



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

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

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.

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

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')

Best practices

- 'Best practices' related to the role of the government
- 'Best practices' related to the role of the social partners

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!

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

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

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)

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?

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)

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.

Best practices re. social partners' role

- Some best practices focus on the role of the social partners
 - France: *Géniisson* 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).