[4]

These developments leave global companies caught in the crosshairs between divergent policy agendas on either side of the Atlantic. In this article, we discuss the requirements imposed on companies operating in the United Kingdom and Europe and how global companies can chart a path through the often-contradictory regimes.

UK and EU Reporting and Compliance Obligations

The UK Perspective

Businesses that employ more than 250 people in the United Kingdom are required to publish their gender pay gap statistics annually.^[5] Additionally, the recently passed UK Employment Rights Bill is expected to introduce a new law mandating UK employers to publish equality action plans, which will address gender gaps as well as disability and ethnicity pay gap reporting.^[6]

Under the Equality Act 2010, UK employers are also under a general duty to protect employees from discrimination. Protected characteristics are broad, and include age, disability, race, religion or belief, marriage and civil partnership, sex and gender reassignment.^[7] At the end of last year, the United Kingdom also introduced a new proactive duty requiring all employers to take reasonable steps to prevent sexual harassment in the workplace.^[8] The Equality and Human Rights Commission is able to investigate employers and compel them to take corrective actions if they fail to comply with these regulations.

The EU Perspective

The United Kingdom's approach to DEI is closely aligned with that of the European Union. The European Union has enacted a comprehensive set of regulations aimed at enhancing workforce diversity and holding companies accountable for meeting those standards. These regulations include provisions which are unlikely to be in tension with the US regime – such as protections against discrimination – and provisions that are more in conflict, such as mandates for gender representation on corporate boards and in executive positions, and laws to support parental leave and work-life balance policies.^[9] In marked relief with current interpretations of federal law in the United States, EU companies are also required to actively engage employees from across certain protected and under-represented demographic groups, as well as offering targeted training and career development programs. Businesses that fail to meet targets can be fined.

In addition, the European Union's upcoming Corporate Sustainability Reporting Directive (CSRD) will require global companies that generate above €150m within the European Union to report on more than just environmental matters. They will also need to disclose their impact on human rights and governance, gender representation, diversity policies, and equal opportunity measures. Reporting deadlines vary depending on the size of the company, but the largest companies are required to report this year on their FY 2024 performance. Non-compliance carries significant financial penalties. These are set by the individual member states but, for example, in Germany they could be fines of up to 5% of annual global turnover.

Procurement

For companies looking to contract with the UK government, a lack of commitment to DEI may see companies locked out of future projects under new rules brought in under the UK Procurement Act 2023 (the “PA 2023”). Whilst previously economic considerations were the key driver in decision making, authorities can now consider a wider range of factors, including “social value” in the award of contracts. As such, companies tendering for public contracts in the United Kingdom may start to be assessed on their DEI efforts, which would align with the UK government’s commitment to addressing inequalities in the workplace.

Importantly, the PA 2023 introduces a new debarment regime that lists suppliers (and their subcontractors) who are either excluded or excludable from participating in public procurement tenders. Of note here is the introduction of discretionary ground for poor conduct which may see contracting authorities effectively warned to avoid awarding contracts to those companies that feature on the list without strong justification. It remains to be seen whether the UK government would use its discretion to debar a company for rolling back their DEI commitments, but for companies that depend upon UK public contracts, this may not be a tolerable risk given the increased flexibility afforded under the new regime.

For European companies, time will tell whether a commitment to DEI will make it into the assessment criteria for the award of public contracts. At present, the main driver in public procurement across the member states remains price, but there are calls for the EU regime to align more closely with the European Union’s wider objectives on climate and DEI. Certainly, initial reactions to the approach of US embassies contacting European companies seeking certification indicate an approach to government contracting that is more closely aligned with the United Kingdom’s policy agenda than that of the United States.^[10]

Conclusion and Next Steps

The UK and EU rules underscore the growing divergence of approaches to DEI on either side of the Atlantic: DEI practices which now present heightened risk in the US are nevertheless mandated in other jurisdictions. Businesses which have a foot in each camp will now face operational and legal difficulties continuing with an off-the-peg compliance solution which looks to conform to the highest regulatory standard. It is therefore crucial for businesses operating in one or more of these regions to understand these regional nuances in the approach to DEI to successfully navigate this rapidly changing landscape.

Global businesses should act now to:

1. Seek legal counsel in the United Kingdom and European Union to advise on the differences in each regime to prevent them from taking actions in one country that could expose them to liability in another.

2. Conduct a review of current policies to look for areas of exposure and potential enforcement risk.
3. Take a bespoke approach to updating and implementing DEI-related policies (or the lack thereof).
4. Keep policies and practices under regular review.

We can help our global clients navigate a path through these contradictory requirements, enabling them to develop an informed and coordinated – even if ultimately not uniform – global DEI strategy.

Footnotes

[1] Executive Order 13985 dated 20 January 2025 and follow-on Executive Orders, available here:

<https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-and-wasteful-government-dei-programs-and-preferencing/> (accessed 1 April 2025)

[2] See: <https://www.nytimes.com/2025/03/29/business/france-trump-diversity-inclusion.html> and

https://www.ft.com/content/02ed56af-7595-4cb3-a138-f1b703ffde84?accessToken=zwAGMYCbUI-4kc8C7VavdZVMs9OhOPG3A__ehA.MEQCIBSaneLqepfHq5ku_Ikp-

[kbyX2C7QrlnQ9UDqV8A8PFTAiAWm7LD8CiiJCtXZUm5IUA7dLXUrd18NztnYQwAPjCjTQ&sharetype=gjft&token=1d89b521-b61a-4a72-aeba-306576fc683b](https://www.ft.com/content/02ed56af-7595-4cb3-a138-f1b703ffde84?accessToken=zwAGMYCbUI-4kc8C7VavdZVMs9OhOPG3A__ehA.MEQCIBSaneLqepfHq5ku_Ikp-kbyX2C7QrlnQ9UDqV8A8PFTAiAWm7LD8CiiJCtXZUm5IUA7dLXUrd18NztnYQwAPjCjTQ&sharetype=gjft&token=1d89b521-b61a-4a72-aeba-306576fc683b) (accessed 1 April 2025)

[3] <https://www.ft.com/content/02ed56af-7595-4cb3-a138-f1b703ffde84> (accessed 2 April 2025)

[4] <https://www.france24.com/en/europe/20250329-trump-diversity-equity-inclusion-dei-france-companies-executive-order-usa-europe-ban>

[5] See s.78 Equality Act 2010

[6] The Employment Rights Bill still needs to go through multiple readings and debates in both Houses of Parliament before it can be voted on. If both Houses agree on the final version, the Bill will receive Royal Assent and become law.

[7] See s.7 Equality Act 2010

[8] See s.40A Equality Act 2010

[9] See Work-Life Balance Directive (2019/1158); Women on Boards Directive (2022/2381); (German Stock Corporations Act/Aktiengesetz sec. 96, 76

[10] See response of the French Government, reported here: <https://stratnewsglobal.com/world-news/french-firms-handed-dei-compliance-letter-by-u-s/> (accessed 31 March 2025).

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