



The Gender Pay Gap in Europe from a Legal Perspective



European Commission

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European Commission

Directorate-General for Employment, Social Affairs and Equal Opportunities
Unit G.2

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Foreword

The European Union from its very beginning has pursued the goal of equal pay for women and men for work of equal value. However, notwithstanding all efforts to achieve the goal of equal pay, statistics show a persisting gender pay gap, of 17.6 % on average for the 27 EU Member States in 2008. Thanks to the European legislation on equal pay, direct discrimination between women and men as regards pay is no longer a major problem in the EU. The causes of the gender pay gap are much more complex and include indirect discrimination, greater difficulties for women in balancing work and private life, segregation of the labour market, and stereotypes that influence the evaluation and classification of occupations or the choice of education undertaken by men and women. Progress in closing the gender pay gap appears to be very slow, and in a number of countries the gender pay gap is even widening again. Taking into account the fact that the European Union has been taking action in the field for more than 50 years, this is a disappointing result.

We must significantly improve the situation as regards the gender pay gap. This complex phenomenon requires a multifaceted approach to address various kinds of inequalities between men and women in the labour market. The Commission will continue to use all available instruments, both legislative and non-legislative, to tackle the gender pay gap in the European Union. However, the gender pay gap can only be effectively tackled by acting on all levels, involving all interested parties, in particular Member States and social partners, and focusing on all the factors that cause it.

This report by the Commission's *European Network of Legal Experts in the Field of Gender Equality* analyses national policies, initiatives and legal instruments aimed at tackling the gender pay gap in 33 states, including the current 27 EU Member States, the EEA countries of Iceland, Liechtenstein and Norway, and the candidate countries of Croatia, the FYR of Macedonia and Turkey. It points to a number of instruments, legislative and otherwise, with a good potential for combating the gender pay gap. In the EU's and Member States' common endeavour to reduce the gender pay gap it is important that we learn from the positive actions already implemented by some Member States.

In the Women's Charter adopted in March 2010, the European Commission has reaffirmed its commitment to promote equal pay for equal work and work of equal value by working with Member States to reduce significantly the gender pay gap over the next five years. In its Strategy for gender equality the Commission will provide a coordinated framework for action across all EU policies to implement gender equality in general and equal pay in particular.



Viviane Reding

Vice-President of the European Commission
Justice, Fundamental Rights and Citizenship

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The Gender Pay Gap in Europe from a Legal Perspective

Petra Foubert*

INTRODUCTION

The gender pay gap: a continuing source of sorrow

Equal pay for men and women for work of equal value has been a concern of the European Union (EU) from its very beginning. The principle was laid down in the original EEC Treaty of 1957, in Article 119. In 1997, when the founding Treaties were renumbered the first time, Article 119 EEC Treaty became Article 141 EC Treaty. Currently, the principle of equal pay between men and women is embodied in Article 157 of the Treaty on the Functioning of the European Union (TFEU), which entered into force on 1 December 2009.¹

An important impetus for bringing this principle into practice was provided by Directive 75/117/EEC (equal pay)² – recently replaced by Directive 2006/54/EC (recast)³ – and by the case law of the European Court of Justice (ECJ).⁴ In particular, the ECJ's findings in the 1970s that Article 119 is directly effective in both vertical (private person versus public authority) and horizontal (private person versus private person) relations⁵ proved to be a powerful instrument for enforcing this principle in national courts, doubtless also with considerable preventive effects. At the national level, the principle of equal pay is, in general, also fully reflected in the legislation of the 27 EU Member States and the 3 countries of the European Economic Area (EEA): **Iceland, Liechtenstein and Norway**.⁶ The three candidate countries of **Croatia, the FYR of Macedonia and Turkey** have also adapted their legislation to EU standards.

Still, Eurostat data show a persisting gender pay gap, reportedly of 17.6 % on average for the 27 EU Member States in 2007 and 2008. Progress in closing the gender pay gap appears to be very slow in general. For **Belgium** (from 9.5 % to 9.0 % in 2007), **Finland** (from 21.3 % to 20.0 %), **Spain** (from 20.2 % to 17.1 %), **Slovakia** (from 27.7 % to 20.9 %), Eurostat data covering the years 2002, 2006, 2007 and 2008 (provisional and incomplete) show a light, though steady reduction of the gap. In **Austria**, the gender pay gap is stable, at the high percentage of 25.5 %. In **Bulgaria, Cyprus, Denmark, Greece, Hungary, Ireland, Latvia, Malta, Romania, Sweden and the United Kingdom**, however, the trend is not clear. Most of these countries feature average to high gender pay gaps, except for Malta (varying between 2.4 % and 9.2 %) Finally, and contrary to what one would expect, in **the Czech Republic, Germany, Estonia, France, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Portugal and Slovenia** the gender pay gap is even widening again. Most of these countries score average to high for the gender

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¹ The Treaty of Lisbon, signed in Lisbon on 13 December 2007, amended the European Union's two core treaties, the Treaty on European Union (EU Treaty) and the Treaty establishing the European Community (EC Treaty). The latter has been renamed the Treaty on the Functioning of the European Union (TFEU).

² Directive 75/117/EEC on the approximation of the laws of the Member States, relating to the application of the principle of equal pay for men and women, OJ L 45 of 19 February 1975, p. 19.

³ Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204 of 26 July 2006, p. 23.

⁴ The Treaty of Lisbon has made the ECJ part of the 'Court of Justice of the European Union'.

⁵ Case 43/75 *Defrenne II* [1976] ECR 455.

⁶ The EEA Agreement, which entered into force on 1 January 1994, enables Iceland, Liechtenstein and Norway to enjoy the benefits of the EU's single market without the full privileges and responsibilities of EU membership.

pay gap, with **Italy** (from 4.4 % to 4.9 %), **Luxembourg** (from 10.7 % to 12.4 %), **Poland** (from 7.5 % to 9.8 %), **Portugal** (from 8.4 % to 9.2 %) and **Slovenia** (from 6.1 % to 8.5 %) as notable exceptions.⁷

With regard to the fact that the European Union has been taking action for more than 50 years to defend the principle of equal pay for equal work or work of equal value between men and women, this is a disappointing result. This explains why the gender pay gap has encouraged several initiatives by the European Commission in the last few years and continues to be one of the Commission's great concerns in the area of gender equality.

Equal pay was a priority mentioned in the 'Roadmap for equality between women and men 2006-2010'.⁸ In 2007 the European Commission adopted a Communication examining the causes of the gender pay gap and putting forward a series of actions to tackle the problem, including, for example, the increase of care services for children and elderly people and the elimination of gender stereotypes in education, training and culture.⁹

In 2007 the European Commission's *Network of legal experts in the fields of employment, social affairs and equality between men and women* ('Network')¹⁰ published a report on the 'Legal Aspects of the Gender Pay Gap'.¹¹ The aim of this report was not so much to provide a detailed overview of the national equal pay legislation, but rather to help reduce the often blurred discussion about the gender pay gap to its essence and to reflect on the question of how law and legal instruments may help to close the gap.

Given the persistence – and rise in many countries – of the gender pay gap since 2007, the European Commission felt the need for a new report, to update the information provided in the 2007 report, but also to further develop it in two specific directions:

- In the first place, the Commission was interested in obtaining better data on the national policies, initiatives and legal instruments aimed at tackling the gender pay gap in practice.
- In the second place, the Commission envisaged an exploration of the potential links between equal pay and other national labour law provisions.

The *Network* sent out detailed questionnaires to legal experts in 33 states, including the current 27 EU Member States, the EEA countries of **Iceland**, **Liechtenstein** and **Norway**, and finally **Croatia**, **the FYR of Macedonia** and **Turkey** as candidate countries. The country reports that resulted from this questionnaire round are the basis for the current overview and can be consulted on the website of the *Network*, where they have been attached *in extenso* to the electronic publication of this overview.¹²

The 33 national reports clearly show that in many countries the gender pay gap is on the political agenda. Consensus is growing that action ought to be taken. Still, there is disagreement as to how to tackle the problem. In some countries, however, the gender pay gap is still not an issue that is given great importance or priority, in terms of urgency, by the Government. This is the case for example in **the FYR of Macedonia**, **Malta** and **Turkey**, where female participation in the labour market is still very low. These countries focus on policies to encourage women to enter the labour market, rather than on policies to address the gender pay gap.

Many of the findings that can be read in the national reports are also confirmed in a very recent (2010) publication of Eurofound,¹³ entitled 'Addressing the Gender Pay Gap: Government and Social Partners' Actions'.¹⁴

⁷ See Eurostat table for the gender pay gap in unadjusted form, available on: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tsiem040>, accessed 29 April 2010.

⁸ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, entitled 'Roadmap for equality between women and men 2006-2010', COM (2006) 92 final.

⁹ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, entitled 'Tackling the pay gap between women and men', COM (2007) 424 final.

¹⁰ For more information on the Network, see the European Commission's website on <http://ec.europa.eu/social/main.jsp?catId=748&langId=en>, accessed 3 May 2010.

¹¹ This report is available on <http://ec.europa.eu/social/main.jsp?catId=641&langId=en>, accessed 29 April 2010.

¹² See <http://ec.europa.eu/social/main.jsp?catId=641&langId=en>, accessed 21 June 2010.

¹³ Eurofound, the European Foundation for the Improvement of Living and Working Conditions (Dublin, Ireland), is a European Union body, set up by the European Council in 1975, to contribute to the planning and design of better living and working conditions in Europe.

The concept of the gender pay gap

The gender pay gap is a rather loose concept, which in some countries has no specific meaning. In many countries, however, there is agreement on what it stands for. In most countries, the gender pay gap is defined as the difference between the average pay level of male and female employees, respectively. The average usually concerns the economy as a whole. If one considers the various sectors of occupations and industry or the age of the working population separately, there is a considerable variation in the gap. Similarly, as a rule, the pay gap is larger in the private sector than in the public sector.

Occupational pensions are not always included in this concept. However, it is obvious that the 'pension gap' is a continuation of the pay gap after retirement. This pension gap persists despite the anti-discrimination provisions in national law in the area of statutory and occupational pensions (although it must be pointed out that this legislation seems to be rather complicated, non-transparent and sometimes lacunal).

At EU level, the 'gender pay gap' is defined as the relative difference in the average gross hourly earnings of women and men within the economy as a whole.¹⁵ This indicator has been defined as 'unadjusted', as it has not been adjusted according to individual characteristics that may explain part of the earnings difference. Such individual characteristics relate, among other things, to traditions in the education and career choices of men and women; to gender imbalance in the sharing of family responsibilities; to the fact that men and women still tend to work in different sectors; to part-time work, which is often highly feminised, etc.¹⁶

The above implies that the 'unadjusted' gender pay gap – also referred to as the 'absolute' or 'raw' gender pay gap – comprises both potential pay discrimination and pay discrepancies based on factors that have nothing to do with discrimination as such, but which may at least explain part of the difference. The 'corrected' or 'net' pay gap, by contrast, corresponds with the portion of the pay gap that cannot be explained, and that, for an important part, is assumingly caused by pay discrimination in the strict legal sense.

The **Dutch** Government has explicitly made it clear that in its view the 'corrected' or 'net' gender pay gap is not to be equalled to pay discrimination. While 'pay discrimination' is a legal concept, the 'corrected' or 'net' pay gap is the result of a calculation on the basis of several statistical factors, resulting in an impression of the situation in various sectors of the labour market.¹⁷

For the purposes of this legal report, the national experts were asked to concentrate on the net pay gap, as this is the portion of the (unadjusted) pay gap that lawyers intend to diminish or even eradicate. However, it is clear that, sometimes, the line between the unadjusted and the adjusted pay gaps is thin, as it is connected with the question of how much information one has with respect to the groups of employees that are being studied. Moreover, as this report also aims at investigating the possible links with other parts of national (labour) law (e.g. measures regarding leaves, part-time work, atypical work arrangements), it can also be seen as an exercise to further move parts of the 'adjusted' or 'net' pay gap to the 'unadjusted' or 'absolute' pay gap, and in doing so make those parts more susceptible to legislative solutions.

¹⁴ This publication is available from the Eurofound website on <http://www.eurofound.europa.eu/pubdocs/2010/18/en/2/EF1018EN.pdf>, accessed 26 April 2010.

¹⁵ See the website of the European Commission on <http://ec.europa.eu/social/main.jsp?catId=684&langId=en>, accessed 26 April 2010. Note that some researchers consider the comparison of a median of wages to be more appropriate. In probability theory and statistics, a median is described as the numeric value separating the higher half of a sample from the lower half. Reference to a median was made, for example, by the Polish and UK experts.

¹⁶ For a slightly more detailed overview of the causes of the gender pay gap, see the European Commission's website on <http://ec.europa.eu/social/main.jsp?catId=682&langId=en>, accessed 26 April 2010.

¹⁷ The Dutch Government's 9th report on Equal Pay (*Negende voortgangsrapportage gelijke beloning*), submitted to Parliament on 1 December 2008, TK 2008-2009, 27 099, no. 20, Paragraph 2.3.

1. THE GENERAL SITUATION IN EUROPE

Many of the 33 experts that filled in the questionnaire have reported an increasing – unadjusted – gender pay gap. Some experts (e.g. **Cyprus**, **Romania** and **Spain**) have mentioned a gradual downward trend over the last few years.¹⁸ In **Cyprus** and **Romania**, such trend has allegedly been triggered by the introduction of national minimum wages (**Romania**) or the increase of such minimum wages. The introduction or increase of minimum wages is said to come to the advantage of occupational categories in which women are over-represented.

The EU (27) average being 17.6 % in 2007, the differences among the countries studied are large, varying from a reported unadjusted pay gap of around 10 % in e.g. **Poland** to a pay gap of around 30 % in e.g. **Estonia**.¹⁹

It is to be stressed, however, that comparisons between countries need to be made with a great deal of caution. After all, it is not always entirely clear whether the data provided by the different countries have been collected and processed in a comparable way. Also, the time period covered by the data may differ among the countries.

However, following the Communication adopted by the European Commission in 2007,²⁰ Eurostat, in collaboration with Member States, improved the methodology used to calculate the gender pay gap in the EU. Instead of a mix of various national sources, it is now an EU harmonised source (called 'Structure of Earnings Survey') which is used, with the support of comparable national sources for the yearly estimates. Part of the increase of the gender pay gap since 2007 may not correspond to a real increase, but may merely be the result of the change in methodology.²¹

When comparing different countries, account should also be taken of the different pay concepts that are being used in the discussion of the gender pay gap.

Denmark, for example, clearly distinguishes between the following concepts:

- narrow income, excluding pension and employee benefits;
- narrow income, including pension and employee benefits but excluding some other wage components;
- income per paid hour;
- income per worked hour.

When the income per worked hour is measured, the gender pay gap is considerably lower than when the first three pay concepts are used. The explanation for this difference is that women, more often than men, receive pay for more hours during which they do not perform work, e.g. due to illness, care functions, etc.

1.1. Characteristics of the gender pay gap

1.1.1. Lower gender pay gap in the public sector

Nearly all experts have reported a considerably lower gender pay gap in the public sector, as compared to the private sector. In the **Belgian** public sector, the pay gap appears to be highest for contractual workers, who often happen to be women. In **Latvia** the difference in the gender pay gap between the public and private sectors is reportedly small. **Iceland**, **Hungary** and **Sweden** were the only countries to mention a gender pay gap that is higher in the public than in the private sector. In **Hungary** this

¹⁸ Only for Spain, this downward trend is clearly confirmed by Eurostat data. For Cyprus and Romania, the trend is not so clear. See the Eurostat table for the gender pay gap in unadjusted form, available on: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tsiem040>, accessed 29 April 2010.

¹⁹ These data, reported by the national experts, are confirmed by the Eurostat table for the gender pay gap in unadjusted form, available on: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tsiem040>, accessed 29 April 2010.

²⁰ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, entitled 'Tackling the pay gap between women and men', COM (2007) 424 final.

²¹ See the website of the European Commission on <http://ec.europa.eu/social/main.jsp?catId=684&langId=en>, accessed 26 April 2010.

phenomenon could allegedly be related to limited opportunity in the public sector to resort to non-reported labour and non-reported payment, the use of which is said to be widespread in the **Hungarian** private sector.

1.1.2. Age

Age is certainly a significant factor of the pay gap. Generally speaking, the lowest levels of the gender pay gap are found in the 20-29 age group, at the beginning of both men's and women's professional careers. The gender pay gap is highest in the 30-49 age bracket. This is the age bracket in which most women have children and tend to take time off in this respect, while men of the same age continue their careers and see their pay grow. This is the situation reported in countries like **the Czech Republic, Germany, Belgium and Greece**, by contrast, reported the highest level of the gender pay gap in the higher age brackets (55+ and 60+).

1.1.3. Large differences between sectors

Some sectors of industry feature very high gender pay gaps. Such sectors typically include finance and insurance, where the average income for both men and women is high. Also in sectors that are, in most countries, highly feminised (e.g. education, healthcare services and social work) the gender pay gap can reach high values, although in these sectors pay is reported to be low in general. **Greece**, however, has reported that the pay gap is lower in the feminised sectors of banking and tourism (hotels, restaurants) than in industry.

Quite the opposite happens in sectors that employ very few women, like construction and building, and mining and quarrying. In these sectors the gender pay gap appears to be very low (reported in e.g. **Belgium, the Czech Republic, France, Germany, Hungary and Norway**). **Croatia, Hungary and Slovenia** even reported that women are earning more than men in these sectors!

1.1.4. Education and position

Many experts report the largest gender pay gaps for people with lower education on the one hand (e.g. **the Czech Republic, Estonia, Hungary and Poland**), and for those with postgraduate education on the other (e.g. **the Czech Republic, Finland, France, Hungary and Poland**). These findings indicate the existence of a 'sticky floor' on the one hand, and a 'glass ceiling' on the other. The smallest differences are generally recorded for people with upper secondary education and for those with technical education. **Iceland**, by contrast, notes the smallest differentials for women who have completed Master's or doctoral studies and **Greece** for university graduates.

Also the position of the workers seems to play a role. E.g. **Belgium, the Czech Republic and Poland** have observed the highest (over 30 %) gender pay gap rate among senior executive officers. Surprisingly, the **Czech** report also referred to a study, entitled 'Gender in Management'²² that came to another conclusion, namely that if the incomes of female managers are looked at more closely, the pay gap is more or less the same as the average pay gap – some 15 %. The pay gap is said to be lower at the highest levels of management, whereas in lower management it is said to reach average values.

1.1.5. Influence of low female employment levels

A small gender pay gap is very often connected with lower rates of female employment. This was reported, for example, by the **Polish** and **Turkish** experts.

In **Poland** only every second woman is employed and usually those who are employed are better educated and qualified, resulting in employment in higher and better remunerated positions.

²² J. Vlach et al. *Gender v managementu* Praha, VUPSV 2008, available on http://praha.vupsv.cz/Fulltext/vz_268.pdf, accessed 8 March 2010.

The **Turkish** expert also noted that moderate pay discrimination and high selectivity are probably on par, and that it is also likely that pay discrimination will increase when more women enter the **Turkish** labour market.

Malta is another example of a country that combines low levels of female employment with a low gender pay gap.

1.1.6. Influence of the economic crisis

It is still too early to find out whether or not the economic crisis has influenced the gender pay gap. The **Icelandic** report mentions no influence yet in the private sector. However, no comprehensive pay gap survey has been conducted after the financial collapse of the autumn of 2008. Still, this expert expects that men's wages will be reduced, while women's working hours will be cut. A widening of the pay gap is also expected in **Greece**.

1.1.7. Immigrants

The pay gap is said to be wider for immigrants than for nationals. Female immigrants are said to consequently become the victim of multiple discrimination. This was reported e.g. by the **Greek** and **Finnish** experts.

1.2. From unadjusted/absolute gender pay gap to corrected/net gender pay gap

Most of the countries have conducted studies to try and find out about the main reasons for the gender pay gap. Recurring explanations include: female part-time work and temporary work, the horizontal and vertical segregation of the labour market, and women's frequent career interruptions. Such explanations reduce the unadjusted gender pay gap to the corrected gender pay gap. What is left, is allegedly partly due to discrimination in the strict legal sense (see above, in the Introduction).

1.2.1. Part-time work and temporary (fixed-term) work

In many countries, a large portion of part-time workers are women (reported e.g. in the **Belgian, Cyprus, Dutch, German, Slovakian, Spanish** and **United Kingdom** reports). Quite opposite to this, **Romanian** data show that in 2005 the number of part-timers in **Romania** was approximately equal for women and men.

A recent **Austrian** study showed that half of the **Austrian** women working part time explicitly do so in order to reconcile work and care for family members. By contrast, only 3 % of the male part-time workers do so due to childcare obligations. Other men work part time in order to conduct further studies or training. Most women work part time between the age of 30 and 44, i.e. during their main earning years, whereas men mainly work part time at the beginning or the end of their professional careers.

The **Austrian** and **German** reports also showed a considerable pay gap (about 30 % in **Austria** and 21 % in **Germany**, taking into account the gross salary per hour) between part-time and full-time employees. In **Germany**, however, this was said to be typical of the private sector, with the public sector showing a gender pay gap that is mostly independent of the volume of employment.

Such a pay gap is not necessarily the result of directly discriminatory wages, but often a consequence of the fact that part-time jobs are more frequent in low-paid and highly feminised sectors, like e.g. the healthcare and cleaning sectors.

Among part-time workers, the gender pay gap is reportedly smaller than when part-timers are compared to full-timers. The **Irish** expert even reported that, in some sectors, female part-time employees earned more than male part-time employees.

Part of the gender pay gap can also be explained by the use of fixed-term contracts, which often seem to be entered into by (young) women. In **Italy**, for example, the 2001 reform of the fixed-term

contract increased the options for the conclusion of such contracts.²³ In doing so, the number of employed women increased, but the quality of those jobs appeared to be bad (low pay rates and few opportunities to change to a regular contract).

1.2.2. Horizontal and vertical segregation of the labour market

Many experts (e.g. **Finland, France, the FYR of Macedonia, Norway, Sweden, Latvia and Cyprus**) mentioned gender-based segregation of the labour market as one of the main reasons for the continued gender pay gap.

On the one hand, women and men tend to predominate in different sectors (i.e. horizontal or sectoral segregation). Women often work in sectors where their work is lower valued and lower paid than those dominated by men. Recurrent examples are the healthcare, education and public administration sectors.

On the other hand, within the same sector or company, women predominate in lower valued and lower paid occupations (i.e. vertical or occupational segregation, to be connected with the 'glass ceiling'). Women are frequently employed as administrative assistants, shop assistants or low-skilled or unskilled workers. Many women work in low-paying occupations, for example, cleaning and care work. Women are under-represented in managerial and senior positions.

Horizontal and vertical segregation of the labour market is an area where the line between the unadjusted and corrected pay gaps is thin. This was also highlighted in the **Finnish** report, indicating strong national disagreement about the degree to which segregation-related differentials should be considered in terms of discrimination. This disagreement has instigated studies on job assessment and statistics development. Also in other countries (e.g. **Malta** and, to a certain extent, also **the Netherlands**) the importance of gender-neutral job classifications has been indicated as an important instrument to fight the gender pay gap.

1.2.3. Frequent career interruptions and combination of a profession with family duties

Shorter periods of accumulated professional experience of women, caused by more frequent interruptions of their career paths due to family-related leave also contribute to the gender pay gap. In this respect, the **Hungarian** report indicated that the number of children clearly increases the gender pay gap in each sector, occupation and level.

It has been suggested that policies to support continuity in women's employment could help to reduce the gender pay gap. In this respect, the extension of statutory maternity leave is said (e.g. in **Turkey**) to reinforce traditional gender roles and to counteract continuity in women's employment. The **Irish** report, however, qualified this position by its finding that of all the flexible arrangements only career breaks are found to reduce the gender pay gap.

The **Portuguese** report has stressed that, as women still invest more time in (unpaid) work at home or care tasks, this may work so as to exclude them from benefits related to employment (for instance, benefits related to the lack of absences despite justification).

2. THE LEGAL FRAMEWORK

A gender pay gap still persists throughout Europe, although most countries have adopted a substantive number of legislative provisions aimed at tackling it, often incited by EU legislation in the field (see above, in the Introduction).

It is remarkable that the candidate countries of **Croatia, the FYR of Macedonia and Turkey** have known the principle of equal pay for men and women for quite some time and seem to be in full accordance with EU law, at least from a purely legalistic point of view.

²³ Decree No. 368 of 6 September 2001, on the fixed-term contract, implementing Directive 1999/70/EC, published in OJ No. 235 of 9 October 2001, available on <http://www.parlamento.it/leggi/deleghe/03276dl.htm>, accessed 20 March 2010.

2.1. Constitutional provisions

Several experts referred to the existence of a general constitutional principle of non-discrimination or equality. Such a constitutional principle is usually linked to one or more forbidden grounds, like e.g. race, sex and religion. This is, for example, the case in **Cyprus**, where the constitution prohibits any direct or indirect discrimination against any person, on various grounds including sex.

In some national constitutions a separate article is devoted to the equal treatment of men and women. In **France**, for example, the principle of equality between men and women was first recognised in 1946, in the Preamble to the **French** Constitution. Also the **German, Hungarian, Luxembourg, Macedonian** and **Slovenian** constitutions contain a specific gender equality clause, often on top of a more general non-discrimination article.

Even the very precise 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**).

2.2. Acts of Parliament

In a number of countries, the principle of equal pay for work of equal value for men and women is only to be found on the level of an Act of Parliament. This is inevitably the case in common law countries with no written constitution, like **the United Kingdom**. But also States that do have a constitution, possibly containing a clause relating to the principle of equal pay for men and women, have adopted legislation that further implements the equal pay principle.

Sometimes the equal pay principle has been laid down in the Labour Code (e.g. **Bulgaria, the Czech Republic, France, Hungary, Latvia, Lithuania, Poland** and **Slovakia**), or even in the Civil Code (**Liechtenstein**).

Sometimes the principle is also to be found in a special equal treatment act, directly aimed at implementing EU equality directives (see above, in the Introduction). Coverage of those Acts of Parliament may vary substantially, both *ratione personae* (employees are usually covered, but sometimes also service providers, liberal professions, independent workers, etc.) and *ratione materiae* (e.g. occupational pensions are sometimes seen as part of 'pay' and sometimes they are not).

Some Acts define what should be understood to constitute equal work or work of equal value (e.g. **Hungary, Romania, Slovakia** and **Sweden**), but very often such definition is lacking, thus leaving it all up to the courts.

In many countries there also exist different Acts for the public and the private sectors (e.g. **Austria, Germany, Luxembourg** and **Portugal**).

3. INSTRUMENTS OF SOCIAL PARTNERS

3.1. Collective bargaining

Collective labour agreements, in particular those concluded on sector level, typically contain minimum pay standards for the branches of industry covered. As a consequence, they should be looked into carefully when doing research on the gender pay gap.

3.1.1. Collective labour agreements must respect the equal pay principle

It is clear that the parties to a collective labour agreement have to comply with the equal pay principle, as laid down in EU law and in various legal provisions (see above, in Section 2 on the legal framework). This implies that the provisions of a collective labour agreement should be in accordance with the

principle of equal pay for men and women, and that lacking such accordance, the related provisions will usually be deemed to be null and void.

That is probably the reason why most collective agreements today do not contain provisions which are *directly* discriminatory. However, many national reports highlighted that collective labour agreements continue to contain provisions with an *indirect* discriminatory impact on female employees' pay. Such indirectly discriminatory provisions include job evaluation and pay systems that are neutral on the face of it, but appear to structurally disadvantage female workers.

3.1.2. Importance of collective labour agreements decreasing

Many national reports (e.g. **Austria, Germany, Hungary, Lithuania, the Netherlands and Sweden**) put the importance of collective labour agreements into perspective. These reports referred to the fact that individual salaries are often individually negotiated far above the bottom lines laid down in the collective agreements, and to the fact that part of the workforce, typically those in higher positions, may not be covered by collective agreements.

The fact that the pay gap is largest among employees in better paid quality jobs (see also above, in Section 1.1.4) shows that the lack of coverage by collective agreements might indeed have a negative impact on the gender pay gap. In **Greece**, for example, it is feared that the recent weakening of national general collective agreements fixing national *minimum* standards will again widen the gender pay gap.

3.1.3. Collective negotiation structure reproducing the gender pay gap

The **Norwegian** and **Swedish** reports also indicated that the collective negotiation structure itself is an element which reproduces differences in men and women's pay. As negotiations are conducted on sector level, sectors dominated by women seem to be at a disadvantage when it comes to negotiate good pay rates. The **Austrian** and **Romanian** reports also stressed the importance of cross-sector comparison of collective agreements and monitoring the implementation of the equal pay principle through the bargaining mechanism.

An example taken from the **Finnish** report illustrates that it is not always easy, however, to try and break through the collective negotiation structure. The judiciary, in particular, is not always prone to approve of experiments in that respect.

The **Finnish** case concerned the negotiation of a municipal collective agreement. One particular trade union was especially dissatisfied with the promised pay rise and managed to achieve for its members a better collective agreement than other unions in the field of healthcare. The Equality Ombudsman participated in the conciliation negotiations and in concluding the collective agreement. The Chancellor of Justice, who supervises the legality of the acts of authorities, received a complaint stating that the collective agreement as restricted to the members of that one union was discriminatory, because other employees performed equal work under other collective agreements for smaller pay. The Assistant Chancellor of Justice confirmed that the collective agreement violated the prohibition of discrimination, on the ground of trade union membership. While the issue at hand was firmly rooted in the gender pay differentials in the municipal sector, it was treated as a matter concerning discrimination on the basis of trade union membership.²⁴

3.2. Measures inducing/obliging social partners to address the gender pay gap

Directive 2006/54/EC (recast) provides that the EU Member States shall, in accordance with national traditions and practice, take adequate measures to promote social dialogue between the social partners with a view to fostering equal treatment, including, for example, through the monitoring of practices in the workplace, in access to employment, vocational training and promotion, as well as through the

²⁴ Decision 11.01.2010 Dnro OKV/1333/2007 by the Assistant Chancellor of Justice Mikko Puumalainen.

monitoring of collective agreements, codes of conduct, research or exchange of experience and good practice.²⁵

Notwithstanding the above provision, the vast majority of the 33 countries questioned have no legal measures in place yet that induce or oblige the social partners to actively address the gender pay gap in collective agreements.

Generally speaking, the social partners are said to oppose to the idea of governmental intervention in this respect (e.g. **Belgium**). If, in a very limited number of countries, the social partners are encouraged by law to adopt measures to tackle (pay) discrimination, such measures are found to be very general and vague (e.g. **Romania**).

A notable exception to the above is the **French** *Génisson* law of 9 May 2001, which has introduced an obligation for the social partners to negotiate on occupational gender equality.²⁶ Another law of 23 March 2006 specified that the gender pay gap must disappear by 31 December 2010.

3.3. Other practices of social partners aimed at tackling the gender pay gap

Given among other things the current employment crisis, the gender pay gap does not appear to be a priority target for the social partners' actions (reported in e.g. **Belgium, Croatia, the Czech Republic, Poland** and **Slovenia**). It is said that their limited interest in the gender pay gap is usually channelled into studies, the declaration of principles, awareness-raising programmes (e.g. an annual equal pay day) and the setting up of substructures (e.g. committees or specific sections within employers' and employees' organisations) devoted to gender equality issues including equal pay, rather than into concrete legal action (reported in e.g. **Finland, Germany, Greece, Iceland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands** and **Poland**).

A recurring item in a number of national reports, however, is the in-depth examination or monitoring of collective labour agreements in order to detect discriminatory provisions, among which provisions that violate the equal pay principle. While one would expect such examinations to be conducted by government bodies (e.g. an ombudsperson or a national equality body), in some countries such examinations are conducted by the social partners themselves (e.g. **Austria**). One may wonder, however, to what extent such examination can be objective, as it is conducted by the bodies that have concluded the collective agreements. The results of such examinations are often used for the development of transparent and non-discriminatory job evaluation systems.

4. INSTRUMENTS SPECIFICALLY AIMED AT EMPLOYERS

Like the social partners, employers are also obliged to comply with the equal pay principle, as laid down in EU law and in various legal provisions (see above, in Section 2 on the legal framework). This obligation serves as an indirect way to realise equal pay for men and women in the workplace. After all, the threat of legal action by individuals and the prospect of significant periods of back pay in the event that they succeed may incite employers to scrutinise their pay policies on their own initiative.

Apart from this, many countries have adopted legislative instruments that specifically oblige or encourage employers to address the issue of the gender pay gap in a more active way. Most of these countries have probably been incited to do so by Directive 2006/54/EC (recast), which asked the EU Member States to encourage employers to promote equal treatment for men and women in a planned and systematic way in the workplace, in access to employment, vocational training and promotion. To this end, employers must be encouraged to provide employees and/or their representatives with appropriate information on equal treatment for men and women in the organisation at appropriate

²⁵ Article 21(1) of Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204 of 26 July 2006, p. 23.

²⁶ See S. Laulom 'Gender Pay Gap in France', *European Gender Equality Law Review* (1/2009) p. 8.

regular intervals. Such information may include an overview of the proportions of men and women at different levels of the organisation; their pay and pay differentials; and possible measures to improve the situation in cooperation with employees' representatives.²⁷

4.1. Measures relating to statistics

Several countries (e.g. **Austria** and **Denmark**) have installed a system that, on certain conditions, obliges employers to deliver gender-specific pay statistics – often on a regular basis – to the competent authorities.

In **Denmark**, the employer can obtain such gender-specific wage statistics free of charge (i.e. at the expense of the Ministry of Employment) if he chooses to use the statistics produced by the Statistical Bureau. If, however, the employer prefers to use a different statistical method, he will have to do so at his own expense.

In **Austria**, employers who do not deliver the required statistics are publicly named on the homepage of the Federal Ministry for Women's Affairs. However, this sanction is reportedly not very deterrent.

4.2. Measures relating to transparency of pay

Many experts have reported a deeply rooted (cultural) taboo regarding the release of information about wages of other people (e.g. **Belgium**, **Malta**). Former communist countries, like **Hungary** and **Lithuania**, have even reported a move back to extreme caution with regard to the release of information about pay from the beginning of the shift to a market economy.

From a legal point of view, information regarding pay is often considered to be private/confidential information under national data protection and privacy legislation. As a consequence, such information generally cannot be released by employers, and neither can employees be obliged to do so. Employees may even be contractually obliged not to inform other employees about their pay (reported e.g. by **the Czech Republic**, **Latvia** and **Slovakia**). In **Poland**, the legality of such contractual non-disclosure clauses is also based on the Law of 16 April 1993 regarding unfair competition.²⁸ **Iceland**, by contrast, has recently adopted legislation that explicitly allows employees, upon their choice, to disclose their pay terms.

The taboo regarding the release of information on pay appears to be greater in the private than in the public sector, where the publication of uniform (but still anonymous) pay scales seems to be common (reported e.g. in **the Netherlands** and **Norway**). When the ban on releasing pay information is loosened, it always seems to happen in the public sector first (e.g. **Latvia**). **Estonia**, by contrast, has reported the exceptional situation that the national pay system in the civil service is not transparent. Although all positions in the civil service are in theory ranked according to fixed salary scales (generally with low pay),²⁹ in practice, civil servants in higher positions often earn salaries that are several times higher. It is clear that different components of the salary are used 'creatively' to move away from the salary scales. Although the **Estonian** Gender Equality and Equal Treatment Commissioner has recently decided that such composition of salaries has at least in one case led to discriminatory treatment,³⁰ this has not yet led to a more widespread analysis of salaries in the public sector.

The idea being that a right to disclosure is vital to enable an individual worker to bring a successful equal pay claim, a number of countries have installed the compulsory delivery of an (anonymous) report

²⁷ Article 21(3) and 21(4) of Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204 of 26 July 2006, p. 23.

²⁸ JoL 1993, n° 47, item 211, with amendments.

²⁹ Wages of Estonian civil servants are regulated by the Civil Service Act, State Civil Servants Official Titles and Salary Scale Act and Government Regulation No. 182 of 30 December 2008 on Remuneration of State Civil Servants.

³⁰ H. Rudi *Ministeerium tegi palka makstes naisametnikule liiga* (Ministry violates rights of female employee in remuneration) – *Postimees*, 24 August 2009, available on: <http://www.postimees.ee/?id=155601&print=1>, accessed 24 August 2009.

showing salaries paid to both women and men, but often also enumerating other elements like the placement of women and men in different jobs, an analysis of the job classification system, pay and pay differentials of women's and men's jobs. Such reports may be examined by a monitoring body, and must sometimes be published and/or delivered to workers' representatives as well. In e.g. **Austria, Finland, France, Italy, Norway** and **Sweden**, such reporting systems have already been introduced.

In some countries, a public authority has been given the right to require from the employer the release of specific pay information on a more *ad hoc basis*, so as to enable an employee to bring a successful equal pay claim. This is, for example, the case in **the Netherlands**, where the Equal Treatment Commission has the power to ask the employer to disclose all necessary pay information as soon as someone has brought a claim in court. In **Greece**, the Data Protection Authority (HDPa),³¹ relying among other things on the principle of equal treatment, has held that the employer must supply a worker with other workers' personal data, when he/she needs them for the review of his/her own assessment by the employer.³²

4.3. Measures regarding public procurement

Although public procurement procedures offer an ideal opportunity for governments to force bidders to comply with the equal pay principle, it appears that only a very limited number of countries have actually made use of this opportunity.

Austria seems to be one of the few countries that have some limited experience in this respect. Also **Norway** and **the United Kingdom** seem to be on their way of introducing legislation that uses public procurement to tackle the gender pay gap.

As there is a great deal of uncertainty about the conformity with EU and national procurement law of the use of public procurement to tackle the gender pay gap, some experts have called for a 'toolbox' or a list of measures that are definitely in conformity with EU law and that could assist the national authorities (see the **Austrian** and the **United Kingdom** reports).

Many experts have linked the absence of any attention for the gender pay gap in public procurement law to a manifest lack of genuine political will (e.g. **Iceland** and **Hungary**) or complete ignorance regarding the possibilities of tackling the gender pay gap through public procurement law (e.g. **Lithuania**).

Notwithstanding the fact that there is very little attention for the gender pay gap in public procurement law, several experts (**Germany** and **Hungary**) highlighted that, even under the current legislation, there are certainly possibilities for the tender announcer to include – by way of so-called 'social criteria' – requirements regarding equal pay in the announcement. Also, in **Spain** there seems to be a possibility to take into account gender-friendly wage policies when comparing several competing bidders.

4.4. Measures regarding the adoption of equality plans/strategies

Sometimes large employers³³ are obliged by law to adopt policy instruments that define how gender equality, including pay equality, will be achieved in the company. Such instruments are known by different names like 'pay mapping' (**Finland**), 'equal opportunity plans' (**Hungary**), 'gender equality programmes' (**Iceland**), 'equality plans' (**Spain**) or 'action plans' (**Sweden**).

An interesting initiative may be found in **Germany**, where national legislation grants employees affected by discrimination a right of appeal to a competent unit within the company. This right corresponds with the employer's duty to establish such a body. Complaints have to be examined and

³¹ The HDPa is an independent authority which issues opinions and recommendations on data protection and imposes administrative sanctions for breaches of data protection legislation.

³² HDPa Decisions Nos. 1/2008 and 35/2008: <http://www.dpa.gr/portal>, accessed 25 March 2010.

³³ It depends on the national law which employers are to be considered as a 'large employer'.

the employee has a right to be heard and to be informed of the results of the considerations. This complaint procedure is no condition for bringing a court claim and the rights of worker representatives remain unaffected. The effectiveness of the procedure still remains to be established.

4.5. Other measures encouraging employers to fight the gender pay gap

The 33 national reports enumerated a wide variety of measures that serve to encourage – as opposed to oblige – employers to fight the gender pay gap.

Such measures include, for example, the possibility for the employer to order an equality audit. In this respect, the **German, Luxembourg and Liechtenstein** reports have referred to *Logib*,³⁴ a tool originally developed in Switzerland, allowing companies to statistically analyse their salary structure to identify gender pay gaps. This tool is generally being presented to the employers by the national governments.

Other measures that have been introduced in a number of countries include the governmental award of labels like ‘best female workplace’ or ‘family-friendly workplace’ (e.g. **France, Hungary and Spain**), and financial incentives like the **Greek** ‘equality prizes’.

Also, brochures and official awareness-raising campaigns targeted at employers are often mentioned among the instruments that are specifically aimed at employers. Such awareness-raising campaigns include initiatives promoting female entrepreneurship.

5. OTHER INSTRUMENTS TO CLOSE THE PAY GAP

5.1. Instruments that may assist individuals to establish pay discrimination

5.1.1. Shifting the burden of proof

Because an employee normally does not have access to the information necessary to bring a successful equal pay claim (i.e. information about the pay of persons who perform the same work or work of equal value), shifting the burden of proof to the opponent (i.e. the employer) is indispensable.

Such reversal of the burden of proof, imposed upon the EU Member States by Directive 97/80/EC³⁵ – as recently replaced by Directive 2006/54/EC (recast)³⁶ – implies that the claimant only needs to establish facts from which it can be presumed that there has been discrimination. Then it is for the defendant (i.e. the employer) to show that no discrimination has taken place, either because there was no different treatment of men and women or because the unequal treatment was justified.

In **Greece**, the rule on the reversal of the burden of proof was included in legislation transposing Directives 97/80 and 2002/73, but was not laid down in the procedural codes, as recommended by the **Greek** Council of State.³⁷ As a consequence, this rule is mostly unknown in **Greece**, and hence not applied.

In **Italy**, the first evidence of discrimination can also be given by statistical data. Also the **German** judiciary has slowly started to accept statistical evidence on the distribution of men and women in different levels of positions to prove discrimination.³⁸

³⁴ *Logib* stands for ‘Lohnleichheit im Betrieb’.

³⁵ Directive 97/80/EC on the burden of proof in cases of discrimination based on sex, OJ L 14 of 20 January 1998, p. 6.

³⁶ Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204 of 26 July 2006, p. 23.

³⁷ See Council of State opinion No. 348/2003 on the legality of the draft decree transposing Directive 97/80.

³⁸ See State Labour Court (*Landesarbeitsgericht, LAG*) Berlin-Brandenburg, 15.Sa.517/08, *Streit* (2009) pp. 22-33. For a discussion of the judgment see J. Heyn & G. Meinel ‘Rückenwind für Diskriminierungsklagen, Die Entscheidung des LAG Berlin-Brandenburg vom 26.11.2008’, *Neue Zeitschrift für Arbeitsrecht (NZA)* 2009 pp.20-23. But also compare LAG Berlin-Brandenburg, 2.Sa.2070/08, *Neue Zeitschrift für Arbeitsrecht – Rechtsprechungsreport (NZA-RR)* 2009 pp. 357-362, where statistical evidence was not admitted in the circumstances of the case.

5.1.2. National equality bodies may help to gather information

Directive 2002/73/EC³⁹ has obliged the EU Member States and the EEA countries to designate national equality bodies. The tasks of these bodies are the promotion, analysis, monitoring and support of equal treatment between women and men, including equal pay. They may form part of agencies with responsibilities at the national level for defending human rights or safeguarding individual rights.⁴⁰

The **Danish** expert reported that her country still has not complied with this provision. **Denmark** consequently does not have an equality body yet that fully satisfies the EU requirements. In some countries a specific ombudsperson performs the functions of the national equality body (reported in e.g. **Greece** and **Latvia**).

The tasks and powers of the national equality bodies are very diverse. A typical competence, however, which is given to the national equality bodies by Directive 2002/73/EC, is the assistance of victims of discrimination by providing advice, information, etc. in pursuing their complaints about discrimination. The **French** national equality body, for example, is in charge of assisting individuals who turn to it in identifying discriminatory practices and countering them. It provides advice on legal options and helps to establish proof of discrimination. It also plays an important role in the dissemination of European concepts related to discrimination. Also the **Slovenian** equality body helps victims of pay discrimination by giving them legal advice.

5.2. Instruments that may assist in establishing gender-neutral job evaluation and pay systems

Several experts have reported that national guidelines for the development of job evaluation systems, pay systems etc. – as a rule – do not contain provisions or instruments directed at supporting the gender-neutral approach (e.g. **the FYR of Macedonia**).

A limited number of experts reported moderate steps in the right direction. In **Germany**, for example, the Government has provided checklists for examining pay systems and identifying potential pitfalls for discrimination.

Still another group of countries, with a number of Northern European countries (**the Netherlands**, **Norway** and **Sweden**) as excellent pupils, seems to already have quite extensive experience with checklists, software programmes and web-based tools to scrutinise evaluation and pay systems for compatibility with the non-discrimination principle.

In **the Netherlands**, for example, reference can be made – among other things – to the ‘*Equal Pay Quick Scan*’. This software programme was developed by the Equal Treatment Commission (ETC) and allows it to analyse the pay data of a company, to see whether an investigation into the pay system of a company is required. This quick scan was applied by the Labour Inspectorate in an investigation of several sectors in the second half of 2005. A simplified version of the quick scan was developed in 2007-2008, for the use of individual employers.

In **Norway**, a white paper recommending the use of pay evaluation as an instrument to achieve equal pay was already presented in 1997.⁴¹ In 1998, the Ministry of Children, Equality and Social Inclusion developed a set of guidelines for gender-neutral work evaluation.⁴² In 2005, a governmental pilot project on the development of a gender-neutral job evaluation scheme was initiated.⁴³ Furthermore, an

³⁹ Directive 2002/73/EC amending Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, OJ L 269 of 5 October 2002, p. 15.

⁴⁰ Article 1(7) of Directive 2002/73/EC.

⁴¹ See: *NOU 1997:10 'Arbeidsvurdering som virkemiddel for likelønn'*: <http://www.regjeringen.no/nb/dep/bld/dok/nouer/1997/nou-1997-10.html?id=116322>, accessed 21 March 2010.

⁴² <http://www.regjeringen.no/nb/dep/bld/kampanjer/familia/familia-12005/diverse-saker/forsok-med-arbeidsvurdering-som-virkemid.html?id=536488>, accessed 21 March 2010.

⁴³ <http://www.regjeringen.no/nb/dep/bld/kampanjer/familia/familia-12005/diverse-saker/forsok-med-arbeidsvurdering-som-virkemid.html?id=536488>, accessed 21 March 2010.

example of a job and pay evaluation scheme is provided in the ombudsperson's brochure aimed at the sector for higher education.⁴⁴

In **Sweden**, the equality ombudsperson also provides specific tools that may assist in establishing gender-neutral job evaluation schemes, pay systems etc.⁴⁵ Reference ought to be made to the pay evaluation scheme '*Analys Lönelots*', and a more general tool for gender equality analysis of pay, '*Jämställdhetsanalys av löner – steg för steg*'.

5.3. Monitoring of collective labour agreements, job evaluation systems, etc.

In most countries, collective labour agreements must be deposited with the ministry of labour. This ministry, however, usually does not have the power to check agreements for compatibility with, for example, the equal pay principle. This does not mean that there is no monitoring at all of collective agreements.

As highlighted before (Section 3.3), in some countries collective labour agreements are scrutinised in order to detect discriminatory provisions, in accordance with the encouragements of Directive 2006/54/EC (recast) (see above, in Section 3.2).

Such examinations are often conducted by a governmental body, usually the national equal treatment body. This is the case for example in **Austria** and **Portugal**.

Monitoring can also be done by research institutions, e.g. universities (**Malta**).

In some countries monitoring is systematic, in other countries collective labour agreements are scrutinised on a more *ad hoc* basis.

5.4. The role of labour inspectorates

Some countries, but not all, know the institution of the labour inspectorate. The labour inspector usually belongs to the national ministry of employment or social affairs and is – generally speaking – charged with monitoring compliance with a number of social law provisions. Competences of this institution may, however, vary substantially from country to country.

In **the Netherlands**, for example, the labour inspectorate has no tasks with respect to the enforcement of equal pay legislation, as it is only competent for general labour conditions and not for the enforcement of the (equal) terms of individual labour contracts. Also in **Romania** it is rather unclear to what extent the labour inspectorate is competent with regard to equal pay legislation. In **Belgium**, the labour inspectorate's powers are also quite limited when it comes to equal pay. The **Belgian** inspectorate's jurisdiction depends on penal sanctions whilst the legislative measures implementing the equal pay principle hardly contain any such sanctions.

In a number of countries, the labour inspectors are clearly competent to intervene when employers do not respect the equal pay principle. In **Italy**, for example, labour inspectors can issue an order to stop the unlawful conduct and allow the employer to discontinue the crime by completing the order and the payment of an administrative sanction.

Many experts have indicated, however, that labour inspectors – even if they have competences in the field – are hardly interested in the gender pay gap and that no serious issues are raised through this mechanism. This seems to be the case in e.g. **Bulgaria, France, Greece, Hungary, Italy, Latvia, Lithuania, the FYR of Macedonia, Poland** and **Portugal**.

In **Norway** the limited interest of the labour inspectorates is said to be due to the fact that the equal pay legislation is the responsibility of the equal treatment bodies.

⁴⁴ www.ldo.no/Global/Brosjyre%20PDF/Utdanning_handbok.pdf, pp. 42-43, accessed 21 March 2010.

⁴⁵ The tools mentioned are available from the Equality Ombudsman website (only in Swedish), on www.do.se, accessed 10 March 2010.

In **Greece**, the labour inspectorates' limited interest is admittedly said to be due to understaffing and lack of material means.

The **Portuguese** report highlighted that employees very often are not willing to inform the labour inspectorates of pay discriminatory practices while their labour contract is still in effect. It is clear that employees may fear retaliation from their employers if they lodged a complaint with the labour inspector.

Some experts highlighted, however, that the labour inspectors' poor attention for the gender pay gap has started to grow (e.g. **Slovakia** and **Spain**), which results in a more active approach.

In **Slovakia**, the labour inspectorate has been monitoring the implementation of the equal pay principle since the year 2002. In the years 2006 and 2007, reviews were conducted with a special focus on 'Determinants of Gender Equality in Industrial Relations'. In 2009 no review with special focus on the equality of remuneration was planned, but it was implemented within the framework of the general inspection, the results of which were summarised in the 'Report on results of labour inspection in the area "Strengthening of Equal Opportunities – Equal Remuneration of Women and Men for the Equal Work and for Work with the Equal Value" for the year 2009'.

In **Spain**, the labour inspectorate has drawn up a programme, valid until 2010, for the supervision of real corporate equality between women and men. For this purpose, the inspectorate has set out equality guidelines for itself to follow, the aim being to provide a methodology by which a complete external analysis can be made of issues affecting equal treatment of men and women in the company.

5.5. Special pay policies

As highlighted above (see Section 1.2.2), gender-based segregation of the labour market is one of the main causes of the continued gender pay gap.

As a consequence, policies aiming at a reduction of the segregation are often prominent in pay equality policies. Reducing the gender segregation of the labour market has been very slow; while girls and women have made their way to male branches, especially those that require high education, men have not entered traditionally female-dominated branches such as education and care – assumingly because of the low pay in these branches.

In this respect, the **Finnish** report pointed out an interesting initiative. A recurring governmental technique in **Finland** is to earmark an amount of money per year as 'equality pot' for municipal employment pay rises targeted at low-paid highly educated 'female' branches.

In **Norway**, the 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, thus targeting the part of the equal pay problem that stems from the gender-segregated employment market.

6. PROBLEMS OF ENFORCEMENT OF EQUAL PAY RULES

6.1. Court proceedings

A considerable number of experts have reported that only very few (or even no) claims on gender pay discrimination make their way up to the competent (regular or administrative) courts (e.g. **Austria, Belgium, France, Croatia, Finland, Greece, Latvia, Liechtenstein, the FYR of Macedonia, Malta, the Netherlands, Norway, Poland, Romania, Slovakia** and **Slovenia**).

Case law on equal pay issues is indeed very scarce. Explanations for such scarcity are multiple, including the problematic scope of comparison, the lack of personal resources of the claimant, problems regarding time limits, limited compensation and sanction possibilities and also lack of trust in the judiciary.

Some national experts also referred to the fact that victims of pay discrimination on the basis of sex are often advised to first try to come to an agreement with their employer (e.g. **Bulgaria** and **the Czech Republic**).

6.1.1. Problematic scope of comparison

It has been indicated above (in Section 4.2) that employees may face substantial difficulties in gathering information regarding pay of colleagues who perform the same work or work of equal value. A preliminary question, however, concerns to whom the employee should compare him/herself (i.e. the 'comparator'). Who performs the same work, or work of equal value? This is one of the most difficult issues when talking about gender pay discrimination.

In the majority of the 33 countries studied in this report, the scope of comparison in pay discrimination claims is not laid down in statutory law. This gives a great deal of leeway to the national courts. **Sweden** is an exception in this respect, with the 2008 Discrimination Act giving a definition of what should be understood to be work of equal value: 'Work is to be regarded as of equal value to other work, if, on overall assessment of the requirements and nature of the work, it can be deemed to be equal in value to the other work. The assessment of the requirements of the work is to take into account criteria such as knowledge and skills, responsibility and effort. In assessing the nature of the work, particular account is to be taken of working conditions.'⁴⁶

Most countries do not accept a hypothetical comparator. An **Irish** court has stated, for example, that a claimant must be able to indicate 'an actual concrete real-life comparator of the other sex' performing like work.⁴⁷ Finding such a real-life comparator, as opposed to the mere hypothetical comparator, proves to be particularly difficult in highly segregated occupations, where fellow workers of the opposite sex are rare or even non-existent.

In **Italy**, however, Article 25 of the Code for Equal Opportunities refers to 'neutral factors, which disadvantage more the workers of one sex compared to the workers of the other sex'. No quantitative elements are necessary anymore and the attention has shifted from the group to the individual. The discriminatory effect can be merely hypothetical and not yet accomplished. This should facilitate the use of the ban on discrimination in relation to the issue of the pay gap, as well. In **France**, the *Cour de Cassation* stated in 2009 that the existence of discrimination does not necessarily imply a comparison with other workers,⁴⁸ thus admitting a very broad scope of comparison, possibly also with a hypothetical comparator.

Courts generally decide that comparisons can only be made within a company. In other words: comparators can never be found with another employer. This is the case in **Bulgaria, Cyprus, the Czech Republic, Hungary, Ireland, Latvia, Lithuania, Norway, Poland, Sweden** and **the United Kingdom**. In doing so, the national courts are faithful to the ECJ, which also tends to restrict comparisons to within the company, the idea being that only in that case the differences in pay can be attributed to one single source (i.e. the employing company).⁴⁹

Cyprus, Ireland and **the United Kingdom** also allow comparisons with employees working for an 'associated employer'. In **the United Kingdom**, the test for this is a corporate one, which requires the employer companies to have the same ownership.

Within the same company or the same sector, several countries allow comparisons between jobs of different occupational categories. This is the case, for example, in **Iceland**, where the Supreme Court has held that a woman's position as manager in the social service sector could be seen as of equal value as a man's position as manager in the technical sector of the same municipality.⁵⁰

⁴⁶ Chapter 3, Section 2, second paragraph of the 2008 Discrimination Act (2008:567).

⁴⁷ J. Budd in *Brides v Minister for Agriculture* [1998] 4 I.R. 250 on p. 270.

⁴⁸ *Cass. Soc.*, 10 November 2009, n° 07-42849.

⁴⁹ Cases C-320/00 *Lawrence* [2002] ECR I-7325 and C-256/01 *Allonby* [2004] ECR I-873.

⁵⁰ *Hrd.* 258/2004.

Cross-employer, and even cross-sector, comparison in general is still unthinkable in most EU, EEA and candidate countries. Still, a number of countries have noted developments in this direction. In **Greece**, comparisons across organisations or sectors are allowed for workers covered by the same wage-fixing instrument. Also in **Malta**, national legislation seems to allow comparisons as wide as the scope of a collective agreement (company or sector level).

It is clear that collective labour agreements, setting minimum pay standards at sector or company level, play an important role in restricting comparisons to within the sector or company. In this respect, the **Austrian** report indicated that the examination of collective labour agreements, to detect indirectly discriminatory provisions (see above, in Paragraph 5.3), might eventually also boil down to cross-employer and cross-sector comparisons. The **Austrian** experience in particular has shown that cross-sector comparison of collective agreements can be realised, when sufficient political will between the social partners is present.

6.1.2. Lack of personal resources of claimants

Very often, employees who are a victim of gender pay discrimination do not have the financial means to start legal proceedings against their employer. Whilst it is true that some countries have installed bodies that advise and assist persons upon submission of complaints regarding (pay) discrimination, such measures do not alter the fact that court proceedings are usually very expensive.

Given the often limited compensation that can be obtained (see below in Section 6.1.4) when a complaint proves to be well-founded, costs for legal assistance and proceedings certainly have a deterrent effect (reported e.g. in the **Croatian** and **Hungarian** reports).

In a number of countries, pay discrimination claims can be brought on behalf of the employee by trade unions (e.g. **Bulgaria, Croatia, Denmark, France, Italy, Latvia, Portugal, Sweden** and **the United Kingdom**), ombudspersons, national equality bodies or other organisations, like non-profit entities or NGOs (e.g. **Bulgaria, Croatia, Italy, Latvia, Sweden** and **the United Kingdom**). In this case, the costs are often borne by these organisations. In **the FYR of Macedonia** legislation enabling trade unions and NGOs to represent victims in court is in the course of being adopted by parliament.

Sometimes claims can even be brought on behalf of a group of victims (e.g. **Bulgaria, Croatia, Denmark, Italy** and **Liechtenstein**). The **Liechtenstein** report highlighted, however, that, in case of a class action, individuals can only be financially compensated when they each start separate and individual proceedings to this end.

The **German** expert considered it to be a great disadvantage that in her country trade unions and the equality body cannot bring claims on behalf of individuals. Also in **Greece** the *locus standi* of trade unions to pursue claims of employees is very limited.

In e.g. **Slovenia** and **Finland**, trade unions and the equality bodies can merely assist victims of pay discrimination with legal advice.

6.1.3. Time limits

Time limits (prescription periods) may also substantially reduce the number of claims that eventually reach the competent courts. Prescription periods are extremely diverse in the 33 countries studied.

In **Belgium** for example, the Employment Contracts Act of 3 July 1978, which applies to an employee challenging gender pay discrimination, imposes a double time limit: the claim must be brought within five years from the disputed facts and, in any case, within one year from the effective termination of the employment contract. For tenured staff members in the public services, the time limit is – generally speaking – five years from the disputed facts. Relying on the **Belgian** Protection of Remuneration Act of 12 April 1965, however, it might be possible to claim compensation for a discrimination that started at the moment the victim was hired by the employer and continued during the whole period of occupation, whatever the duration of such discrimination may have been.

In **Latvia**, however, the general two-year time limit laid down in the Labour Code is not applicable to discrimination cases. As regards discrimination, applicants must bring a claim within three months from the violation of the principle of non-discrimination (equal pay) or from the moment the applicant learned or should have learned about such discrimination.⁵¹ It has been argued many times that such a brief time limit does not correspond to the EU law principles of equality and effectiveness. Also in **Malta** and **the United Kingdom** the very short prescription periods applicable to equal pay claims have been criticized.

In many countries there also seems to be discussion as to when the time limit should start to run: either at the moment the discrimination occurred, or at the moment the victim learned of such discrimination. In **Poland**, for example, the Supreme Court seems to have decided that the crucial moment is the moment when the employee became aware of the discrimination,⁵² which will undoubtedly entail difficulties of proof.

6.1.4. Limited compensation and sanctions

Compensation for gender pay discrimination is in most cases composed of the difference with the salary of the comparator, implying that the highest remuneration is automatically substituted when pay is not equal. In the **Greek** report this has been called the 'levelling up' solution,⁵³ the **German** expert called it '*Anpassung nach oben*'.⁵⁴

The number of months for which compensation can be claimed usually depends on the prescription periods discussed in the previous section (6.1.3). Given the enormous diversity in national prescription periods, the periods that can be covered by compensation also vary substantially. Some experts reported that there are no limits to the period that can be taken into account (e.g. **the Czech Republic** and **France**). **Croatia** and **Italy** mentioned that the amounts of damages that can be paid are not capped.

In some countries, national legislation provides for a lump sum compensation. In **Belgium**, for example, the victim of pay discrimination may apply for either fixed damages equal to six months' pay, or for the compensation of the actual damage, the extent of which must be demonstrated by the victim.

In **Austria** and **Lithuania**, pension rights are not taken into account in determining the amount of compensation or the sanctions. In **Hungary**, by contrast, the employer has to pay (and also deduct) and transfer to the social security fund all social security fees that should have been paid in case of lawful wage setting, thereby correcting the pension entitlement of the employee. Also in **the United Kingdom**, missed contributions to pension schemes are allegedly included as an element of pay that is to be compensated.

In e.g. **Cyprus**, **Iceland**, **Lithuania** and **Romania**, damages include pecuniary satisfaction to compensate for moral damages caused to the claimant by the offender.

Sometimes also criminal sanctions are provided by law. This is the case, for example, in **Italy**. The **Lithuanian** report referred to the possibility of imposing administrative fines.

6.1.5. Lack of trust in the judiciary

The **Croatian** expert also indicated a lack of trust in the judiciary as one of the reasons why very few gender pay discrimination cases reach the courts. Such lack of trust includes suspicion of corruption within the courts, but also the belief that the courts simply do not have the capacity to effectively deal with complex cases like pay discrimination on the basis of sex.

⁵¹ Articles 34(1), 48(2), 60(3), 95(2) of the Labour Code (*Darba likums*).

⁵² I PK 242/06.

⁵³ See S. Koukoulis Spiliotopoulos 'Gender equality in Greece and effective judicial protection: issues of general relevance in employment relationships', *Neue Zeitschrift für Arbeitsrecht* Beilage 2/2008, pp. 74-82.

⁵⁴ R. Winter in: W. Däubler (ed.) *Tarifvertragsgesetz*, § 1, marginal notes 455 et seq. (with further references) Baden-Baden, Nomos 2nd ed. 2006.

Also the **Portuguese** report referred to the fact that technical notions related to pay discrimination (e.g. the notions of direct and indirect discrimination, and of work of equal value) remain unclear to courts and also labour inspectors. The **Finnish** report voiced similar thoughts with respect to labour union lawyers and general lawyers, who are said to prefer to handle cases on the basis of ordinary labour law, and leave non-discrimination law out of the picture.

6.2. Procedures before national equality bodies

As highlighted above (in Section 5.1.2), national equality bodies may have very diverse competences.

Some equality bodies have the authority to hear complaints on gender equality (including equal pay). The way in which the procedure is organised, and the outcome of the procedure (binding or non-binding opinions, mediation, etc.) varies from country to country.

In **Hungary**, for example, the equality body can proceed only in case of violation of the provisions relating to equal treatment and normally it only acts upon a claim. It has no power, however, to promote active measures to close the pay gap. If violation of equal pay is found, it can stop the unlawful practice, and can impose a fine, but it cannot award financial compensation. An interesting additional sanction is the publication of the final and binding decision on the equality body's website whereby the employer is excluded from the qualification of having 'orderly labour relations', a precondition of applying for public money.

Also in **Latvia**, the national equality body opens investigation cases in response to complaints of individuals.

In **Greece**, the equality body opens investigations, but cannot start judicial proceedings. It takes binding decisions or imposes sanctions, mainly through mediation.

Procedures before the national equality bodies are generally free of charge and bringing the claim is usually straightforward and not formalistic. Sometimes the claim can even be brought on behalf of the employee, e.g. by the ombudsperson (e.g. **Cyprus**). Moreover, the national equality bodies have substantial know-how in discrimination matters, which makes them particularly well-equipped institutions to deal with cases of pay discrimination on the basis of sex.

Because of the above-mentioned advantages, the procedure before the national equality body is, in some countries, a good alternative for bringing the case before the ordinary courts. In **Norway**, for example, the procedure before the national equality body is allegedly so efficient that nearly no cases end up before the courts.

However, some experts (e.g. **Bulgaria**) have reported a high number of complaints to the national equality bodies, resulting in a considerable backlog.

Other experts registered very few claims regarding the gender pay gap presented to the equality bodies (e.g. **Luxembourg**). In **the FYR of Macedonia** the equality body was said to be much too passive. Also in **Lithuania**, the national equality body reportedly is not very interested in problems of equal pay for men and women. In **Estonia** concerns have been expressed about insufficient financial resources and staff for the equality body to fulfil its competences effectively.

7. RELATIONSHIP BETWEEN THE GENDER PAY GAP AND OTHER PARTS OF LAW

The experts of the 33 countries were asked in particular to check whether other parts of law, e.g. labour law – other than just those provisions directly connected to equal pay for equal work for men and women – could influence the gender pay gap. This question was meant to invite the national experts to think out of the box, and beyond the ordinary boundaries.

As will become clear in the following sections, this question implies that many of the explanations for the - unadjusted - gender pay gap (see above, in Paragraph 1.2) should be revisited in order to find out whether the legislation regarding these explanations still reflects discriminatory practices and ideas.

7.1. Part-time work

Many countries have adopted legislation guaranteeing equal treatment for part-time and full-time workers, which is in full accordance with the principle of non-discrimination between full-time and part-time employees as laid down in Directive 97/81/EC (part-time work).⁵⁵ Quite contrary to this, one can still detect legislative measures regarding part-time employees that influence the gender pay gap in an indirect way.

In **Belgium**, for example, the courts' views have recently clashed with regard to the question whether the notice period and payment in lieu of notice on termination of a part-time employment contract should be calculated on the basis of the full-time or the part-time remuneration. Generally, the **Belgian** courts have refused to see the gender dimension of this issue and its obvious impact on the gender pay gap.

The **Norwegian** expert referred to the working hours regulations laid down in the Working Environment Act of 17 June 2005 (WEA). The specific regulations with regard to part-time work have resulted in a practice by the employers in the female-dominated health sector, like e.g. hospitals, to work with many small part-time positions (rather than full-time positions), in order to facilitate shift work/rotational work and avoid overtime pay. In Norway, it is hard to find comparable male-dominated professions with an equally high number of part-time positions. According to the **Norwegian** expert, it is typical that, with regard to Acts like the **Norwegian** WEA, the gender perspective is lost. After all, the WEA does not contain gender equality and equal pay provisions, and seems to work – at least at first sight – within the gender-neutral context of working hours arrangements.

7.2. Overtime

In recent years, **Belgian** employers' organisations have exerted pressure on the Federal Government to adopt legislation allowing more flexible and cheaper overtime work, the current legislative measures being too strict and too expensive in their view. The Government has partly met these requests by reducing taxes on overtime pay. The **Belgian** expert warned that making overtime easier and cheaper for employers entails the risk of negatively impacting those workers – mostly women – for whom the performance of overtime work clashes with e.g. family duties. Their pay will not be increased with overtime pay and, as a consequence, the gender pay gap will rise.

In **Bulgaria**, the sectors where women tend to work overtime – i.e. sectors with high female presence – the remuneration for such overtime work is usually very low. If these women receive additional pay for overtime work, it is usually part of the grey economy and thus not counted for social security purposes. Also, the **Croatian** report pointed out that many women work overtime, in particular in the trading sector which appears to be dominated by women, but are not paid for it at the increased rate, as provided by law.

In **Greece**, part-timers receive additional overtime pay for work in excess of their part-time hours at a rate that is lower than the full-timers' rate. They receive the same rate as full-timers only where they exceed the full-time limits. Also in **Latvia**, issues on pay for overtime with regard to part-time workers are not regulated. Whilst, in the nineties, the ECJ defended the position that overtime pay for work in excess of part-time hours is only due for hours that exceed full-time limits,⁵⁶ more recent case law of the ECJ seems to be more favourable to part-time workers.⁵⁷

In **Lithuania**, certain groups of women (e.g. pregnant women, women who are breastfeeding, women raising young children, etc.) are prohibited by law to work overtime without their consent.

⁵⁵ Clause 4 of the Directive 97/81/EC concerning the framework agreement on part-time work concluded by *UNICE, CEEP* and *ETUC*, OJ L 14, of 20 January 1998, p. 9.

⁵⁶ Case C-399/92 *Helmig* [1994] ECR I-5727.

⁵⁷ Case C-285/02 *Elsner-Lakeberg* [2004] ECR I-5861.

7.3. Temporary (fixed-term) work arrangements

In many countries, fixed-term contracts constitute an exception only allowed for explicitly prescribed reasons. This is in line with Directive 1999/70/EC (fixed-term work) which intended to eradicate abuse arising from the use of successive fixed-term employment contracts or relationships.⁵⁸

Notwithstanding the above-mentioned principle, many countries reported the 'creative' use of fixed-term contracts, which eventually works to the disadvantage of female employees.

Croatia, for example, reported higher abuse of fixed-term contracts in sectors dominated by women, such as the trading sector. Also in **Greece**, state schoolteachers employed on a private-law fixed-term contract – a quite large and overwhelmingly female category – are disadvantaged as to their pay: e.g. their seniority/length of service is not taken into account for the calculation of their pay, and they cannot work overtime.

In some countries (e.g. **Italy**) the more flexible use of fixed-term contracts was allowed in order to improve female labour market participation. However, allegedly no positive effect from this on the gender pay gap could be recorded, as we are talking about precarious and low-paid jobs.

7.4. Posting of workers

The United Kingdom highlighted that, in particular in the public sector, the posting of workers, or contracting-out, has been one of the most significant downward drivers of female pay. Contractors undercut public sector rates either for all staff or for new recruits.

7.5. Issues related to reconciliation of work and family life

Many national reports referred to the high level of protection of labour law with regard to female workers, and the negative influence this may have on women's pay (e.g. **Croatia, the Czech Republic, Italy, Lithuania, Slovakia** and **Turkey**).

For example, lengthy family-related leaves – although to be welcomed at first sight – eventually work to the disadvantage of female employees and have a negative impact on the gender pay gap in a double way. In the first place, the social security benefits (if any) that go along with such leaves – whatever their amount may be – never reach the level of normal pay (see e.g. the **Bulgarian** and **Croatian** reports). In the second place, the employee faces the risk of receiving lower pay/missing pay rises from the employer due to the taking up of (lengthy) family-related leaves (reported by the **Croatian** and **Slovenian** experts).

Also, the **Irish** expert suggested that policies to support continuity in women's employment could help to reduce the gender pay gap. She referred to a national report that came to the remarkable, though somewhat confusing conclusion that of all flexible arrangements only career breaks are found to reduce the gender pay gap (also see above, in Section 1.2.3).⁵⁹

The **Swedish** report indicated that in collective labour agreements, parental pay rights tend to reflect 'the need' of the typical member in the relevant area of the labour market. This said to reinforce gender segregation in labour markets (making women prefer the public sector) and the gender-biased 'parental-leave behaviour'. Still, no discrimination in the legal sense is at hand, talking about gender-neutral rules in different sectors and branches of the labour market.

⁵⁸ Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, OJ L 175 of 10 July 1999, p. 43.

⁵⁹ See the joint report from both the Equality Authority and the Economic and Social Research Institute entitled *The Gender Wage Gap in Ireland – Evidence from the National Employment Survey 2003*, published in September 2009 by S. McGuinness et al., available on <http://www.equality.ie/index.asp?locID=105&docID=817>, accessed 23 March 2010.

Croatia also questioned its national ban on night work for pregnant women, except when approved by a medical doctor and irrespective of the woman's personal interests.⁶⁰ As night work is remunerated better than daytime work, the effect on the gender pay gap is obvious.

A similar question was posed by the **Macedonian** expert. In **the FYR of Macedonia**, a female worker with a child until the age of three cannot be obliged to do night shifts, whilst this only applies to fathers on strict conditions, e.g. when the mother has left the child. This implies that female workers are more often in a position to reject highly paid night work, which will negatively affect the gender pay gap. It even means that, on the family level, parents who want to switch their obligations (because of better payment of the woman's job), cannot do so.

The **Turkish** report mentioned the legal obligation for large employers to establish pre-school classes and providing childcare facilities at the employer's expense. One can easily imagine that such measures discourage employers from hiring women.

The **Italian** and **United Kingdom** experts both highlighted that rules inducing fathers to take up leaves would be very useful to progressively reduce the gender pay gap. In this respect, it is worthwhile to mention a project started by the **Polish** Ministry of Labour and Social Policy on the 'Reconciliation of professional and family roles of women and men'. This project involves research and training of employers and trade unions on new legal opportunities facilitating such reconciliation, including the 2008 law amendment, which allows to cover from enterprises' social funds the children's day-care services organised at the workplace.

7.6. Party autonomy in contract law

Several national experts (e.g. **the Netherlands**) highlighted that party autonomy in contract law may be an important cause of unequal pay. It is a well-known fact that women, when negotiating the terms of their labour contract, are not so keen on getting a salary as high as men's. They often prefer to negotiate about other contractual terms instead (e.g. having the possibility to work flexible hours, or the possibility to do part of the work at home).

As already mentioned before, however, party autonomy is not absolute as the employer is bound by legal provisions recognising the principle of equal pay for men and women (see Section 4), and possibly also by collective labour agreements (see Section 3.1.2).

7.7. Measures to fight unemployment

In many countries (reported e.g. in the **Belgian** and **Greek** reports) the number of unemployed women is higher than the number of unemployed men. As a consequence, measures that fight unemployment can have an impact on the gender pay gap, and sometimes they may even be targeted at the female unemployed in particular.

In **Greece**, for example, measures to combat unemployment include subsidies (funded by the European Social Fund) to employers for hiring unemployed workers, or to young unemployed for setting up a business. They favour women directly (by giving them priority) or indirectly (by giving priority to mostly 'female' categories, such as the long-term unemployed or single-family heads).

Also in **Bulgaria**, **Hungary** and **Italy**, women (in particular women with small children) are said to use measures and special policies to fight unemployment more often than men. Such measures and policies are often related to ensuring (subsidised) employment, but at a low level of pay (usually at the

⁶⁰ Note that this is the opposite of what Directive 92/85/EEC (pregnancy) provides in its Article 7: subject to the submission of a medical certificate, pregnant workers cannot be obliged to perform night work. See Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), OJ L 348, of 28 November 1992, p. 1.

level of the minimum wage). Thus women more often accept receiving lower pay, which does not positively affect the gender pay gap.

7.8. Pensionable age and pension systems

As stressed in the **Italian** report, most pension systems are structured in such a way that they mirror any differences in women's working patterns. After all, it is typical of a pension system to create links between pay and contributions on the one hand, and the amount of pension benefits on the other.

In **Bulgaria**, women's pensionable age in the first pillar of social security is still lower than men's. As a consequence, the unequal pay reflects directly on their pensions.

In **Greece**, statutory provisions and internal rules allow dismissal at the pensionable age, which is still often lower for women than for men. As a consequence, women are deprived of possibilities of promotion and higher pay and pension. The Supreme Civil Court found these provisions contrary to the equal treatment principle,⁶¹ but the relevant measures remain on the books and continue to be applied.

7.9. Measures regarding seniority/length of service/evaluation

In some countries, collective agreements or other measures provide for allowances for length of service with an employer (e.g. **Greece** and **the United Kingdom**). Length of service often is also a condition for the calculation of redundancy pay. This is the case, for example, in **Greece**. Women are clearly disadvantaged by this system due to frequent career breaks and also atypical work arrangements. Whilst the **Latvian** labour legislation requires taking into account the time spent on childcare leave for purposes of seniority, this does not seem to happen in reality.

The **Croatian** report referred to a legal rule providing that civil servants who have been absent from work for more than six months within a period of one year will not be subject to work evaluation, regardless of the reasons for such absence.⁶² It is clear that this apparently neutral provision works to the disadvantage of women's possibilities of promotion, and consequently also their pay. Moreover, it is also contrary to the case law of the ECJ.⁶³

7.10. Provisions of family law

The **Latvian** report was the only one to also focus on family law provisions. The interpretation and application of the national provisions on guardianship over children after divorce, and the amount of maintenance payments were said to create serious obstacles for the equal opportunities of women in the labour market, and for equal pay in particular.

For example, although **Latvian** civil law provides that every parent has a duty to perform daily care of his/her child, there is no enforcement mechanism to force an unwilling parent (usually fathers) to perform his/her duties. In addition to this, due to stereotypical ideas regarding social roles – which are still widely spread among national courts – it proves to be impossible to obtain an increase in the maintenance payment with a view to compensate for such unequal sharing of the childrearing burdens.

Generally speaking, one could imagine that many national provisions on guardianship after divorce still work to the advantage of the mother, which at the same time clearly negatively affects the mother's wage-earning capacities. Also here, the obligatory and more evenly shared implication of fathers in guardianship after divorce could eventually have a positive effect on the gender pay gap.

⁶¹ Supreme Civil Court Nos. 85/1995, 449/1999 (Article 5(1) Act 435/1976).

⁶² Article 82 of the State Officials Act.

⁶³ Case C-136/95 *Thibault* ECR [1998] I-2011.

8. SOME GOOD PRACTICES

National instruments to fight the gender pay gap are very diverse. Still, many national experts concluded that their respective governments are not doing enough.

It is remarkable that many national reports called for more compulsory measures, as mere voluntary instruments are said to be insufficient.

In this respect, there was a recurring call for legislation obliging employers to publish detailed information regarding wages paid and other advantages given to employees within the company. Compulsory reporting systems like the ones that currently exist in e.g. **Austria, Finland, France, Italy, Norway** and **Sweden**, can serve as good practices.

Also the compulsory equal pay plans, to be drafted by large employers in Nordic countries like **Finland, Iceland** and **Sweden**, but also in **Spain**, were highlighted as good practices.

Since one of the explanations for the unadjusted pay gap is that it is caused by the low wages that are being paid in highly feminised branches of the public sector, the **Finnish** government initiative to earmark an amount of money as 'equality pot' meant for municipal employment pay rises targeted at low-paid highly educated 'female' branches is a very good practice that could inspire other countries. **Norway** seems to have followed the Finnish example by adopting, in May 2010, a considerable pay rise in the female-dominated professions of the public sector.

As far as the social partners are concerned, the compulsory negotiations on occupational gender equality (including equal pay), as imposed by the **French** *Génisson law* are exceptional, and can certainly be called an excellent practice. After all, many countries have indicated that the social partners in their countries are not interested in the gender pay gap. Compulsory negotiations on the matter thus seem to be the only way to place the issue on the social partners' agenda.

Also the systematic and compulsory analysis of all collective labour agreements by an independent governmental body (e.g. a national equality body) would be a good way to force social partners to take into account the principle of equal pay for male and female workers. In this respect, **Austria** and **Portugal** can serve as good practices.

A number of national experts also called for measures that oblige men to be more actively involved in household and childrearing tasks. This would, according to the **Italian** and **United Kingdom** experts, be the only way to fight the gender stereotype that involves the reconciliation of family and work life, and would eventually also have a positive impact on the gender pay gap. Here, the **Polish** project on the 'Reconciliation of professional and family roles of women and men' could be mentioned as good practice.

As regards the enforcement of equal pay provisions, several reports stressed the importance of class action suits, which in many countries are still not available.

Finally, reference should also be made to **Austria**, being one of the few countries that have – limited – experience with public procurement as a instrument for fighting the gender pay gap. Many experts regretted that their governments still do not use this ideal opportunity to force bidders to comply with the equal pay principle, thus indirectly diminishing the gender pay gap.

9. CONCLUSION

An unadjusted gender pay gap of 17.6 % (EU average in 2007) constitutes a considerable challenge for the European Commission. This is particularly true, as progress in closing the pay gap appears to be very slow, with an obvious increasing trend in the pay gap in a substantial number of countries. It is clear that the average of 17.6 % masks a number of differentiations, which do not only concern differences among the countries. For example, on a transnational level, the gender pay gap tends to be higher in the private sector, in the 30-49 age bracket, in particular sectors of industry (e.g. finance, insurance and healthcare), and for people with either lower education or postgraduate education.

Parts of the unadjusted gender pay gap can certainly be explained by phenomena like the disproportionate representation of women in part-time and temporary work, the horizontal and vertical segregation of the labour market, and women's frequent career interruptions. Still, the part of the gender pay gap that remains unexplained (i.e. the adjusted gender pay gap) continues to be significant.⁶⁴

This disappointing state of affairs has encouraged the European Commission to remain very active in the area of equal pay for men and women, and to further update and develop its information on the gender pay gap. In that respect the Commission asked its *Network of Legal Experts in the Field of Gender Equality*⁶⁵ to send out a detailed questionnaire to the legal experts of this Network. The national reports cover 33 states (the 27 EU Member States, the three EEA countries and Croatia, the FYR of Macedonia and Turkey).⁶⁶ The Commission wanted to obtain better data on the national policies, initiatives and legal instruments aimed at tackling the gender pay gap in practice, and to explore the potential links between equal pay and other national labour law provisions.

The answers provided to the questionnaire have clearly shown that in many countries the gender pay gap is not very high on the agenda of national governments and social partners. Still, the national legal experts pointed out some interesting instruments (legislative provisions, and other – soft-law and non-enforceable – measures) targeted at social partners or employers, which definitely contain good possibilities for combating the gender pay gap.

As far as the social partners are concerned, many national reports have highlighted that collective labour agreements continue to contain provisions with an *indirect* discriminatory impact on female employees' pay. Such indirectly discriminatory provisions include job evaluation and pay systems that are neutral on the face of it, but appear to structurally disadvantage female workers. In this respect national experts have welcomed instruments involving the systematic and compulsory analysis (sometimes by the social partners themselves) of all collective labour agreements in order to detect provisions that violate the equal pay principle.

Experts have also presented several measures targeted at employers. The most frequent ones include measures relating to the compulsory delivery by the employers of gender-specific pay statistics, measures relating to transparency of pay, and measures regarding the compulsory adoption by employers of equality plans or strategies. Although public procurement procedures would reportedly offer an ideal opportunity for governments to force bidders to comply with the equal pay principle, it appears from the national reports that only a very limited number of countries have actually made use of this opportunity. There is certainly room for a more proactive policy in the national public procurement field.

The 33 national experts have also presented a wide variety of other measures aimed at tackling the gender pay gap. Some of the most interesting measures include those that may assist in establishing gender-neutral job evaluation and pay systems. Furthermore, a number of Scandinavian countries have reported novel initiatives trying to remedy the gender segregation of the labour market, through pay rises paid out of an 'earmarked' source and targeted at low-paid and highly feminised branches of the economy (e.g. healthcare).

The enforcement of equal pay rules is reportedly problematic. Case law on equal pay issues indeed remains very scarce. One of the explanations is the problematic scope of comparison. Many countries do not accept a hypothetical comparator and cross-employer and cross-sector comparison is still

⁶⁴ A. Dupuy, D. Fouarge and B. Buligescu have advanced that, depending on the country studied, the adjusted gender pay gap is similar, smaller or even larger than the unadjusted gender pay gap. See *Development of econometric methods to evaluate the gender pay gap using structure of earnings survey data*, a study carried out by the Research Center for Education and the Labour Market at Maastricht University, Eurostat, 2009, available on http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/KS-RA-09-011/EN/KS-RA-09-011-EN.PDF, accessed 23 June 2010.

⁶⁵ For more information on the Network, see the European Commission's website on <http://ec.europa.eu/social/main.jsp?catId=748&langId=en>, accessed 3 May 2010.

⁶⁶ The 33 national reports are available on the Network's website: <http://ec.europa.eu/social/main.jsp?catId=641&langId=en>, accessed 21 June 2010.

unthinkable in most countries. Other explanations relate to the lack of personal resources of the claimant, problems regarding time limits, limited compensation and sanction possibilities and finally, in some countries, also the lack of trust in the judiciary.

As hoped for, the 33 national reports also uncovered a number of interesting links between the gender pay gap on the one hand and other parts of law on the other hand. Some of these links are rather unexpected, and provide a novel view on the gender pay gap. The link with the posting of workers, for example, was signalled by only one country, but is without any doubt relevant to many other countries. The posting of workers, also referred to as contracting out, would be one of the most significant downward drivers of female pay, especially in the public sector.

Research with regard to the discovery of such unexpected links should be encouraged. As direct instances of pay discrimination have become rather exceptional in most of the 33 countries involved, the focus for legal action by both the EU and the Member States should be on the indirect instances of discrimination, including the unexpected and unattended ones.

Annex I Selected Bibliography

- S. ALLEGREZZA et al. 'Egalité hommes-femmes, mythe ou réalité?' in: *Cahiers économiques* No. 105, November 2007.
- A. ANDERSEN, R. Nielsen & K. Precht *Ligestillingslovene med kommentarer, 5. udgave, Bind II - Ligebehandlingsloven, ligelønsloven, barselloven, barselsudligningsloven og loven ligebehandling i forbindelse med pension, forsikring og lignende finansielle ydelser* Copenhagen, 2010.
- D. F. ANGEL-URDINOLA *Can the Introduction of a Minimum Wage in FYR Macedonia Decrease the Gender Wage Gap?*, Policy Research Working Paper 4795, The World Bank, Europe and Central Asia Region Human Development Sector Unit, 2008.
- R. ANKER 'Theories of Occupational Segregation by Sex: An Overview', *International Labour Review* 136(3) (1997) pp. 1–25.
- W. ARULAMPALAM, A. BOOTH & M. BRYAN 'Is There a Glass Ceiling over Europe? Exploring the Gender Pay Gap across the Wage Distribution', *Industrial and Labor Relations Review* 60 No. 2 (January 2007) pp. 163–186.
- H. AUNE *Deltidsarbeid. Vern mot diskriminering på strukturelt og individuelt grunnlag* (Part-time work. Protection against discrimination on a structural and individual level) PhD at the University of Oslo, February 2009. Under publication in Norwegian by Cappelen Damm Publishing House, Oslo during 2010.
- H. G. BAMBERGER & H. ROTH *Beck'scher Online-Kommentar zum AGG* Munich, C.H. Beck 2010.
- C. BAYART ET AL. *Les nouvelles lois luttant contre la discrimination* Bruxelles, La Charte 2008.
- K.-J. BIEBACK *Die mittelbare Diskriminierung wegen des Geschlechts* Baden-Baden, Nomos 1997.
- A. BILIĆ 'Discrimination in European Labour Law', 44 *Zbornik radova Pravnog fakulteta u Splitu* No. 3-4 (2007).
- B. R. BJØRST *Ligeløn for job af samme værdi* Copenhagen, 2005.
- D. BLACKABY, A. BOOTH & J. FRANK 'Outside Offers And The Gender Pay Gap: Empirical Evidence From the UK Academic Labour Market', *The Economic Journal* 115 No. 501 (January 2005) pp. 81-107.
- BMFSFJ *Engeltgleichheit zwischen Frauen und Männern in Deutschland* Berlin, 2009, <http://www.bmfsfj.de>
- BMFSFJ *Atlas zur Gleichstellung von Frauen und Männern in Deutschland* Berlin 2009, <http://www.bmfsfj.de>
- BMFSFJ *Geschlechtsspezifische Lohndifferenzen nach dem Berufsstart und in der ersten Berufsphase* Berlin, 2009, <http://www.bmfsfj.de>
- S. BORBÉLY ET AL. *Górcső alatt a női ágazatok* (Female sectors under loupe) Budapest, Marmol Bt. Co. 2009. Only in Hungarian: <http://www.berbarometer.hu/main/kutatasaink-kiadvanyok/>
- S. BORBÉLY & M. VANICSEK *A nők és férfiak bére közötti különbségek. Helyzetkép és javaslatok – a BérBarométer 10000-es mintája alapján*. (Differences between the wages of men and women. The state of affairs and proposals on the basis of 10,000 sample of the Wage Barometer) Budapest, 2008. Only in Hungarian: <http://www.berbarometer.hu/main/equal3-beliv-1.pdf>
- P. BOUČKOVÁ ET AL. *Antidiskriminační zákon – komentář* Prague, C.H. Beck 2010 (in print).
- H. BRÆKHUS 'Likelønn – markedslønn. I hvilken utstrekning kan markedslønn begrunne lønnsdifferensiering etter likestillingslovens § 5?' in: H. Aune et al. *Arbeid og rett. Festskrift til Henning Jakhellns 70-årsdag* Oslo, Cappelen Damm Publishing House 2009.
- H. BRÆKHUS 'Likelønn og likestilling i familien', published by Festskrift til Jussformidlingens 35-årsjubileum (2008) p. 47 - (FEST-2008-uib-47).
- H. BRÆKHUS *forfater av kapittel 7 'Likelønn' i boken 'Diskriminerings- og likestillingsrett', Hellum og Ketscher (red.)* Oslo, Universitetsforlaget 2008.
- E. BRAINERD 'Women in Transition: Changes in Gender Wage Differential in Eastern Europe and the Former Soviet Union', *Industrial and Labor Relations Review* 54 (2000-2001).
- BRITISH OFFICE FOR NATIONAL STATISTICS *Statistical Bulletin*, <http://www.statistics.gov.uk/pdfdir/lmsuk0310.pdf>
- L. CARLSON *Searching for Equality, Sex Discrimination, Parental Leave and the Swedish Model with Comparisons to EU, UK and US Law* Uppsala, Iustus Förlag 2007.
- N. ÇAĞATAY & G. BERIK 'Transition to Export-led Growth in Turkey: Is There a Feminization of Employment?', *Review of Radical Political Economics* 22(1) (1990) pp. 115–34.

- ČMKOS *Kolektivní vyjednávání aneb uplatnění rovnosti mužů a žen v praxi* Prague, ČMKOS 2007.
- CONSEIL ÉCONOMIQUE, SOCIAL ET ENVIRONNEMENTAL *1968-2008: évolution et prospective de la situation des femmes dans la société française*, Avis et Rapport, 2009.
- E. CREMERS & M. VEGTER 'Geslacht' in: J.H. Gerards (ed.), *Gelijke Behandeling, Oordelen en Commentaren 2007* pp. 59-80 Nijmegen, Wolf Legal Publishers 2008.
- E. CREMERS & M. VEGTER 'Geslacht' in: J.H. Gerards & P.J.J. Zoontjens (eds), *Gelijke Behandeling, Oordelen en Commentaren 2008* pp. 61-81 Nijmegen, Wolf Legal Publishers 2009.
- E. CUDEVILLE & L.Y. GÜRBÜZER 'Gender Wage Discrimination in the Turkish labour market', Paper presented at the JMA, Fribourg, June 2007 and the ECINEQ Conference, Berlin, July 2007; <http://halshs.archives-ouvertes.fr/docs/00/18/87/45/PDF/Bla07067.pdf>
- J. CVIKOVÁ (ED.) *Equal pay for equal work? Aspects of the gender pay gap*, http://www.aspekt.sk/download/summary_web_new.pdf
- CZAJKA *Wynagrodzenia kobiet i mężczyzn w Polsce w 2009* (The salaries of men and women in Poland in 2009), Sedlak & Sedlak, <http://www.wynagrodzenia.pl>
- W. DÄUBLER *Teilzeit- und Befristungsgesetz* Baden-Baden, Nomos 2007 (new edition forthcoming).
- W. DÄUBLER & M. BERTZBACH (EDS.) *Allgemeines Gleichbehandlungsgesetz* Baden-Baden, Nomos 2nd ed. 2008.
- R. DAVIES & G. PIERRE 'The family gap in pay in Europe: a cross-country study', *Labour Economics* 12 Issue 4 (August 2005) pp. 469-486.
- T. DAVULIS *Darbo teisė: Europos Sąjunga ir Lietuva* Teisinės informacijos centras 2004, pp. 238-255.
- T. DAVULIS ET AL. *Europos Sąjungos teisės aktų įgyvendinimas Lietuvos darbo teisėje* Teisinės informacijos centras 2008, pp. 144-148.
- M. DAYIOĞLU & Z. KASNAKOĞLU 'Kentsel Kesimde Kadın ve Erkeklerin İşgücüne Katılımları ve Kazanç Farklılıkları' (Women's Labour Force Participation and Earnings Differentials between Genders in Turkey), *METU Studies* 24(3) (1997) pp. 329-361.
- M. DAYIOĞLU & İ. TUNALI *Falling Behind While Catching Up: Changes in the Female-Male Differential in Urban Turkey, 1988 to 1994* EALE/SOLE 2005, unpublished paper.
- M. DAYIOĞLU & M. KIRDAR 'Determinants of and Trends in Labour Force Participation of Women in Turkey' unpublished background paper prepared for the SPO-WB report 'Female Labour Force Participation in Turkey: Trends, Determinants and Policy Framework' (February 2009).
- M. DEDING & M. LARSEN 'Lønforskelle mellem mænd og kvinder 1997-2006' in: *Rapport 08:28 SFI - Det nationale forskningscenter for velfærd* Copenhagen, 2008.
- DEUTSCHER BUNDESTAG, 'Bericht der Bundesregierung zur Berufs- und Einkommenssituation von Frauen und Männern' in: Deutscher Bundestag, *Bundestagsdrucksache 14/8952* Berlin, 2002.
- DIRECTION GÉNÉRALE DU TRAVAIL *La négociation collective en 2008*, Ministère du travail, juin 2009, http://www.travail-solidarite.gouv.fr/IMG/pdf/Bilan_NC_2008.pdf
- V. DONLEVY & R. SILVERA *Kasu ja tasakaal: soolise võrdõiguslikkuse edendamise retseptiraamat Eesti ettevõtete juhtidele* (Gender Equality in your Company: the recipes for success), http://www.sm.ee/fileadmin/meedia/Dokumendid/Sotsiaalvaldkond/sooline_v6/Retseptiraamat_INGLISE_keeles.pdf
- K. DUPATE *Latvijas tiesu prakse diskriminācijas aizlieguma pārkāpuma lietās darba tiesiskajās attiecībās* (National court practice in discrimination cases in the field of employment), Tiesībsargs, 2007.
- K. DUPATE 'Vai Darba likums atbilst Eiropas Savienības tiesībām' (Whether the Labour Law corresponds with EU law), *Jurista Vārds* Nos 36, 37 (21 and 26 September 2004).
- K. DUPATE 'Vidējās izpeļņas aprēķināšana un vienlīdzīga darba samaksa' (Calculation of average pay and equal pay), *Jurista Vārds* No. 40 (6 October 2009).
- V. ECKER & G. THOMAS *Rapport sur la législation et la jurisprudence luxembourgeoises en matière d'égalité de salaire entre les femmes et les hommes* Ministère de la Promotion Féminine, October 2002.
- W. VAN ECKHOUTTE & V. NEUPREZ *Compendium droit du travail 2009-2010*, Kluwer 2009.
- A. EGERÖ (ED.) *Nio perspektiv på jämställdhet, En antologi om kvinnors och mäns löner*, Medlingsinstitutet, Stockholm 2009, www.medlingsinstitutet.se
- E. EPERJESI-LINDNER (in cooperation with A. Kovács and J. Brosch Wlaszovitsné) *Inequalities of chances appearing in the earnings from salaries of men and women as reflected in statistical data (Nők és férfiak kereseti esélyegyenlősége a statisztikai adatok tükrében)*. Within the framework of the ROADMAP Programme for the working group entitled 'Equal salary for equal work'. Available in Hungarian and English. English version: <http://www.szmm.gov.hu/download.php?ctag=download&docID=21359>
- K. FELDHOFF *Der Anspruch auf gleichen Lohn für gleichwertige Arbeit – Zur mittelbaren Diskriminierung von Frauen in Entgelttarifverträgen* Baden-Baden, Nomos 1998.

- Forschungsberichte Bundeskanzleramt Frauen: *Geschlechtsspezifische Einkommensunterschiede - Indikatoren 2007*, <http://frauen.bka.gv.at/site/5461/default.aspx>
- Forschungsberichte Bundeskanzleramt Frauen: *Qualifizierte Teilzeitbeschäftigung in Österreich*, <http://frauen.bka.gv.at/site/5461/default.aspx>
- Forschungsberichte Bundeskanzleramt Frauen: *Qualität von Teilzeitbeschäftigung und die Verbesserung der Position von Frauen am Arbeitsmarkt*, <http://frauen.bka.gv.at/site/5461/default.aspx>
- Forschungsberichte Bundeskanzleramt Frauen: *Diskriminierungsfreie Arbeitsbewertung und Arbeitsorganisation*, <http://frauen.bka.gv.at/site/5461/default.aspx>
- Forschungsberichte Bundeskanzleramt Frauen: *Die Stellung der Frau im Österreichischen Erwerbsleben*, <http://frauen.bka.gv.at/site/5461/default.aspx>
- Forschungsberichte Bundeskanzleramt Frauen: *Beschäftigungs- Und Einkommenschancen von Frauen und Männern*, <http://frauen.bka.gv.at/site/5461/default.aspx>
- Forschungsberichte Bundeskanzleramt Frauen: *Zunehmende Einkommensungleichheit zwischen Frauen und Männern*, <http://frauen.bka.gv.at/site/5461/default.aspx>
- Forschungsberichte Bundeskanzleramt Frauen: *Warum verdienen Frauen weniger als Männer? Leitfaden „Gleicher Lohn für gleichwertige Arbeit*, <http://frauen.bka.gv.at/site/5461/default.aspx>
- S. FRANSSON *Lönediskriminering* Uppsala, Iustus Förlag 2000.
- S. FRANSSON & P. NORBERG *Att lagstifta om diskriminering* Stockholm, SNS Förlag 2007.
- S. FREDMAN 'Reforming equal pay laws', *Industrial Law Journal* Vol. 37 No. 3 (September 2008) pp.193-218.
- M. FREY *A nők és férfiak kereseti különbségét befolyásoló strukturális jellemzők* (Structural factors influencing the pay differences of women and men) Budapest, 2007.
- C. FUCHSLOCH *Das Verbot der mittelbaren Geschlechtsdiskriminierung* Baden-Baden, Nomos 1995.
- B. GANNON ET AL. 'Inter-Industry Wage Differentials and the Gender Wage Gap: Evidence from European Countries', *The Economic and Social Review* 38 No. 1 (Spring 2007) pp. 135–155.
- GENDER EQUALITY COMMISSIONER, Annual report of the Gender Equality Commissioner of 2005/2006. Available on (in Estonian): <http://www.svv.ee/failid/2006.pdf>, accessed 22 March 2010.
- M. GIANNAKOUREOU & E. SOUMELI *Equal pay between men and women in collective bargaining* KETHI 2002, <http://www.kethi.gr>
- GOVERNMENT OF THE REPUBLIC OF MACEDONIA, CONFEDERATION OF FREE TRADE UNIONS OF MACEDONIA 'General Collective Agreement for the Public Sector', *Official Gazette*, No. 10 (2008).
- M. GRAJEK 'Gender Pay Gap in Poland', *Economics and Planning* 2003, No. 36, p. 28.
- B. GRESY *Rapport préparatoire à la concertation avec les partenaires sociaux sur l'égalité professionnelle entre les femmes et les hommes*, 8 juillet 2009, <http://www.ladocumentationfrancaise.fr/rapports-publics/094000313/>
- I. GRGUREV 'Equal Pay for Equal Work or Work of Equal Value', *56 Zbornik Pravnog fakulteta u Zagrebu*, No.4 (2006).
- M. GROBYS 'Die Beweislast im Anti-Diskriminierungsprozess', *NZA* 2006, 898-904.
- D. GUMBREVIČIUTĖ 'Lyčių lygybes principo taikymo problemos' in: *Darbo teisė vieningoje Europoje* pp. 128-142 Vilnius, Forcasas 2003.
- B. HAIDINGER, U. PAPOUSCHEK & A. SCHÖNAUER (Forschungs- und Beratungsstelle Arbeitswelt) 'Koppelung von Wirtschaftsförderung und öffentlicher Auftragsvergabe an betriebliche Gleichstellungsmaßnahmen', *WISO – Wirtschafts- und sozialpolitische Zeitschrift des Instituts für Sozial- und Wirtschaftswissenschaften ISW* Vol. 32, No. 2 (2009) pp. 37-52.
- P. V. HANSEN 'Lønforskelle, lønpolitik og beskæftigelse i 1970'erne' in: *Arbejdsløshedsundersøgelserne* 4, SFI publikation nr. 111, Copenhagen, 1982.
- B. HAVELKOVÁ *Rovnost v odměňování žen a mužů* Prague, Auditorium 2007.
- J. HEYN & G. MEINEL 'Rückenwind für Diskriminierungsklagen, Die Entscheidung des LAG Berlin-Brandenburg vom 26.11.2008', *NZA* 2009, 20-23.
- İ. ILKKARACAN & R. SELIM 'The Role of Unemployment in Wage Determination: Further Evidence on the Wage Curve from Turkey', *Applied Economics* 35(14) (2003) pp. 1589–1599.
- İ. ILKKARACAN & R. SELIM 'The Gender pay gap in the Turkish Labour Market', *LABOUR: Review of Labour Economics and Industrial Relations* Vol. 21, No. 2 (2007) pp. 563-593.
- INSTITUT POUR L'ÉGALITÉ DES FEMMES ET DES HOMMES ET AL. *L'écart salarial entre les femmes et les hommes en Belgique*, Bruxelles, 2009.
- M. JAFFE, B. MCKENNA & L. VENNER *Equal Pay, Privatisation and Procurement* Liverpool, The Institute of Employment Rights 2008, <http://www.unison.org.uk/acrobat/IER8917.pdf>

- M. JUCHOWICZ *Wartościowanie pracy oraz ocena pracowników w polskich przedsiębiorstwach. Wyniki badań* (Valuation of work and the assessment of work of employees in Polish enterprises. The result of research) Warszawa, Institute of Labour and Social Policy (IPIPS) 2005.
- Š. JURAJDA 'Gender Segregation and Wage Gap: An East-West Comparison', *Journal of the European Economic Association* 3 No. 2-3 (April/May 2005) pp 598-607.
- O. KARA 'Occupational gender wage discrimination in Turkey', *Journal of Economic Studies*, vol. 33, No. 2 (2006) pp. 130-143.
- M. KARAMESSINI 'The Gender Pay Gap in Greece – Origins and Policy Responses' in: EU expert group on Gender, Social Inclusion and Employment (EGGSIE) *The gender pay gap - Origins and policy responses. A comparative review of 30 European countries*, p. 53 July 2006, <http://ec.europa.eu/social/main.jsp?catId=748&langId=en&furtherPubs=yes>
- M. KARAMESSINI & E. IOAKIMOGLU 'Wage determination and the gender pay gap: a feminist political economy analysis and decomposition' *Feminist Economist* Vol. 13 No. 1 (January 2007), pp. 31-66.
- G. KIRTON & A. GREENE 'Gender, Equality and Industrial Relations in the 'New Europe': An Introduction', *European Journal of Industrial Relations* 11 No. 2 (2005) pp. 141-149.
- S. KLUMPP '§ 23 BetrVG als Diskriminierungssanktion?', *NZA* 2006, 904-906.
- E. KOCHER 'Gleichstellungspolitik und Individualansprüche', *KJ* 2007, 22-35.
- S. KONSTATZKY 'Equal Pay, Durchsetzungsprobleme von Diskriminierungsfällen', *Recht der Arbeit* (2010), p.164.
- G. KRELL ET AL. *Diskriminierungsfreie Bewertung von (Dienstleistungs)Arbeit. Ein Projekt im Auftrag der Gewerkschaft Öffentliche Dienste, Transport und Verkehr* Stuttgart, VER.DI Bundesvorstand 2001.
- A. KUNYSZ *Dyskryminacja płacowa a wartościowanie stanowisk* (Gender wage discrimination and work positions valuation), Sedlak & Sedlak, <http://www.wynagrodzenia.pl>
- M.-TH. LANQUETIN 'Chronique juridique des inégalités de salaires entre les femmes et les hommes' in: *Travail, genre et sociétés*, 2006/1, p. 69.
- M.-TH. LANQUETIN 'L'égalité des rémunérations entre les femmes et les hommes, réalisée en 5 ans?' in: *Droit Social*, 2006
- L. ŁATUSZYŃSKI & Ł.P. WOŹNY 'Zróźnicowanie płac kobiet i mężczyzn na polskim rynku pracy w 2004' (The diversification of wages of women and men on the Polish labour market in 2004), in: W. Pachó & M. Garbicz (eds.) *Wzrost gospodarczy a bezrobocie i nierówności w podziale dochodu* (The economic growth and inequalities in the division of income) p. 250, Warszawa, 2008.
- S. LAULOM 'Gender Pay Gap in France' *European Gender Equality Law Review* No. 1 2009.
- S. LEINERT NOVOSEL 'Policy of Women's Employment, Political Thought', *Croatian Political Science Review* No. 3 (2003).
- C. LUCIFORA & D. MEURS 'The Public Sector Pay Gap in France, Great Britain and Italy', *Review of Income and Wealth* 52 Issue 1 (February 2006) pp. 43-59.
- I. MAČERNYTĖ-PANOMARIOVIENĖ 'The right to receive fair remuneration for work in the Republic of Lithuania', *Jurisprudencija* No 1(103), (2008) pp. 30-36.
- K. MAYR 'Diskriminierungen im betrieblichen Alltag', *Recht der Arbeit* (2009), p. 153.
- A. MCCOLGAN *Discrimination Law: Text, Cases and Materials* pp. 408-470 Oxford, Hart Publishing 2005.
- MEDLINGSINSTITUTET *Vad säger den officiella lönestatistiken om löneskillnaden mellan kvinnor och män 2008*, Report September 2009, Stockholm, 2009, www.medlingsinstitutet.se
- MEDLINGSINSTITUTET *Avtalsrörelsen och lönebildningen 2009*, Medlingsinstitutets årsrapport, Stockholm, 2009 www.medlingsinstitutet.se
- MINISTÈRE DE LA PROMOTION FÉMININE *L'égalité de salaire, défi du développement démocratique et économique*, 2002.
- L. MULLER 'Les écarts de salaire entre les hommes et les femmes en 2006: des disparités persistantes' in : *Premières synthèses*, Dares, octobre 2008, n°44.5.
- P. NORBERG *Marknadsbegreppet i konkurrensrätten och i jämställdhetsrätten – om hur olika marknadsbegrepp påverkar rättstillämpningen i lönediskrimineringsmål* Uppsala, Iustus Förlag 2007.
- D. VAN NOTEN *Functiewaardering gewikt en gewogen*, Kluwer 2007.
- N. NTERMANAKIS ET AL. *Towards a closing of the gender pay gap. Country report. Greece*, KETHI 2002, http://www.suchthilfe.net/peripherie/docs/genderpaygap/greek_finalreport.pdf
- OECD *Economic Surveys Turkey*, Vol. 2008/14 (July 2008).
- R. OOSTENDORP 'Globalization and the Gender pay gap' Policy Research Working Paper 3250 (2004) for the World Bank, Washington, D.C *The World Bank Economic Review*, Vol. 23, No. 1 (2009) pp. 141–161.
- S. OZLER 'Export Orientation and Female Share of Employment: Evidence from Turkey', *World Development* 28(7) (2000) pp. 1239–48.

- G. PASCALL & J. LEWIS 'Emerging Gender Regimes and Policies for Gender Equality in a Wider Europe', *Journal of Social Policy* 33 No. 3 (2004) pp. 373-394.
- H. PFARR & K. BERTELSMANN *Diskriminierung im Erwerbsleben* Baden-Baden, Nomos 1989.
- M. RANDOJA *Soolised palgaerinevused* (Gender pay gap), http://www.stat.ee/otsing?query=palgaerinevus&search_type=or&exclude=§ion=&last_changed=&order=relevance&op=search
- REPUBLIC OF MACEDONIA STATE STATISTICAL OFFICE 'EMPLOYEES AND NET PAY – Status October 2008' in: *STATISTICAL REVIEW: Population and social statistics*.
- REPUBLIC OF MACEDONIA STATE STATISTICAL OFFICE *Women and men in Macedonia, 2008*.
- E. VIERTEL (European Training Foundation (ETF)), *Gender study - barriers to labour market participation of women in the Former Yugoslav Republic of Macedonia*, November 2008, [http://www.etf.europa.eu/pubmgmt.nsf/\(getAttachment\)/761856C25580BBA2C125753E0055FD3A/\\$File/NOTE7NALCZ.pdf](http://www.etf.europa.eu/pubmgmt.nsf/(getAttachment)/761856C25580BBA2C125753E0055FD3A/$File/NOTE7NALCZ.pdf)
- A. RIGLER & M. VANICSEK *Sex-based inequalities in the labour market (Nemi egyenlőtlenség a munkaerőpiacon)* Written as part of the EQUAL project H005 – Pay Barometer, Budapest 2008, <http://www.berbarometer.hu/main/kutatasaink-kiadvanyok/equal3-beliv-1.pdf>
- C. ROLFS *Beck'scher Online-Kommentar zum Arbeitsrecht* Munich, C.H. Beck 14nd ed. 2009.
- M. DO ROSÁRIO PALMA RAMALHO *Garantir a Igualdade Remuneratória entre Mulheres e Homens na União Europeia* Lisbon, CITE (Comissão para a Igualdade no Trabalho e no Emprego) 2003 (translated into English under the title 'Guaranteeing Equal Pay between Women and Men in the European Union').
- M. DO ROSÁRIO PALMA RAMALHO 'Igualdade de tratamento entre trabalhadores e trabalhadoras em matéria remuneratória: a aplicação da Directiva 75/117/CE em Portugal' in: *Estudos de Direito do Trabalho I* pp.179-193 Coimbra, 2003.
- M. DO ROSÁRIO PALMA RAMALHO *Direito do Trabalho II*, 2ª edição Coimbra, 2008.
- J. RUBERY, D. GRIMSHAW & H. FIGUEIREDO 'How to close the gender pay gap in Europe: towards the gender mainstreaming of pay policy', *Industrial Relations Journal* 36 Issue 3 (May 2005) pp. 184-213.
- H. RUDI 'Ministerium tegi palka makstes naisametnikule liiga' (The Ministry violated the rights of a female employee in remuneration), *Postimees* 24 August 2009, <http://www.postimees.ee/?id=155601&print=1>
- VER.DI-BUNDESVERWALTUNG, TARIFFPOLITISCHE GRUNDSATZABTEILUNG (ed.) *Schritt für Schritt zur Entgeltgleichheit* Berlin, VER.DI 2003.
- SDFEFH *Les chiffres clefs de l'égalité femmes-hommes en 2009*, mars 2010, http://www.travail-solidarite.gouv.fr/IMG/pdf/Egalite_-_chiffres-cles_2009.pdf
- Z. SEKUŁA *Systemy wynagradzania w Polsce w świetle badań* (The wages system in Poland in research) Wrocław, XVII Zeszyty Naukowe WSZiF we Wrocławiu 2004, <http://www.wynagrodzenia.pl>
- Z. SEKUŁA 'Płace bez dyskryminacji' (Wages without discrimination), *Personel i Zarządzanie* 2004, no. 9.
- M.-A. SIMOVART 'Riigihanke sekundaarsete eesmärkide rakendamise võimalustest Eestis. Soolise võrdõiguslikkuse näide' (The possibility to apply the secondary purposes of public procurement in Estonia. The example of gender equality), *Juridica* 2009 No. 3, pp. 148-158.
- A. STEFANIAK ET AL. *Alles, was Recht ist! Auf dem Weg zur Entgeltgleichheit durch diskriminierungsfreiere Arbeitsbewertung: Erfahrungsberichte aus Deutschland, Großbritannien und Österreich* München, Hampp 2002.
- M. STOFFELS 'Grundprobleme der Schadensersatzverpflichtung nach § 15 Abs. 1 AGG', *RdA* 2009, 204.
- A. TANSEL 'Public-Private Employment Choice, Wage Differentials and Gender in Turkey', *Economic Development and Cultural Change* 53(2) (2005) pp. 453-477.
- A. TANSEL 'Self-employment, Wage-employment, and Returns to Schooling by Gender in Turkey' in: D. S. Isfahani (ed.) *Labour and Human Capital in the Middle East* pp. 637-667 Reading UK, Ithaca Press 2001.
- A. TANSEL 'Formal versus Informal Sector Choice of Wage Earners and Their Wages in Turkey' in: T. Bulutay (ed.) *Informal Sector I* pp. 127-150 Ankara, State Statistical Organization, publication no. 2399.
- K. TONDORF *Fair P(lay) - Entgeltgleichheit für Frauen und Männer, Leitfaden zur Durchsetzung des Grundsatzes des gleichen Entgelts bei gleicher und gleichwertiger Arbeit* Bundesministerium für Familie, Senioren, Frauen und Jugend (Hrsg.), Berlin, 2009, <http://www.bmfsfj.de>
- K. TONDORF *Gleiches Entgelt für gleichwertige Arbeit – Tarifverträge auf dem Prüfstand, ver.di Bundesverwaltung* Berlin, VER.DI 2002.
- İ. TUNALI 'Background Study on Labour Market and Employment in Turkey', report prepared for European Training Foundation (June 2003).
- T.R. PRIME MINISTRY, STATE PLANNING ORGANIZATION (SPO) AND WORLD BANK HUMAN DEVELOPMENT SECTOR UNIT EUROPE AND CENTRAL ASIA REGION *Female Labour Force Participation in Turkey: Trends, Determinants and Policy Framework*, Report No. 48508-TR, 23 November 2009, <http://www.worldbank.org.tr>

- S. UDSEN 'Køn og Løn – og det kønsopdelte arbejdsmarked, i Emerek', in: Ruth & Helle Holt (red.) *Lige muligheder – frie valg? Om det kønsopdelte arbejdsmarked gennem et årti*, SFI 08:24, Copenhagen, 2008.
- P.Y. VERKINDT 'L'égalité de rémunération entre les hommes et les femmes' in: *Droit Social*, 2008, p. 1051.11.
- E. VIGERUST 'Kollektiv avtalefrihet og retten til likelønn. Likestillingsloven og Norges internasjonale forpliktelser' *Institutt for offentlig retts skriftserie* No. 4 (2003) pp.1-50.
- M. WEISS 'Equality and Integration - The German Case' in: *Diversity, Equality and Integration*, Roger Blanpain (ed.), S. 187-200, Bruges, 2008.
- H. WIEDEMANN 'Tarifvertrag und Diskriminierungsschutz – Rechtsfolgen einer gegen Benachteiligungsverbote verstoßenden Kollektivvereinbarung', *NZA* 2007, 950-954.
- H. J. WILLEMSSEN & U. SCHWEIBERT 'Schutz der Beschäftigten im Allgemeinen Gleichbehandlungsgesetz', *NJW*, 2006, 2583-2592.
- R. WINTER *Gleiches Entgelt für gleichwertige Arbeit* Baden-Baden, Nomos 1998.
- R. WINTER 'Kommentierung zu § 1 TarifVG, marginal notes 356ff.' in: W. Däubler (ed.) *Tarifvertragsgesetz* Baden-Baden, Nomos 2nd ed. 2006.
- WORLD BANK *Turkey Labour Market Study* (2006).
- K. ZWICKL 'Geschlechtsspezifische Einkommensunterschiede in Österreich', *WuG – Wirtschaft und Gesellschaft* (2009), p. 355.

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The principle of equal pay for men and women for work of equal value has been key to the European Union ever since its foundation. It was laid down in the original Treaty, and brought into practice by several directives. Also the Court of Justice's case law has boosted its importance.

Notwithstanding these efforts at the legal level, the average gender pay gap for the 27 EU Member States (17.6 % in 2008) is hardly diminishing.

It is against this worrisome background that the European Commission asked its European Network of Legal Experts in the Field of Gender Equality to collect data on national policies, initiatives and legal instruments aimed at tackling the gender pay gap, and to explore potential links between equal pay and other national legal provisions.

33 legal experts of the EU Member States, the EEA countries and the candidate countries took part in a questionnaire that formed the basis for this publication. It analyses a wide variety of national policies, initiatives and legal instruments that aim to combat the gender pay gap and it uncovers a number of unexpected links between the gender pay gap and other parts of the law.

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