



The Gender Pay Gap

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Equal pay in 2010: the legal perspective

- EU legislation
 - Art. 157 TFEU (ex Art. 119 TEC)
 - Dir. 75/117 (equal pay) - replaced by Dir. 2006/54 (recast)
- Case law of the ECJ
 - E.g. *Defrenne II*: Art. 119 TEC has direct effect
- Principle is fully reflected in legislation of 27 MS, 3 EEA countries and 3 candidate countries

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Equal pay in 2010: the facts

- Persisting gender pay gap of 17.6 % on average for 27 EU Member States (2007 and 2008)
- Large differences among countries: from around 10 % in e.g. Poland to around 30 % in e.g. Estonia
- In a number of countries: gender pay gap is even widening again

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Statement for discussion

- Given,
 - on the one hand, the fact that the principle of equal pay is already fully reflected in the legislation of the 27 EU Member States, the 3 EEA countries and the 3 candidate countries and,
 - on the other hand, the fact that the gender pay gap is persisting,
- it is obvious that the legal combat of the gender pay gap has failed.

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The Network's 2010 report

- Obtaining better data on national policies, initiatives and legal instruments aimed at tackling the gender pay gap in practice
- Exploring the potential links between equal pay and other national labour law provisions
- For these purposes: questionnaires were sent to legal experts in 33 countries

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Main findings

- National instruments to fight gender pay gap are very diverse.
- Many national experts concluded that their respective governments and the social partners are not doing enough.
- Still a number of interesting instruments were uncovered ('best practices')

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Best practices

- ‘Best practices’ related to the role of the government
- ‘Best practices’ related to the role of the social partners

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Best practices re. governmental role

- Most interesting examples of those ‘best practices’ related to the role of the government mirror a continuing critical attitude towards the ‘unadjusted’ vs. ‘adjusted’ gender pay gap!

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Best practices re. governmental role

- Unadjusted/ absolute/ raw gender pay gap = relative difference in the average gross hourly earnings of women and men within the economy as a whole
- Relative difference is caused by:
 - Factors that have nothing to do with discrimination = ‘explanations’
 - Pay discrimination in the strict legal sense

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Best practices re. governmental role

- Recurrent ‘explanations’ for unadjusted wage gap include:
 - Part-time work
 - Temporary work
 - Horizontal/ vertical segregation of labour market
 - Frequent career interruptions – combination of profession with family duties

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Best practices re. governmental role

- These ‘explanations’ reduce the ‘unadjusted’ gender pay gap to the ‘adjusted’ gender pay gap (i.e. product of pure discrimination)

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Statement for discussion

- Should pay differences between typically male dominated and typically female dominated sectors of industry be seen as mere explanations for the gender pay gap, or should they rather be discussed in terms of pay discrimination?

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Best practices re. governmental role

- Most interesting 'best practices' question 'explanations' for the 'unadjusted' gender pay gap and uncover them as discriminatory
 - Finland/ Norway: pay-rise in female-dominated professions of the public sector (↔ horizontal segregation)
 - Poland: measures obliging men to be more actively involved in household and childrearing tasks (↔ career interruptions)

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Statement for discussion

- Measures obliging men to be more actively involved in household and childrearing tasks (e.g. compulsory paternity leave at childbirth) could help to reduce the gender pay gap, and enhance gender equality on the work floor more in general.

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Best practices re. social partners' role

- Some best practices focus on the role of the social partners
 - France: *Géniçon* Law: compulsory negotiations on occupational gender equality (including equal pay)
 - Monitoring of collective labour agreements in order to detect discriminatory provisions, either by social partners themselves (e.g. Austria) or by a governmental body (e.g. Portugal).

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Gender pay gap and job evaluation. Analysis of the French case.

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Economist

Gender pay gap: a lot of measures

- Annual gross gender remuneration gap: 27%
- Annual gross gender remuneration gap for full time employees: 19%
- Hourly wages gender gap (working time neutral): 16%
- Gender hourly base wage gap (based on occupied job) (without bonus, salary supplement...) : 13%

- All these measures reflect the overall occupational differences between men and women (diploma, employment contract, working time, type of company, career, kind of job ...). That makes it interesting to remove all structural effects:
- Measure of discrimination: wage gap, "all things being equal " .
The method is to divide the wage gap into two components :
 1. gap explained by differences in average individual characteristics of employment (diploma, job, activity sector, kind of company...): 6% (6 of 16%).
 2. gap "all things being equal" (the unexplained residual gap): 10% . This is the pay gap related to discrimination.

- All these measures show the combined effects of wage and occupational differences and especially the importance of occupational segregation on wage differentials

➡ link with the legal principle of equal pay and non-discrimination:
"Equal work, equal pay"
and
"Equal pay for work of comparable worth"

"Equal pay for work of comparable worth"

- Legal definition: "comparable set of professional knowledge, skills resulting from experience, responsibilities and types of physical or mental work (nervous) loads".
- Very interesting approach because we analyze comparable jobs and not just the same jobs. This approach intends to overcome the problem of occupational segregation.
- This approach needs a comparison between jobs predominantly occupied by women and jobs predominantly occupied by men.

Job evaluation to reduce gender pay gap

- To evaluate jobs with gender-neutral criteria (skills, responsibilities, knowledge, working conditions...)
- Pay attention to indirect discrimination: apparently neutral criteria that generates inequalities between women and men.
For example: jobs occupied predominantly by women are undervalued if we attribute value only as economic and financial responsibilities and not in the light of responsibilities concerning the supervision of the sick (nurses) or working with confidential documents (secretaries)...

Foreign experience

- Québec: Pay equity law
Requirement for businesses to evaluate jobs with a non-discriminatory method in order to increase the wages of undervalued « female jobs ».
- Belgium: Awareness and training for companies to encourage non-discriminatory job evaluation.
- Switzerland: Comparison of nursing jobs and work of policemen in a canton lead to an increase in the wages of the nursing jobs.

The French case

- With Rachel Silvera, we conducted a case study in order to come to a comparison between five female and five male jobs.
- For example, between:
 - nursing and technical leader in a hospital,
 - assistant and maintenance technician,
 - engineer and administrative manager...
- Our study concludes that there is a gap in evaluation between jobs occupied predominantly by men and jobs occupied predominantly by women:

- **Male jobs** : with a strong professional culture, a precise job description, important technical aspects, a clear organizational role, predefined careers, technical legitimacy strongly supported by unions values...

□ **Female jobs** : a lot of female jobs have a same title for a variety of contents (for example administrative assistant) with unclear definitions, incomplete and imprecise job descriptions, more personalized contents, invisible and non-determined skills. This goes particularly for all female jobs that are assistant jobs (dealing patients, vulnerable people, superiors, colleagues...) and this aspect concerns skills that are poorly recognized and treated as non-technical.

■ This research (published by the Halde in 2010) proposes an analysis of existing gendered bias in job evaluation criteria.

For example:

□ **Multitasking:**

Not only should the capacity to work on a number of different jobs be valued (male jobs)

but as well

The diversity of roles and expectations for the same job (female jobs).

□ **The value of relational skills:**

Relational skills are not a woman's 'natural' domain, but should be seen as professional and technical skills.

For example:

The ability to solve a human problem (crisis with a patient or a client) is not only a relational quality, but also a technical skill.

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□ The value attributed to working conditions:

To take into consideration, for example:

- the emotional burden,
- the human environment of work (nuisance to human presence (noise, dirt, aggressiveness, open work environment, constant disturbance ...))

Working conditions must not only be seen as valuable in the context of industrial work.

□ Responsibilities :

Not just financial or economic responsibilities should be valued,

Also consider the value of responsibilities with regard to people, confidentiality, communication...

- This approach is very complex (it compares distinct employment situations for the purpose of determining comparable wages).

- French jurisprudence on the subject is in construction and conflicting judgments have been given.

- In 2008, a decision has ruled that employees with different functions do not perform work of equal value (26 June, Sté Sermo / Jany Fornassier).
- In the same year, another decision has compared different managerial jobs and challenged the traditional hierarchy, attributing less value to support jobs related to human resources, for instance (feminized), and "core business" jobs related to financial services (masculinized).

- Since the beginning of 2010, the Halde has created a working group to prepare a methodological guide on the comparable worth of segregated women and men's jobs.

- This group consists of researchers, social partners, lawyers, institutions ...

- In order to advance :

- The understanding of wage inequality by social partners, the government and civil society
- The application of the legal principle concretely: "Equal pay for work of comparable worth "
- The fight against and reduction of wage inequality
