



‘The Gender Pay Gap in Europe from a Legal Perspective’

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Equal pay in 2011: 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 2011: the facts

- Persisting gender pay gap of 17.1 % on average for 27 EU Member States (Eurostat data 2009 – provisional value)
- Large differences among countries: from 3,2 % in Slovenia to 25,9% in the Czech Republic (Eurostat data 2009)
- In a number of countries: gender pay gap is even widening again (e.g. Bulgaria, Latvia, Portugal, Slovakia – Eurostat data 2009)

The Network's 2007 report

- European Network of Legal Experts in the Field of Gender Equality
- 'Legal aspects of the gender pay gap'
- Aim:
 - Help reduce the often blurred discussion about the gender pay gap to its essence
 - Reflect on the question of how law and legal instruments may help to close the gap

The Network's 2010 report

- New goals:
 - 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 (27 EU MS, 3 EEA countries, 3 candidate countries)

The questionnaire

- 1) The general situation in your country
- 2) The legal framework
- 3) Instruments to close gap by/ aimed at social partners
- 4) Instruments to close gap by/ aimed at employers
- 5) Other instruments to close gap
- 6) Problems of enforcement + good practices
- 7) Relationship gender pay gap – other parts of labour law
- 8) Good practices

Aims of this presentation

- Presenting striking aspects of the 2010 report
- Present 'best practices'

Interesting aspects of national situations

- Small gender pay gap: often connected with low rates of female employment (e.g. Poland, Turkey)
- Sectors employing very few women (e.g. construction and building): gender pay gap = low (reported in e.g. Belgium and France)
- Hungary: higher pay gap in public sector, because less opportunity to resort to non-reported payment

Interesting aspects of national legal frameworks

- Constitutional provisions:
 - Idea of equal pay for equal work or work of equal value has been laid down in a surprising number of national constitutions (e.g. Finland, Greece, Hungary, Italy, Poland, Portugal, Romania, Slovakia and Spain)
- Acts of Parliament:
 - Some Acts define what should be understood to constitute equal work or work of equal value (e.g. Hungary, Romania, Slovakia and Sweden)

Interesting aspects of instruments by/ aimed at social partners

- Many experts reported: gender pay gap is not high on social partners' agendas (only 'declarations', 'studies', 'awareness raising programmes', ...)
- Finnish, Norwegian and Swedish experts: collective negotiation structure itself reproduces pay gap: sectors dominated by women are at a disadvantage when it comes to negotiate good pay rates

Interesting aspects of instruments by/ aimed at social partners

- The vast majority of the 33 countries questioned have no legal measures in place that induce or oblige the social partners to actively address the gender pay gap in collective agreements
 - One exception: France
Génisson law of 9 May 2001, which has introduced an obligation for the social partners to negotiate on occupational gender equality

Interesting aspects of instruments by/ aimed at social partners

- In-depth examination of collective labour agreements in order to detect discriminatory provisions: sometimes conducted by social partners themselves (e.g. Austria)

Interesting aspects of instruments by/ aimed at employers

- Several countries: system obliging employers to deliver gender-specific pay statistics
 - Denmark: Statistical Bureau can produce those statistics free of charge
- Transparency of pay ↔ former communist countries report move back to extreme caution re. the release of information on pay
 - Poland: legality of contractual nondisclosure clauses is also based on the Law of 16 April 1993 regarding unfair competition

Interesting aspects of instruments by/ aimed at employers

- Measures regarding public procurement
 - Austria: only country with some limited experience in this respect
- *Logib* (*‘Lohnungleichheit im Betrieb’*): tool developed in Switzerland allowing companies to statistically analyse salary structure to identify gender pay gaps
 - Referred to by experts from Germany, Luxembourg and Liechtenstein

Interesting aspects of other instruments

- A number of countries already have quite extensive experience with tools to scrutinise evaluation and pay systems for compatibility with the non-discrimination principle
 - The Netherlands: '*Equal Pay Quick Scan*' = software programme allowing to analyse pay data of a company, to see whether an investigation into the pay system of a company is required
 - Also Norway and Sweden have pay evaluation systems

Interesting aspects of other instruments

- Special pay policies
 - Finland: recurring governmental technique of earmarking an amount of money per year as 'equality pot' for municipal employment pay rises targeted at low-paid highly educated 'female' branches
 - Norway: 2010 collective pay negotiations for the public sector culminated on 27 May 2010 in a pay rise of 3.3 % for the female-dominated sectors

Interesting aspects of enforcement problems

- Deterrent effect of costs for legal assistance and proceedings
 - Claims can be brought on behalf of victims (trade unions, national equality bodies, ombudspersons, ...) – often free of charge
 - Class actions (e.g. Bulgaria, Croatia, Denmark, Italy and Liechtenstein)
But: Liechtenstein: individuals can only be financially compensated when they each start separate and individual proceedings to this end!

Interesting aspects of relationship gender pay gap – other parts of labour law

- Part-time work:
 - Belgium: courts' views have recently clashed re. the question whether notice period and payment in lieu of notice on termination of a part-time employment contract should be calculated on the basis of full-time or part-time remuneration
- Overtime work:
 - Bulgaria: in sectors where women tend to work overtime – i.e. sectors with high female presence – remuneration for overtime work is very low

Interesting aspects of relationship gender pay gap – other parts of labour law

- Temporary work arrangements:
 - Italy: more flexible use of fixed-term contracts was allowed in order to improve female labour market participation
- Posting of workers
 - United Kingdom: in particular in the public sector, the posting of workers has been one of the most significant downward drivers of female pay. Contractors undercut public sector rates (for all staff or for new recruits).

Interesting aspects of relationship gender pay gap – other parts of labour law

- Reconciliation of work and family life
 - High level of labour law protection with regard to female workers may have negative influence on women's pay (reported by experts from e.g. Croatia, Czech Republic, Italy, and Turkey)
 - Italian and United Kingdom experts: rules inducing fathers to take up leaves would be very useful to progressively reduce the gender pay gap
 - Poland: project by Ministry of Labour and Social Policy on the 'Reconciliation of professional and family roles of women and men'

Conclusion: 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)

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)

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).