Eliminating the gender pay gap by law

Lessons learned in Belgium

Institute
For the Equality
of Women
and Men

.be

Content

1. The Belgian law to combat the gender pay gap explained 3

The interprofessional level 3

The sectoral level 4

The company level 7

2. Strengths and weaknesses 13

+ Embedding the new regulations into existing labour legislation and processes 13

+ Involving employers actively in closing the gender pay gap 13

+ Periodicity in obligations: keep the flame burning 14

+/- Good will is not enough 14

- Lack of sanctions 14

- Not asking for results 15

- Misreading of indicators and lack of gender expertise 15

- Lack of transparancy: the unresolved issue of privacy 17

- Limited interpretation of work of equal value 17

- No measures for small companies or the public sector 18

- The role of the mediator is insufficient embedded in structures 18

3. Three legislative proposals to amend the law 18

4. Recommendations on how to make the law on the gender gap more effective 18

1. Defining clear sanctions in line with other regulations in labour legislation 19

2. Supporting the correct interpretation of data: providing tools for gender analysis 19

3. Handling the issue of privacy, both at individual and corporate level 19

4. Setting clear objectives 19

5. Developing tools for small businesses 20

6. Removing the glass ceiling in the public sector 20

7. Making the mediator and the equal opportunity plans visible 20

8. Strengthening the role and powers of the social inspectorate 20

9. Developing a tool to define work of equal value across sectors and enable comparisons to be made 21

5. Conclusion 21

In 2012, after many years of actions by the trade unions, Equal Pay Days and reports and recommendations by the Institute for the Equality of Women and Men, the Federal Public Service Employment, Labour and Social Dialogue, the national statistical office Statbel and the Federal Planning Bureau, the Belgian parliament adopted a law to eliminate the gender pay gap. Eight years later, the gender pay gap has not disappeared and the new State Secretary on Gender Equality, Equal Opportunities and Diversity has announced that she will adapt to law to make it more effective.

In this analysis the current Belgian law to combat the gender pay gap is explained. Its strengths and weaknesses are discussed. The recent proposals on adapting the law are briefly outlined. And finally, recommendations are formulated on how the effectivity of the Belgian law could be enhanced.

1. The Belgian law to combat the gender pay gap explained

The law of 22 April 2012 to combat the gender pay gap introduces the obligation to deal with the gender pay gap on all levels of social dialogue.[1]

The interprofessional level

Every two years social partners from the private sector negotiate at a national level an interprofessional agreement (IPA) on the evolution in wages, reductions in employers' contributions, the level of social benefits… This IPA is a framework agreement that forms the basis for future sector agreements. The law obliges social partners to discuss gender equality in wages, its evolution and possible measures to be taken. Job classifications are generally not negotiated at this level, but strategies to make them gender-neutral are to be discussed during interprofessional bargaining.

> CHAPTER 2. - Obligation to negotiate measures to combat the pay gap at the interprofessional level
>
> Art. 2. In Article 4 §1 part1 of the Law of 26 July 1996 on the promotion of employment and the preventive safeguarding of competitiveness, the words "and the development of the pay gap between men and women" shall be inserted between the words "and the development of companies" and the words ". Where appropriate".
>
> Art. 3. Article 6 §1 of the same Law shall be supplemented by the following sentence: "Measures to combat the gender pay gap shall also be laid down, in particular by making job classification systems gender-neutral".

[1] The law exists in the three Belgian national languages Dutch, French and German and can be downloaded via: http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=fr&la=F&cn=2012042229&table_name=loi&&caller=list&F&fromtab=loi&tri=dd+AS+RANK&rech=1&numero=1&sql=(text+contains+(%27%27))
The English translations in this text are unofficial.

The sectoral level

The law also introduces the gender pay gap to the negotiations at sectoral level. Here the focus is mainly on the classifications of functions.

> CHAPTER 4. - Obligation to negotiate measures to combat the pay gap at sectoral level
>
> Section 1. - Sectoral agreements in the context of the fight against the pay gap
>
> Art. 5. Article 8 of the Law of 26 July 1996 on the promotion of employment and the preventive safeguarding of competitiveness, as amended by the Law of 26 June 1997, shall be supplemented by a paragraph 3, as follows:
> " § 3. Collective agreements shall also be concluded in the context of the fight against the gender pay gap, in particular by making job classification systems gender-neutral".

The law goes on to clarify how these classifications of functions are to be made gender-neutral: joint committees have to send them (the existing ones and the new ones) for evaluation to the Directorate of the Analysis and Evaluation of the Collective Bargaining Agreements. This Directorate is part of the General Directorate for Collective Labour Relations of the Federal Public Service Employment, Labour and Social Dialogue. If a classification of functions receives a negative evaluation by the service, then a certain delay is foreseen to rectify the shortcomings. At this point the text of the law was adapted in 2013 and 2015 in order to make the deadlines achievable, and to clarify procedures. Joint committees are to make a prior analysis themselves of the gender-neutrality and have to submit coordinated versions that are currently applicable.

> Section 2. - Evaluation of the gender-neutral character of job rating and classification scales established
>
> Art. 6. For the purposes of this section, the following terms shall have the following meanings:
> 1. the committee: the joint committee or the joint subcommittee according to the law of 5 December 1968 on collective agreements and joint committees;
> 2. the agreement: the collective bargaining agreement;
> 3. classification: job classification;
> 4. the directorate: the directorate of the analysis and evaluation of the collective bargaining agreements, set up in the General Directorate for Collective Labour Relations of the Federal Public Service Employment, Labour and Social Dialogue;
> 5. registration: registration by the registry of the General Directorate for Collective Labour Relations of the Federal Public Service Employment, Labour and Social

Dialogue according to the Royal Decree of 7 November 1969 laying down the terms and conditions for the deposit of collective agreements;
6. the Institute: the Institute for the equality of women and men established by the Law of 16 December 2002;
7. the Minister: the Minister responsible for employment.

Art. 6/1. The committee that has concluded an agreement with regard to the classification shall, within six months of the entry into force of the Law of 12 July 2013 amending the legislation on combating the gender pay gap, submit to the directorate a coordinated version of the currently applicable classification.
Any agreement amending an existing classification or introducing a new classification shall also be submitted to directorate within six months of the registration of that agreement.
Prior to the submission of the classification agreement to the directorate, the committee shall carry out a prior assessment of the gender-neutral character of the classification agreement.

Art. 6/2. §1. The directorate shall examine the gender-neutral character of the classification submitted to it.
Within a period of eighteen months after the entry into force of the Law of 12 July 2013 amending the legislation on combating the gender pay gap, this examination may be carried out in cooperation with public or private institutions with expertise in the gender-neutral character of classifications, to the exclusion of representative employees' and employers' organisations.
§2. As regards the agreements existing on the date of entry into force of the Law of 12 July 2013 amending legislation on combating the gender pay gap, the directorate shall issue an opinion within twenty-two months of the entry into force of the aforementioned Law.
§3. The directorate board shall deliver an opinion within the period referred to in the previous paragraph as regards agreements registered and transferred to it within seventeen months of the entry into force of the Law of 12 July 2013 amending the legislation on combating the pay gap between men and women.
§4. As regards agreements transferred after the expiry of the seventeen-month period referred to in the previous paragraph, the directorate shall issue an opinion within six months of receipt of the agreement.

The law provides that the Directorate can call on the expertise of public or private institutions regarding the gender-neutrality of job classifications, with the exception of trade unions and employers' organisations, as they are regarded as parties involved. The Directorate has effectively called upon the KULeuven Brussels Campus to develop an instrument that should allow a straightforward analysis. This instrument consists of a checklist of 12 questions and regularly refers to publications of the Institute for the Equality of Women and Men, and the Federal Public Service of Employment, Labour and Social Dialogue on the subject matter.[2]

[2] The Instrument is available in Dutch and French and can be downloaded:

The 12 questions that are used to evaluate the classifications of functions on gender-neutrality deal with the following subjects:

1. Was an analytical method of job evaluation used in the development of the job classification? In an analytical system each job is first evaluated separately for each predetermined criterion (e.g. skills, responsibility or working conditions) and only afterwards this information is combined to an overall job evaluation. This method of job grading is considered more systematic and objective than other methods and is recommended by the Institute for the Equality of Women and Men, and by the Federal Public Service of Employment, Labour and Social Dialogue.
2. Was the composition of the technical committee responsible for developing the job classification sufficiently heterogeneous? The more heterogeneous the committee, the more representative the decisions.
3. Has the technical committee been assisted by external experts who are familiar with the pitfalls of stereotypes and unconscious prejudice?
4. When identifying the different jobs in the sector and making up the inventory, was attention paid to the fact that identical jobs are to be given the same designation and that only neutral job titles are used? Were specific male or female job titles avoided?
5. Are all jobs systematically and equally comprehensively described and are these job descriptions included in the collective labour agreement?
6. When collecting the necessary information, was the risk of subjectivity sufficiently excluded by using a pre-established procedure of collecting information, using a questionnaire with closed questions and questioning the function holders themselves and not only the heads of department?
7. Are the valuation criteria sufficiently clear?
8. Are the different aspects of a function captured by the valuation criteria? The ILO recommends that each job should be valued on the basis of valuation criteria that cover at least the following four aspects: (1) skills or qualifications, (2) effort, (3) responsibility and (4) working conditions.
9. Are the valuation criteria sufficiently balanced with regard to the 'typical female and typical male qualities'? In order to avoid this, a comparison is made to the ILO-instrument '*Gender-neutral job evaluation for equal pay: a step-by-step guide*.'[3]
10. Has the same classification system been used for jobs mainly carried out by women and jobs mainly carried out by men?
11. Is the job classification system regularly updated to take account of advancing insights into gender equality?
12. Is there a provision for an appeal procedure for workers who feel discriminated against?

---

https://emploi.belgique.be/sites/default/files/content/documents/Gelijkheid%20en%20non-discriminatie/Tools%20en%20goede%20praktijken/M%C3%A9thode%20d'analyse%20pour%20le%20contr%C3%B4le%20de%20la%20neutralit%C3%A9%20sur%20le%20plan%20du%20genre%20des%20classifications%20de%20fonctions%20sectorielles.pdf

[3] International Labour Office, *Gender-neutral job evaluation for equal pay: a step-by-step guide*. Geneva, 2008. This document can be downloaded via: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_122372.pdf.

The law continues to explain the consequences of a negative evaluation by the Directorate. The specifics of the implementation are set out in a Royal Decree.

> Art. 6/3. If, on the basis of the opinion referred to in Article 6/2, the classification is not gender-neutral, the committee shall, within 24 months of notification of the opinion, make the necessary amendments.
> During that period, the committee may consult the directorate. The Directorate may call upon the Institute on that occasion.
> If the necessary amendments are not made within that twenty-four-month period, the Directorate shall inform the Minister and the Institute accordingly. The committee shall receive a copy of that notification.
> The committee shall have three months in which to inform the Minister and the Institute of the reasons why the disputed classification is still not gender-neutral.
>
> Art. 6/4. The King determines the detailed rules for the implementation of this section.

Since 2019, all the foreseen deadlines and possible postponements are over. A short list of joint committees that have not regulated their classifications of functions while having received a negative evaluation, is published on the website of the Federal Service and functions as a name-and-shame list.[4] Six joint committees have not regulated their classifications. Another six have not submitted their classifications.

The company level

The law also directly impacts on the level of the company. In order to guide the social dialogue at company level, the employer is obliged to compile a statistical report every two years on the gender pay gap within the company, taking into account the different job levels. This obligation applies to companies with 50 employees or more. The statistical report on the gender pay gap in the company has to be discussed in the works council, and if there is none, in the committee for prevention and protection at work. The establishment of a works council is mandatory for companies with 100 employees or more. The establishment of a committee for prevention and protection at work is mandatory from 50 employees.

> CHAPTER 5. - Organisation of compulsory consultation within the company in order to achieve a gender-neutral remuneration policy
>
> Art. 7. In Title II, Chapter II, Section IV of the Law of 10 May 2007 on combating discrimination between women and men, an Article 13/1 shall be inserted, as follows:
> "Art. 13/1 §1. The employer of each company which normally employs an average of at least fifty employees shall, every two years, carry out a detailed analysis of the

[4] This list can be viewed via: https://emploi.belgique.be/fr/themes/egalite-et-non-discrimination/egalite-femmes-hommes-lecart-salarial.

remuneration structure within the company that makes it possible to determine whether the company applies a gender-neutral remuneration policy and, if this is not the case, to achieve this through consultation with the employee representatives.

This analysis is the subject of investigation and consultation within the organisation in accordance with the provisions of this Law.

Whether a company usually employs an average of at least fifty employees, is determined in accordance with Articles 49 to 51bis of the Law of 4 August 1996 on the welfare of employees in the performance of their work.

§2. The analysis referred to in § 1 is reported in accordance with the provisions of Article 15, m), 1°, of the Law of 20 September 1948 on the organisation of businesses or Article 65duodecies of the Law of 4 August 1996 on the well-being of employees in the performance of their work, inserted by the Law of 22 April 2012 on combating the wage gap between men and women.

This analysis report will be provided and discussed in the course of the three months following the end of the financial year.

It shall be sent to the members of the Works Council or the Committee at least fifteen days before the meeting for examination.

The law continues by listing all the categories that are to be taken into account in the statistical report. For companies with at least 100 employees, the level of detail required is quite high. The splitting of data by sex and these categories is compulsory for each cell in the table with more than three employees. Wage data are to be presented separately for ordinary wages and direct social benefits, employers' contributions to additional insurances (such as hospitalisation insurance, or second pillar pensions) and, finally, other additional benefits paid.

Perhaps characteristic for the Belgian law on the gender pay gap is the clarification that the company’s gender pay gap report is to be treated as confidential by the members of the works council.

If the analytical report shows that there is an unbalanced pay structure in the company, the works council can decide to adopt an action plan. The rules for this action plan remain rather vague. However, if a company has an action plan to establish a gender-neutral remuneration structure, this action plan has to be included in the analytic report and an evaluation of it has to be included in the next report.

Art. 8. Article 15 of the Law of 20 September 1948 on the organisation of businesses, as last amended by the Law of 6 May 2009, shall be supplemented by the provision under m), as follows:

"m) 1° to obtain from the employer every two years an analysis report on the remuneration structure of employees, in application of the law of Article 13/1 of the Law of 10 May 2007 on combating discrimination between women and men.

This analysis report, in addition to the information referred to in Article 15 of the Royal Decree of 27 November 1973 regulating economic and financial information to works councils, shall be provided and discussed within the period referred to in

Article 16 of that Decree. The analysis report shall only be sent to the members of the works council. They must respect the confidentiality of the information provided.

The analysis report shall contain the following information, except where the number of employees concerned is less than or equal to three:

a) remuneration and direct social advantages. In the case of part-time workers, these will be expressed in full-time equivalents;

b) the employer's contributions for extra-legal insurance;

c) the total amount of other extra-legal benefits in addition to the wage, granted to the workers or part of the workers.

This information shall be broken down by sex of the workers and communicated according to a breakdown based on the following parameters:

a) the status (blue-collar worker, white-collar employee, managerial staff);

b) the function as classified according to the job categories set out in the classification system applicable in the company;

c) seniority;

d) the level of qualification or training (classified by lower, middle and higher educated according to Eurostat definition and on the basis of the employee's basic diploma).

The employer shall provide this information in accordance with the further rules laid down by the King and on the basis of a form determined by the Minister responsible for Work. The King may adapt the list of information and the parameters referred to in the first and second paragraphs.

The employer shall also state whether the "Checklist gender neutrality in job evaluation and classification" drawn up by the Institute for Gender Equality was used in drawing up the remuneration structure.

If an action plan as referred to in the 2° of this point, is applicable in the company, the report shall also contain a progress report on the implementation of this plan;

2° To assess, on the basis of the information obtained in accordance with the analysis report referred to in 1°, whether it is desirable to draw up an action plan with a view to applying a gender-neutral remuneration structure within the company.

If applicable, this action plan shall include:

a) the concrete objectives;

b) the action domains and instruments to achieve them;

c) the deadline for achieving them;

d) a system for monitoring implementation."

Article 9 of the law is meant as another adaptation to existing labour legislation, in order to clarify consequences if employers fail to comply to the obligations set out in Article 8. However, it contains a legislative error, since the article it refers to was repealed in 2011. The law it is meant to adapt simple notes that the amendments to Article 32 cannot be implemented.

Article 10 clarifies that when there is no works council the examination of the statistical report has to be done by the committee for safety and prevention. For companies with 50 to 100

employees, the details requested in the report are less demanding. The text on the possible action plans is identical.

> Art. 10. In the Law of 4 August 1996 on the welfare of workers in the performance of their work, an Article 65duodecies is inserted as follows:
> "Article 65duodecies. §1. In the absence of a works council, the employer provides the Committee every two years with the analysis report referred to in Article 15, m) of the Law of 20 September 1948 on the organisation of businesses. The analysis report is sent exclusively to the members of the Committee. They must respect the confidentiality of the information provided.
> If an action plan as referred to in the 2° of this point, is applicable in the company, the report shall also contain a progress report on the implementation of this plan.
> §2. On the basis of the analysis report referred to in § 1, the Committee shall assess the desirability of drawing up an action plan with a view to applying a gender-neutral remuneration structure within the company.
> If applicable, this action plan shall include:
> 1° the concrete objectives;
> 2° the action domains and instruments to achieve them;
> 3° the deadline for achieving them;
> 4° a system for monitoring implementation."

The specifics of these analytical reports have been further elaborated in a Royal Decree. This Royal Decree provides for comprehensive reporting for companies with at least 100 employees and more concise reporting for companies with 50 to 100 employees. Two forms have been drawn up by a Ministerial Decree, which must be used to present the data. Reference is made to the Institute's *'Checklist gender neutrality in job evaluation and classification'*.[5]

Apart from structurally embedding the gender pay gap in the social dialogue, the law introduces two other elements at the company level. The first is the obligation to provide certain data to the National Bank broken down by sex. The other is the possibility – not the obligation – to appoint a mediator if in a company an accusation of pay discrimination based on sex should arise, or a gender pay gap comes to light and an action plan is appropriate.

> CHAPTER 3. - Breakdown of wage data in the social balance sheet by sex of employees
>
> Art. 4. Article 91, point B "Social Balance Sheet", I, second paragraph, 1°, of the Royal Decree of 30 January 2001 for the implementation of the Companies Code, is supplemented with a paragraph as follows:

[5] This checklist can be downloaded via: https://igvm-iefh.belgium.be/sites/default/files/downloads/39%20-%20Checklist_ENG.pdf.

> "The data listed under the above headings shall be broken down by the sex of the employees. If the number of employees concerned is less than or equal to three, the section does not have to be broken down".

Companies in Belgium are required to submit information to the National Bank of Belgium annually. Based on this information, economic and financial indicators are calculated, but the operation of companies is also monitored. The Social Balance Sheet is the obligation to submit information on the workforce. For the trade unions, this is an important tool, because economics is not only about money but also about people. The breakdown of some of these data by gender was, in fact, a previous request. Members of parliament included this request in the legislation. Prior to the adoption of the law, data on educational level and vocational trainings paid for by the employer were already disaggregated by sex of the employee. The law introduces this split for the data on employment and personnel costs as well. In implementing the law, the National Bank adapted its forms for the Social Balance Sheet.

Filling in the Social Balance Sheet is compulsory for companies with 20 full-time equivalent employees or more. Companies, associations and foundations that have to submit annual accounts have to fill in the extensive form of the Social Balance Sheet or include a section in their annual report that corresponds to it. This obligation also applies to companies, associations and foundations that do not have to publish annual accounts, but if they employ only 20 to 50 employees, they may limit themselves to a shorter version.

The data from the Social Balance Sheets are analysed by the National Bank. These statistics are published. Annual accounts are as such public. Individual data from companies that do not have to submit annual accounts are not made available to the public. In other words, not all the data collected via the Social Balance Sheets are made available, but for most larger companies they are.

Finally, the law provides for the possibility of appointing a mediator. The mediator assists the employer in the implementation of the gender pay gap law and can also mediate informally if an employee claims to be discriminated in pay on the basis of gender. The complainant may ask to remain anonymous. The mediator must be given access to the remuneration data in order to verify whether the complaint is justified. All wage data will remain confidential. The appointment of a mediator is not compulsory, but a cumbersome procedure is provided for dismissing a mediator once appointed.

> CHAPTER 6. - Appointment of a mediator in the company
>
> Art. 11. In Title II, Chapter II, Section IV of the Law of 10 May 2007 on combating discrimination between women and men, an article 13/2 shall be inserted, as follows:
> "Article 13/2. §1 On a proposal from the works council or, in the absence thereof, from the Committee, the employer of any company which normally employs an

average of at least 50 employees, as referred to in section 13/1 of this Law, may appoint a member of staff as mediator.

He shall remove him from this post only with the prior agreement of all the members of the works council or, in the absence thereof, of the Committee, representing the employees.

If no agreement is reached, the employer requests, under the conditions and according to the detailed rules determined by the King, the opinion of the Permanent Employment Committee of the Council of Equal Opportunities for Men and Women referred to in Article 13, § 1 of this Law. If he does not follow the advice of this Committee, he shall inform the works council or, where applicable, the Committee of the reasons.

The mediator shall assist the employer, the members of the hierarchical line and the employees in applying the measures referred to in the Law of 22 April 2012 on combating the pay gap between men and women. More specifically, he supports the drawing up of the action plan and the progress report referred to in Articles 8 and 10.

The mediator hears the employee who considers himself to be the subject of unequal treatment in terms of remuneration on the basis of his gender and informs him of the possibility of reaching an informal solution through an intervention with the head of the company or with a member of the hierarchical line. The mediator will only act with the agreement of the member of staff making an appeal.

Under no circumstances shall the mediator disclose the identity of the member of staff who has appealed to his intervention in the context of his intervention. The mediator shall ensure the confidentiality of the information he obtains in the context of his mandate as mediator. He shall maintain confidentiality after his mandate has ended. The manner in which these data are processed falls within the scope of the law of 8 December 1992 on the protection of privacy with regard to the processing of personal data.

The mediator performs his function completely autonomously and may not suffer any disadvantage as a result of his assignment.

The employer shall ensure that the mediator can fully and effectively fulfil his task at all times. He shall also ensure that the mediator is able to acquire or improve the skills and abilities necessary for the performance of his duties, in particular with regard to payroll administration, through training courses.

The mediator shall take the necessary measures to respect the confidential nature of any personal social data that he comes to know in the course of carrying out his duties and to ensure that such data are used solely for the purpose of carrying out his mediation task.

All data processed which permits identification of data subjects, can only be kept for as long as necessary to achieve the purposes for which these data were obtained, with a maximum retention period of two years.

§ 2. The King shall determine, after obtaining the unanimous opinion of the Commission for the Protection of Privacy, the powers of the mediator and the competences required to perform this function. He also determines the deontological rules which the mediator must respect.”

A Royal Decree further clarifies the exact role and obligations of the mediator.

Article 12 stipulates that preventing the mediator from functioning properly shall be fined and that these fines shall be borne by the employer.

> Art. 12. In Title II, Chapter II, Section IV of the same Law, an Article 13/3 shall be inserted, as follows:
> "Article 13/3. Penalties shall be imposed in accordance with Article 15, 2°, of the Law of 16 November 1972 on labour inspection, on any person who prevents the mediator from having access to the social data necessary for the performance of his duties.
> The employer is liable under civil law for the payment of the fines to which his appointees or mandataries have been sentenced."

2. Strengths and weaknesses

The Belgian law dates from 2012. Over the years its strengths and weaknesses have become sufficiently clear.

+ Embedding the new regulations into existing labour legislation and processes

The many references to existing labour legislation make the law as such hard to read. However, it is actually one of its strengths. The link with existing institutions and legal obligations has in fact given the law a backbone. Civil servants with specific tasks were faced with an extension of those tasks. Sometimes additional gender training was needed, but tasks were taken up dutifully and accurately. The Directorate of the Analysis and Evaluation of the Collective Bargaining Agreements had been analysing new CLA's on their compliance to the law. Compliance to the norm of gender-neutrality was added. Moreover, this is not a one-off operation, but will be done for all future job classifications, or adjustments. The National Bank's statisticians collected more disaggregated data and occasionally carried out additional gender analyses. In the preparation of the interprofessional agreement the latest gender pay gap figures are presented and explained.

In fact, this is in essence gender mainstreaming: the embedding of a gender perspective in existing regulations and processes rather than developing new parallel circuits and actions.

+ Involving employers actively in closing the gender pay gap

The Institute has always stressed that eliminating the gender pay gap would take a joint effort of all parties involved. But through the many years of action of the trade unions, the gender pay gap had become somewhat their theme. One of the strengths of the law is the fact that employers are actively involved in dealing with the gender pay gap. Embedding it in social dialogue makes it a joint responsibility again. Combating the gender pay gap is not necessarily seen as progressive, or left-wing, or a prerogative of the trade unions.

+ Periodicity in obligations: keep the flame burning

Most of the obligations imposed by law are periodic. They must be repeated annually or every two years. Incorporating the periodicity is once again a good thing, because it is clearly impossible to eliminate the gender pay gap in a single movement. The periodicity imposes a regular monitoring and evaluation of the gender pay gap.

+/- Good will is not enough

Good will is very important, but gender equality can never made dependent on that, since it is a basic human right. In that sense, it is important to root gender equality sufficiently in the processes, and if possible, to link it to other legal obligations. In this respect, the law combines both strength and weakness.

The law of 2012 has a history in Collective Labour Agreement 25. CLA 25 dates from 1975 and imposes equal pay for women and men *"for equal work or work of equal value"*. Explicit reference is made to the job classification systems: *"Under no circumstances must job evaluation systems lead to discrimination, neither by the choice of criteria, nor by the weighting of those criteria, nor by the system of converting job points into wage points"*.[6] In 2001 an addition was made to this in CLA 25bis. Herein the recommendation was made to analyse all job classifications on their gender-neutrality. In 2008 an extra addition was made in CLA 25ter. Analysing job classifications on their gender-neutrality was made compulsory for all joint committees. Although a number of joint committees took this at heart and renewed their classification systems completely based on a thorough gender analysis, the CLA 25ter remained a mere piece of paper in many joint committees. The law of 2012 incorporates exactly this obligation and engages the Directorate that is responsible to control and supervise the technical and legal correctness of CLAs, to check this gender-neutrality.

It is therefore clear that a line of increasing obligation can be drawn. However, the step of control should be followed by a step of sanctions, and in that respect, the law is lacking. Joint committees that don't comply with the regulations, appear on a name-and-shame list, but no publicity is made and no public debate follows. In short, it does not really harm them, and it does not seem to impress anybody.

- Lack of sanctions

This lack of sanctions is felt in several areas of the law. A quarter of all Social Balance Sheets are filled in poorly, incomplete or deliberately incorrect with respect to the disaggregation by sex. Data are often presented as if the gender pay gap equals exactly 0,00%, which in practice is quite unrealistic. The National Bank signals the lack of correctness to the employers in question and exclude the bad data from their statistics. However, they do not have the powers to act here. They cannot sanction in the same way incorrect economical or financial data are

[6] National Collective Labour Agreements can be downloaded from the website of the National Labour Council: http://www.cnt-nar.be. The English translations in the text are unofficial.

sanctioned.[7] Whoever chooses not to react to their remarks or correct their data, will not encounter any consequences.

A comparison could be made to the law of 28 July 2011 on quota in the boards of directors of autonomous public companies, listed companies and the National Lottery. The law introduces a quota of at least one third of the less represented sex for all members of the board of directors. The transitional period during which companies were able to adapt and comply with the law was very long, i.e. eight years for small and medium-sized companies and six years for very large companies. For public companies there was no delay. However, once this transitional period was over, clear penalties are defined for companies that fail to comply with these provisions: nullity of the appointment of new board members, and suspension of al the financial and other benefits for board members. Sanctions are simply needed, in order to make a law effective.

Moreover, the flaw in article 9 of the law that was meant to introduce sanctions was never really repaired.

- Not asking for results

Perhaps even more important than the lack of sanctions, is the lack of well-defined objectives, and the fact that no real achievements are demanded. In essence, the law imposes mostly effort commitments, not result commitments. Social partners are obliged to discuss the gender pay gap during their negotiations; they do not have to effectively achieve a reduction, or the elimination of the gender pay gap. They can choose to adopt an action plan, but again there is no obligation.

For some time now, the effectiveness of this law is rightfully questioned. In overall statistics the Belgian pay gap has not started to decline at a faster pace since 2012. And on a company level, there is no way of measuring its effects, because data are often confidential and insufficiently available.

- Misreading of indicators and lack of gender expertise

The law of 2012 uses the gender pay gap indicator as an instrument to discuss gender inequality on a national level, in sectors, subsectors and companies. This is useful and in line with the spirit of the law, i.e. to engage social partners at the various levels of social dialogue in combatting the gender pay gap. The figure of the gender pay gap on the level of the social bargaining provides a first insight into the degree of gender inequality and should be a starting point of discussion.

However, the misreading of indicators constitutes another serious threat to the successful execution of the law. Although the gender pay gap is an easy indicator to calculate, it comprises a lot of factors in one figure. That is exactly its strength, but sufficient insight in the gender dimensions of labour and the structure of pay regulations is needed to interpret it. The law

[7] Heuse P. 'The social balance sheet 2014', in: *Economic Review*. June 2016. This article is available in Dutch, French and English: https://www.nbb.be/en/articles/social-balance-sheet-2014. The Economic Review is the National Bank's journal 'to provide information about important economic, financial and monetary development.'

presupposes that figures are easy to read for everybody, and that no further gender analysis would be needed. Both assumptions are wrong.

In the public discussion on the gender pay gap a number of things are frequently confused: the distinction between the gender pay gap on the one hand and pay discrimination on the other; the criteria for whether or not a company does well in terms of gender equality; the idea that the gender pay gap in a country would be the sum of the gender pay gap in all of its companies; and the gender pay gap figure as a substitute for pay transparency. There are no records of what the discussions are like in the work councils and the committees for prevention and protection at work, but it is only likely that a significant degree of misinterpretation might arise there. An overall lack of interest might also be a huge obstacle, but again, there is no way of knowing this.

Firstly, the pay gap indicator is not in itself a measure of pay discrimination, nor is it an approximation or an impure measurement of it. The two are linked of course, but not the same.

The pay gap is a general indicator of gender inequality in the labour market. It is calculated on the basis of the difference in average gross wages of women and men. In principle, the pay gap is calculated as widely as possible, i.e. across the economy as a whole. Pay discrimination is, in principle, measurable at individual level. A comparison of the actual wages of women and men doing comparable work is needed to study pay discrimination. The absence of a gender pay gap does not guarantee the absence of pay discrimination. After all, individual data can disappear in the bigger picture.

The wage gap can be calculated at the level of sectors, sub-sectors or large and medium-sized enterprises. The smaller the scale, however, the less meaningful the data. The idea behind that is that the pay gap figure should not shift if one worker is replaced by one worker of the other sex with the same salary. Small shifts in the workforce should not have a significant impact. Otherwise, one could make the gender pay gap disappear by firing the cleaning lady. In theory, you could calculate a pay gap for two colleagues, but then you are in fact comparing two concrete wages, not calculating a general indicator of gender inequality. But even then, wage differences do not automatically indicate pay discrimination, since all the relevant elements in the wage formation must be taken into account and the work must be of equal value.

Pay discrimination is clearly illegal and punishable, gender inequality is undesirable. Wage discrimination involves legal action and sanctions, gender inequality involves raising awareness and a supportive policy.

Secondly, and perhaps difficult to understand in this context, are the criteria for evaluating whether or not a company does well in terms of gender equality. The absence of a gender pay gap is not a guarantee for doing well, nor does the existence of a gender pay gap automatically means that a company is performing poorly. Simply put, a company with 0% female employees, will have no gender pay gap, while a company that creates opportunities for long-term unemployed, low-skilled women will effectively have a clear gender pay gap. In the bigger picture that last company is contributing to combatting gender inequality, the first one is not. The blind and injudicious use of one indicator as a criterion and objective will eventually lead to dysfunctions.

Thirdly, in the discussion sometimes the idea emerges that if companies were obliged to publish their gender pay gap figure from the analytical reports, this would constitute pay transparency. Calculating a gender pay gap on company level, however, does not replace the need for good pay transparency. Pay transparency means creating clarity about who gets what. In the first place, it concerns job classifications that must be clear, gender-neutral and publicly available, but in fact it also concerns the differences in actual pay-outs compared to the set minimum. After all, many pay differences between women and men are situated in the part that is paid above the set minimum. The logic behind this transparency is that the responsibility for determining wage discrimination is not placed on individual employees but is taken on by the employer. The importance of pay transparency is recognised in the European Community. However, in Belgium, openness about real wages remains a sensitive issue that encounters a lot of resistance. The law explicitly refrains from interpreting transparency in this sense.

- Unrealistic expectations

Furthermore, there seems to be an expectation that the pay gap in a country will disappear once it has been eliminated in each individual company, as if the pay gap for the total is simply the sum of the pay gap for the parts. This assumption ignores the great segregation that exists between sectors and companies. Often there is a certain homogeneity within sectors or companies: in some places there is simply less money to be made than in others. And this distinction often coincides with a degree of gender segregation.

Eliminating the gender pay gap cannot be accomplished by social partners alone. There are a number of factors that escape their sphere of influence. It must therefore be clear that the law is intended to make an important contribution to eliminating the gender pay gap, but that it will not suffice on its own. There is also the matter of equal sharing of care responsibilities and the need to combat gender stereotypes in education and professional choices.

Eliminating gender inequality is a broader story, in which the social partners and companies have a responsibility, without making the mistake of holding them solely responsible.

- Lack of transparancy: the unresolved issue of privacy

A distinct weakness of the law is its repeated reference to the confidentiality of wages. This is explicit on the level of individual wages as well as on company level. Privacy regulations are quite strict but allow for prioritising other socially desirable goals. All it takes is political decisiveness in this matter. It remains very hard to uncover pay discrimination as long as wages remain a big secret.

In concrete court cases concerning wage discrimination on the grounds of gender, the burden of proof lies with the employer: they must prove that there was no discrimination. The question can be asked whether this responsibility should not be extended generally, independent of concrete cases.

- Limited interpretation of work of equal value

The law interprets work of equal value quite restrictive. By placing the emphasis solely on classifications of functions, work of equal value is limited to work that is carried within the same

sub-sector. In legal practice, this basis of comparison is even further restricted to work within the same company, with the same job title, seniority, etc.

- No measures for small companies or the public sector

The law is limited to in the private sector. Obligations are only stipulated for medium-sized and large companies. A large part of Belgian industry consists of small-scale companies. The public sector is not dealt with either.

- The role of the mediator is insufficient embedded in structures

There is currently no information on how many companies have actually appointed a mediator. It seems that these are rather exceptions. Neither the government institutions, nor the trade unions, nor the employers are very satisfied with this part of the law. The Institute prefers to give a greater role to the social inspectorate in the context of complaints about wage discrimination in companies. The trade unions point out that their representatives are much better protected by law when they have to carry out such difficult balancing exercises within a company. In short, the law is introducing a parallel circuit in stead of strengthening and broadening existing structures and procedures.

3. Three legislative proposals to amend the law

In 2019, three legislative proposals to amend the gender pay gap law were submitted by members of parliament from socialist and green parties. The proposals were inspired by good practices in other countries but should also be read as an expression of the frustration over the lack of tangible results. The proposals included the following ideas: making the action plans compulsory when the remuneration structure of a company is unequal, making the appointment of a mediator compulsory, publish the analysis reports of companies on a website, or awarding a label on the basis of those analysis reports and making those labels publicly accessible, explicitly include the principle of equal pay for work of equal value in the gender law, and finally conducting an evaluation of the gender pay gap law every five years.

The current State Secretary for Equal Opportunities, who was one of the authors of the last legislative proposal, announced that additional measures will be taken to make the law of 22 April 2012 on combating the gender pay gap more effective. Given the amount of energy that employers and work councils invest in the implementation of the law, such an initiative is very much legitimate.

4. Recommendations on how to make the law on the gender gap more effective

In order to make the law on combatting the gender pay gap more effective a number of adjustments would be advisable.

1. Defining clear sanctions in line with other regulations in labour legislation

Measures on gender equality should not just be a layer of varnish. Violations of obligations on gender equality must therefore be punished in a similar way to other violations of labour law. The Directorate must be allowed to act, because a name-and-shame list clearly proves to be too soft an approach. Furthermore, the National Bank must be given clear powers to sanction incorrectly or incompletely filled-in Social Balance Sheets. A clear mandate must also be issued so that the National Bank can make maximum use of these data. Finally, it must also be verified whether the analysis reports in the companies meet the necessary quality requirements and whether they are discussed in depth in the works councils or the committees for prevention and protection at work. If systematic checking is not feasible with current resources, at least a random check by the social inspectorate should be possible. Clear sanctions for violations must also be defined for this obligation.

2. Supporting the correct interpretation of data: providing tools for gender analysis

The current forms for drawing up an analysis report are insufficiently user-friendly and difficult to interpret. With current technological resources, it should be possible to develop a tool that allows to automate the drawing up of these reports, for example on the basis of social security declarations and the one-off entry of a profile for each employee. The analysis should also be supplemented by a number of other important gender indicators and the output should be provided with useful guidelines for the reading and interpretation. The authorities should considerably facilitate the effective use of the analysis reports.

3. Handling the issue of privacy, both at individual and corporate level

The current law gives precedence to the right to privacy over the right to transparency, both at individual and company level. At European level, however, increasing emphasis is being placed on transparency. It is therefore recommended that this issue be dealt with in depth in Parliament, since this is a political choice. It is important to be aware that full wage transparency is a great weapon in the fight against wage discrimination. After all, it often exists only thanks to secrecy. However, it is also important not to be blind to the possible negative consequences of full transparency, because the level of pay has a strong hierarchising effect and can alienate employees from each other. In fact, it would be good to broaden the debate and to discuss what constitutes a fair wage. In recent decades, high and low wages have grown further and further apart. Is this really a desirable situation? These issues clearly go much further than closing the gender pay gap.

If the choice is made to give priority to the right to privacy, minimum control mechanisms must be put in place. The right to privacy cannot be invoked in order to make the attainment of certain standards or the failing to do so invisible.

4. Setting clear objectives

It is not enough to create the obligation to social partners to discuss the gender pay gap. Making parties responsible implies that they also have to think about how they want to promote gender equality and that they take concrete actions. At the interprofessional level, a feedback to the Institute for the Equality of Women and Men would be a useful step. At company level, the

discussing of gender equality and the measures taken should also be monitored, at least a system of random checks should be put in place, similar to the monitoring of the analysis reports.

At the same time, the government should make this task easier by providing templates of equal opportunities plans. Good templates and manuals should turn action plans in companies into useful tools. The database of good practices in companies and organisations can also be touted here as a possible source of inspiration.[8]

5. Developing tools for small businesses

SMEs are outside the scope of the law. A quarter of female employees work in an SME. Extending the law with its specific obligations as such to SMEs does not make sense. However, it is important to support the development of a gender-sensitive personnel policy at SME level and to provide attractive tools for this purpose. A series of thematic videos offered online as an accessible package could be a suggestion here.

6. Removing the glass ceiling in the public sector

The public sector is also outside the scope of the law. Extending the law in this respect would not make sense either, because wages are not negotiated in the same way. Nowhere are wages more strictly regulated than in the public sector. The existing gender pay gap is a result of vertical segregation: the fact that women and men do not work at the same job level. Tackling the under-representation of women in managerial positions is the most appropriate approach here.

7. Making the mediator and the equal opportunity plans visible

The law and the accompanying royal decree define the mediator's task and obligations quite well, but it is completely unclear whether many companies make use of them. Nevertheless, the philosophy behind appointing a mediator is one of cooperation and taking responsibility. If a company appoints a mediator, this can be regarded as good practice, as can the adoption of an equal opportunity plan. In fact, it should be promoted that companies just come out with this and present themselves as gender-sensitive and in keeping with the times. The authorities could support this by creating a platform, or by inviting companies to share good practice with others.

8. Strengthening the role and powers of the social inspectorate

When there are conflicts in a company, the position of the mediator is not strong enough to resolve them. Victims of wage discrimination can call on the Institute for the Equality of Women and Men. The Institute cooperates with the social inspectorate to gather evidence in wage cases. A clear and unequivocal extension of the powers of the Social Inspectorate on wage discrimination would certainly help to combat it more effectively.

[8] This database is available in Dutch, French, and English, and can be consulted via: http://www.iefh-action.be/

9. Developing a tool to define work of equal value across sectors and enable comparisons to be made

In order to be able to have a thorough debate on what exactly constitutes work of equal value, it is necessary to take a broader view on the comparison between wages. It must not only be about similar work, but it must also be possible to give equal weight to very different tasks, regardless of the sector and regardless of whether they are carried out mainly by women or mainly by men. It is recommended that this instrument be made available online so that it is accessible to everyone.

At the same time, this instrument would be very useful in the pension debate. For the time being, that takes too little account – not at all, to be precise – of the wage and other gender discrimination that older generations of women have suffered throughout their lives. The question of making amends when calculating pensions must not be avoided.

Such an instrument requires a clarification of who is responsible for wage differences that arise across companies and sectors. It is hard to speak of wage discrimination when it is not one and the same employer who makes a distinction. How should equal pay between sectors be pursued: that will be the future challenge of the wage gap policy.

5. Conclusion

In spite of its weaknesses, the Belgian law on the gender pay gap is an interesting instrument to broaden the basis to tackle the gender pay gap and to involve social partners in the process. A number of adjustments should be made in order to make the law more effective, such as defining sanctions, providing tools, supporting a correct interpretation of data and providing a platform for good practices. Separate initiatives should be taken to address the gender pay gap in small businesses and in the public sector. The law is not the best instrument to fight pay discrimination as such, however. In order to tackle that a clear mandate should be given to the labour inspectorate. The questions of privacy, fairness of pay, comparability of work, and the correction of discrimination and inequality suffered in the past, should be taken up for a broader discussion in parliament and with the larger public.

Colophon

Institute for the equality of women and men
Rue Ernest Blerot 1
B-1070 Brussels
Tel. 02 233 44 00
equality.womenmen@iefh.belgique.be
http://igvm-iefh.belgium.be

Responsible editor: Michel Pasteel, Director of the Institute for the equality of women and men
Author: Hildegard Van Hove

File number: D/2021/10.043/17

Cette publication est également disponible en français.
Deze publicatie is ook beschikbaar in het Nederlands.

This text was written in the context of the Croatian Ombudsperson for Gender Equality's Equal Rights Equal Pay Equal Pensions Project that was funded by the Rights, Equality and Citizenship Programme of the European Union (2014-2020)

This project is funded by the Rights, Equality and Citizenship Programme of the European Union (2014-2020)