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► **To cite this version:**

Mark Smith. SOCIAL REGULATION OF THE GENDER PAY GAP IN THE EU. European Journal of Industrial Relations, 2012, 18 (4), pp.365-380. 10.1177/0959680112465931 . hal-00807533

**HAL Id: hal-00807533**

**<https://hal.science/hal-00807533>**

Submitted on 4 Apr 2013

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## **SOCIAL REGULATION OF THE GENDER PAY GAP IN THE EU.**

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### **Abstract**

Although there has been more than thirty years of equal pay legislation in the European Union the gap between male and female earnings has remained remarkably resilient and is present across all Member States regardless of Member State institutional arrangements. The European regulatory landscape has changed to one relying heavily on soft law approaches and with more limited ambitions in the field of gender equality than at the creation of the European Employment Strategy. In this environment the European Commission has placed greater emphasis on the role of social partners in addressing the gender pay gap. This paper critically reviews the role of these social partners in addressing pay inequalities.

## **1. Introduction**

The gender pay gap captures the enduring inequalities that exist in the labour market between women and men (Whitehouse 2003). Although there has been more than thirty years of equal pay legislation in the European Union the gap between male and female earnings has remained remarkably resilient and is present across all Member States regardless of the overall level of female employment, welfare models or their own national histories of equality legislation (Vosko *et al.* 2009). Recent improvements in methodology and data collection at the European level only serve to underline the intransient nature of the pay gap and the challenge of reducing pay inequalities (Eurostat 2009; 2010). This is perhaps one of the reasons that Trade Unions have been somewhat reluctant to engage actively in closing the gap. On the other hand it is also important to recognise that collective negotiation of wages is one of the factors maintaining existing wage structures and gender inequalities (Gannon *et al.* 2006).

In spite of limited progress in recent years, the European Union has played a pivotal role in shaping the regulatory landscape for gender equality including the gender pay gap. Indeed the Directives of the mid-1970s were a major force for a change in mind-sets around pay inequalities and promoter of considerable regulatory and institutional change at the Member State level (Mazey 1998). Some thirty years later, the appetite for new regulations has changed. Not only do the size and heterogeneity of Member States limit the scope of equality initiatives, but also the neoliberal agenda and the dominant model of promoting convergence, via soft rather than hard regulation, constrain action (ETUI 2009; Smith and Villa 2010).

Thus outside the main mechanisms of its Employment Strategy, the Commission has placed considerable emphasis on soft mechanisms, including the role of social partners, in dealing

with gender gaps. While such an approach might be considered timid given the persistence of the gender pay gap, the key role which social partners play in negotiating pay in many EU countries means that social partner negotiations are perhaps the locus for progress. Furthermore the drawback of the Commission in this area means that there is a greater reliance on Member State initiatives to make progress against pay inequalities.

This paper is divided into five sections. After this introduction, we briefly introduce the gender pay gap in Europe and the reasons why social regulation of pay inequalities have come to the fore in Europe. The third section takes a critical perspective on the role of social partners in promoting gender equality. The fourth section examines the progress and limitations of social partners in addressing the gender pay gap firstly at the European level and secondly in the case of France, a country where a legal obligation to negotiate has been introduced. The fifth and final section considers the prospects for social regulation of the gender pay gap.

## **2. Gender Pay Gap, the EU and Social Regulation**

The Gender Pay Gap is both a simple and complex term – simply measuring the gap between male and female pay, whether hourly, weekly, or monthly as just one aspect of a wider picture of gender inequities (Wajcman 2000) but also capturing the complex processes on the labour market that lead to women’s disadvantage. A range of factors help reinforce male and female wage disparities. At one level, sex segregation and stereotyping processes confine women and men to different parts of the labour market with different rewards, often undervaluing women’s work (Colgan and Ledwith 1996; Robinson 2001). The vertical segregation of women and men into different positions in organisational hierarchies, including through discriminatory processes, limited women’s career

progression (Clarke et al 2005; Dex et al 2000; Wass and McNabb 2005). In addition the impact of the uneven division of domestic labour on the ability of women and men to devote time to careers and labour market work. As a result both part-time work and time out of the labour market on leave impact upon current and lifetime earnings profiles (Joshi and Davies 1992; Meurs *et al.* 2010). The impact of women's concentration in non-standard jobs further reinforces lower pay and weaker career prospects (Smithson *et al.* 2004). Finally organisational innovations such as 'new' individualised pay systems, which increase pay diversity among employees at similar levels, further reduce transparency and disadvantage women (Huffman 2004).

The gender pay gap is defined as the difference between men's and women's hourly pay divided by men's hourly pay. It is the difference between men's and women's average gross hourly earnings which tends to be used and it relates only to paid employees.<sup>1</sup> The so-called unadjusted measure of the gender pay gap captures the overall or raw gap in men's and women's hourly wages. Some of this gap can be explained by observable characteristics of male and female employees – these include differences in education, labour market experience, type of job and company characteristics. Adjustment for these observable characteristics reduces the gender pay gap but does not eliminate it and large differences remain (Callan *et al.* 2009). Furthermore many of these observable characteristics are also sources of disadvantage and indirect discrimination. Recent advances in the methodology of assessing the extent of the gender pay gap have only served to underline the persistence of the disparity between women and men's pay, with

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<sup>1</sup> By using the gross hourly pay the gender pay gap measures reward on the labour market independent of any impact from taxation.

women on average in the EU currently earning approximately 18% less per hour than men (table 1).

< TABLE 1 ABOUT HERE >

Across Member States we find that the gap extends to over 30% in Estonia with nine Member States reporting gaps of 20% or more (table 1). Italy recorded the lowest gap 5.5% and was joined by five other member states with gaps below 10%. These most recent data for 2009 confirm the stability of the gender pay gap and the wider annual variations in some Member States are more likely to be related to methodological issues than short-term changes in the underlying structure of women's and men's wages. The low reported gender pay gaps in Member States with low female employment rates – Italy and Malta for example – are the result of a 'selection effect' whereby the low proportion of women working is dominated by higher educated women with strong attachments to the labour market. These low pay gaps are at risk of increasing, as women enter work in low-paid service jobs, a trend likely to increase pay gaps.

The European Commission has been a key player in promoting equal pay in Europe. The Equal Pay legislation (former article 141 and in 1975 'Equal Pay Directive') can be seen as a triumph in establishing the principle of Equal Pay for work of equal value across all Member States (Gold 2009) and embodies the equality principles of the founding treaty (Heide 2001). Mazey (1998:146-7) describes the almost overnight change following the mobilisation of Article 119 with a "flurry" of Member States legislation and/or introduction or upgrading of equality bodies. As with most legislative developments, the implementation of the Directives at the Member State level has been shaped by systems of

national rules and norms (EC 2009a) and in this process some dilution and country variation takes place (Velluti 2010). In practice the implementation of Directives has required the evaluation of the value of women's and men's jobs via systems that have not necessarily been value free and thus may have inhibited progress against pay gaps. The nature of the gender pay gap means that, to be effective, the presence of a common legislative framework needs to be complemented with multi-faceted policies to address wage disparities.

Although there has been an absence of hard legislation in addressing the gender pay gap since the major steps forward in the 1970s, there have been other European level pressures to address the factors affecting the gender pay gap in EU Labour markets (Rubery *et al.* 2003). As in other policy areas, the Commission can be regarded as "a promoter and an impresario as much as legislative leaders" with the ability to set agendas and promote dialogue (Hine 1998:8). In response to limited progress, the Commission has made various efforts to close the gender pay gap. Under the auspices of the European Employment Strategy (EES), since 1997, addressing the gender pay gap has become linked to the effective utilisation of female human resources in Europe and broader goals of high sustainable employment rates. However the separation of main action on gender equality from the EES after its 2005 re-formulation meant that the so called Roadmap for gender equality became the main axis for action on the gender pay gap (Smith and Villa 2010).

The gender pay gap was highlighted as one of the key concerns in the Roadmap for equality between women and men 2006-2010 (EC 2006). One of the early milestones of the Roadmap was for the Commission to work with Eurostat in the development of adequate data for the measurement of pay inequalities (EC 2009b). The Commission has been able to publish comparable data on the pay gap but Member States have been

criticised over the adequacy of their own national data for monitoring (EC 2009c:14) and limited action (EC 2009d:66; EC 2010a:9).

Following the review of existing legislation, a legislative approach was not considered as the main policy option for progress at the European level with effective implementation of existing legislation and non-legislative measures as a possible way forward (EC 2009a). The rejection of the legislative approach is perhaps more to do with the limited appetite for hard law in general rather than an assessment that further legislation is not applicable. Badger (2009:92) describes these coming decades as one for “consolidation” rather than radical developments and new Directives. The approach can be seen as building upon the recast equality Directive of 2006 (Directive 2006/54/EC) that require Member States to;

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

The second major outcome of the Road map, after improvements in data monitoring, was the publication of a Communication on “Tackling the pay gap between men and women” in July of 2007. The Commission's Communication set out ways that the EU can address the gender pay gap recognising limited movement in recent years. The Communication identified four fields of action:<sup>2</sup>

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<sup>2</sup> The Commission's Communication was followed in 2008 with a European Parliament Resolution on the Pay Gap. The Resolution recognised that the gender pay gap did “not show any sign of significantly narrowing” and

- ensuring better application of existing legislation,
- fighting the pay gap as an integral part of Member States' employment policies,
- promoting equal pay among employers, especially through social responsibility,
- Supporting the exchange of good practices between Member States, including encouraging social partners to implement their framework of actions.

The approach adopted by the Communication recognised not only the need to make the most of existing legal framework around the gender pay gap but also develop a mainstreamed and multilevel approach to addressing gender pay inequalities. The improved application of the legislation also involves raising awareness and consideration of how current laws could be adapted, feeding into the Roadmap work programme (EC 2009a). In response to the need to raise awareness, in March 2009 Commission piloted an information campaign about the gender pay gap across the EU, subsequently rolled out to all 27 Member States in 2010.

In light of its limited capacity to introduce new hard law, the Commission, in its Communication, promoted the sharing of good practice and the engagement of other actors in the fight against pay inequalities. The Communication stressed the role of social partners in the exchange of good practice (CEC 2007a: section 3.4). The European Parliament also supported this line and called for social dialogue as a way to address gender pay gaps at the Member State level, including national or sectoral collective agreements (European Parliament 2008). Indeed the Commission has expressed a strong commitment to support NGOs and Trade Unions in their work favouring non discrimination

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called for wider action on the full range of factors with a focus beyond hourly pay and equal pay for the same work (European Parliament 2008).

(CEC 2009e). Thus an important element of dealing with the pay gap in Europe is the involvement of the social partners.

### **3. The Role of Social Partners in Addressing Pay Inequalities**

On the one hand, the renewed approach towards the gender pay gap can be considered a weak compromise based on a limited support for further hard law to tackle gender equalities and a reliance on elements of the social protocol to include the social partners as a catalyst for action. However, on the other hand, the engagement with social partners, as key actors in the wage formation mechanisms in many member states, can be considered as recognition of the need for action at multiple levels. So although not supported by new legislative proposals, the inclusion of social partners as a means to address pay inequalities can also be seen as an innovation in the light of stagnation of progress in the hard law approach.

In fact the mobilisation of social partners in addressing pay inequalities can be seen as simply exercising the existing legal framework. Indeed as Foubert points out “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” implying that the “provisions of a collective labour agreement should be in accordance with the principle of equal pay for men and women” (2010:12). Nevertheless collective labour agreements may still contain provisions that have an indirect discriminatory impact on women’s earnings for example job evaluation and pay systems that structurally disadvantage female workers (ibid: 13). In Belgium a recent collective agreement has led to the adoption of a gender neutral job evaluation system but this is the exception rather than the rule (Meulders 2010).

An approach drawing upon on social partners does however recognise the complex web of factors acting to maintain the gender pay gap and also the variety of actors at different levels that are involved in pay determination, labour market regulation and shaping women's and men's experience of work. Whitehouse (2003:125) calls for a "multidisciplinary and multi-methodological approach" to researching pay equity and we can extend this advice to policy mechanisms addressing the gender pay gap itself. A focus on the gender pay gap from a more holistic position necessitates the gender mainstreaming of policy and practice around wage setting (Plantenga *et al.* 2008). This also opens up possibilities of addressing the link between the pay gap and segregation for example, in the mainstreaming of 'general' wage policies, for example considerations of the gendered impact of the growth of low-paid work (Rubery and Grimshaw 2009).

Gannon *et al* (2006) study shows that inter-sector industry wage differentials help explain an important component of the variation in gender pay gaps across countries. Less regulation does not lead to similar wages across social groups (Rubery and Grimshaw 2009) but rather decentralised or limited wage bargaining is associated with a higher dispersion of industry wage premia. Gannon *et al.*'s study underlines the importance of different industrial relations systems in shaping gender pay gaps and thus the need to work with these to address pay equity.

The presence of trade unions does help narrow the earnings differentials for women and men and wage dispersion is lower in organised compared to unorganised sectors (EuroFound 2010; Metcalfe *et al* 2000). Elivra and Saporta (2001) confirm this finding but also that the effect is stronger in feminised sectors suggesting unions have a greater role of play in feminised sectors in reducing the gender pay gap. In fact the benefits for women of union membership extend further and Allen and Sanders (2006) find that women's pay can

benefit more than men's from union membership, although these positive outcomes are not always by design. For example, Whitehouse (2003:124-5) suggests that the Australian system of centralised industrial relations has been beneficial for pay equity even though it has been based on male norms and "pay equity gains have primarily been the accidental outcomes of structure rather than evidence of a capacity to avoid gender bias in the valuation of skills" (see also Whitehouse et al. 2001). Similarly in Italy, before its abolition, centralised wage indexation limited inequalities over a number of years (Plantenga and Remery 2006).

Antonczyk et al. (2010) suggest that in spite of falling trade union coverage in Germany, the gender pay gap remained quite stable between 2001 and 2006. Sectoral coverage of collective bargaining actually fell more for women than men, 19 compared to 16 percentage points. However, since women benefit more than men from sectoral coverage of bargaining, the decline also prevented progress in closing the gap. This notion of swimming upstream has been identified across a number of countries where individual gains by women – for example in terms of education or more continuous participation – are undermined by changes in the institutional, collective or economic environment (Blau and Kahn 2006).

The engagement of social partners in the fight against the gender pay gap can also be considered an appropriate mechanism for coping with institutional heterogeneity across EU Member States (Schulten 2008). Recognition of the variety of wage setting systems at the national level would be useful in addressing persistent pay gaps. The gender segregation across work places is important in explaining low pay so tackling sectoral inequalities would be a useful step (Rubery and Grimshaw 2009). As such, a reduction of

the gender pay gap might be achieved not only with action that works with the variety of national industrial relations systems, but also targeted policies that may vary between specific systems within Member States (Gannon et al. 2007).

On the other hand, there are a number of weaknesses for using the social partners to address the gender pay gap. The uneven distribution of social partners across sectors also needs to be recognised, for example organisations may span regions rather than sectors where specific action on pay gaps may be required, for example the federal unions in Germany (Bosch 2009). Female-dominated sectors also tend to have lower rates of unionisation, with the exception of the public sector in some Member States. The effects of segregation on the gender pay gap extend beyond the relative strength of social partners in different sectors and flux in collective bargaining arrangements mean that institutions that could address low pay or the gender pay gap are shifting (Palier and Thelen 2010)..

Women are underrepresented in trade union structures across the EU, particularly among Southern Member States (Ebbinghaus 2002). Although gender disaggregated data are not available for a number of Member States, Spire (2009) confirms that women are underrepresented in most unions. However, women are also increasing their share of union organisations. Women do make the majority in some unions organised along occupational lines, for example white collar unions like FTF in Denmark or STTK in Finland. There are also eight member States where women account for the majority of union members. Women account for a greater share of the growth in new members where organisations are expanding for example, EAKL in Estonia and SAK Finland. On the other hand, where there have been falls in membership, absolute falls in female membership exceed those for men in central and Eastern European countries (Spire 2009: table 3). Ebbinghaus and Visser (2002) also note that falls in union coverage affect men more than

women although this is not always the case (see the case of Germany for example Antonczyk *et al.* 2010).

Indeed the Commissions own evaluation recognises that there may be weaknesses in relying on such an approach for a number of reasons (EC 2009a); firstly, the low percentage of employees in trade unions; secondly the male domination means that they are not particularly keen to address the gender pay gap issue; and thirdly the limited coverage of collective bargaining means that sectors where action is most urgent are not covered.

Similarly Ebbinghaus notes that the gender pay gap has often fallen through the gap of social partners and government policy interests since “governments have thus far focused less on equal pay issues than on formal anti-discrimination policies and promotion of female employment, while the collective bargaining partners were less willing to renegotiate the wage structure than pushing for general pay increases” (2002:10-11). A study by Soumeli and Neergard (2002) suggested that social partners tended to view pay equality as an issue for governments and legislation rather than one for collective bargaining. In addition “existing wage discrepancies between men and women [were] seen as a consequence of positional differences in working life which is too big an issue to be solved through negotiations” (ibid:1) . Furthermore, and rather like policy priorities at the European and National level, these authors suggested that raising women’s employment level was seen as more important than addressing gender pay gaps.

It is also important to note, however, that social partners may not always hold a common view on what the equal pay problems are or agree on how to proceed since they have their own ties to sectors, occupations and work groups (Clarke et al 2005; EuroFound 2006; Green et al 2005; Kirton and Greene 2005; Short and Nowak 2009). There is a role for

various actors in structuring existing pay within markets; among these trade unions are an important group. Rubery et al (2003) argue that social partners have views and expectations from labour wage structures that help form wage outcomes along with economic factors. These structures reproduce differences in men and women's pay. For example, in Portugal, the Cork Industry has agreed to act on the gender pay gap, with social partners developing a project to "revalorise work to promote equality" by applying job evaluation free of gender bias (USEPME 2008:75). However, the programme of higher pay rises for female dominated job groups to eliminate gender pay gaps will be implemented over an eight-year period (op cit : 68). The current economic conditions may also be an additional challenge to place the gender pay gap on the agenda since the social partners may have other priorities - we already see evidence of this in the case of Germany (Maier and Carl 2009). Even in the absence of multi-employer bargaining mimetic behaviour by firms promotes similarities across wage structures within sectors (Scmidt and Dworschak 2006)

#### **4. Social Partner Activities at EU and Member State Level**

Social Partners at the European level have been active independently of the European Commission's initiatives with the European Trades Unions Congress (ETUC) committing itself to "prioritise actions to reduce the gender pay gap with all possible means..." at its Seville Congress in 2007 and adopting a resolution on "Reducing the gender pay gap" in June 2008 (ETUC 2008). The ETUC has been broadly supportive of the European Commission's 2007 Communication and recognises the role trade unions can play. Furthermore the ETUC has envisaged a more active role for collective bargaining in closing the gender pay gap and not just addressing wage inequalities – this includes putting the

part-time pay gap on the agenda for bargaining negotiators. Similarly the European Federation of Public Service Unions adopted a resolution on Equal Pay in June 2009 (EFPSU 2009).

The clearest commitment from the European Social Partners was the adoption of a Framework of Action in 2005. Thus the Commission's promotion of a social partner role ties in with existing aspirations of European Social Partners themselves - UNICE/UEAPME, CEEP and ETUC – and their Framework of Actions on gender Equality (2005). This Framework includes a section on the gender pay gap, along with addressing gender roles, promoting women in decision making, and supporting work-life balance. As part of the actions for gender pay gap the Social Partners have acknowledged: an obligation to ensure that pay systems do not lead to pay discrimination between women and men; to develop a variety of instruments to act on the underlying causes of gender pay differences; the need to provide information and guidance about existing legislation on equal pay; and to ensure that pay systems and job evaluation schemes are transparent and gender neutral, including the possible discriminatory effects of secondary elements of pay.

The mechanisms of the Framework for Action led to an annual report on national trade union actions to promote equality, including in the area of the gender pay gap. European Social Partners report an increase in activities to address the gender pay gap, for example the development of toolkits for tackling the gender pay gap in negotiations (USEPME 2008). This builds on capacities that already exist in many trade union structures across the EU. The ETUC (2002) found that the majority of confederations have collected gendered disaggregated data, possess trained negotiators on equality issues, and have monitored negotiated equality measures. However, gender representation among the top levels of

European Social Partners remains imbalanced on both trade union and employer associations sides (Table 2).

< TABLE 2 HERE >

The ETUC commitment was further underlined by the 2008 Resolution on “Reducing the gender pay gap” (ETUC 2008). The eight-point resolution reconfirmed a commitment among member organisations to “prioritise actions to reduce the gender pay gap with all possible means, and especially in collective bargaining” (ibid:1). However, it also recognised the difficulties in placing equal pay on bargaining agendas and also called on the Commission to take more concrete action. Among the demands made on the Commission were a strengthening of the legal framework, the inclusion of equality clauses in public contracts and the introduction of a target for reducing the pay gap in the Employment guidelines of the EES – all policies that were unlikely, given the direction of policies within the Employment Strategy.

However, in spite of the recast 2006 Directive requiring social partners to adopt the principle of equal pay for men and women in collective bargaining there is limited evidence of measures put in place to encourage social partners to actively address the gender pay gap in collective agreements (Foubert et al. 2010). The independence of collective bargaining from the state means that trade unions are likely to be hostile to such intervention.

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. This law was followed up on 23 March 2006 with legislation that specified that

the gender pay gap must disappear by 31 December 2010. France has a long history of legislating to close gender gaps even if these gaps have remained as persistent as elsewhere in the EU. The principle of equality between men and women was first recognised in 1946, in the Preamble to the French Constitution and the equal pay principle has been laid down in the Labour Code. Nevertheless in France the gender pay gap has remained relatively stable. Between 1990 and 2002 the gaps closed just one percentage point, despite this being a period of rapid progression for women's educational attainment and a number of legislative developments promoting equality (Meurs and Ponthieux 2006). Nevertheless these legislative developments provided an interesting example of the potential for legislative framework to provide impetus for equality bargaining while leaving responsibility for progress with social partners themselves. The 2006 Act on equal pay law initially provided for penalties to be introduced, from 2010, for companies that had not fulfilled their obligations regarding the elimination of wage inequalities. These obligations include the drafting of a report on the comparative situation of salaries in the organisation (known as an RSC, *Rapport de Situation Comparée*), with a simplified version for businesses with fewer than 300 employees. There was also an obligation to negotiate on equality (including salaries), with measures for the abolition of wage differentials observed. No details on the nature of sanctions were outlined in the text.

The 2006 Act introduced compulsory bargaining on equality (2001 Act) with a requirement to define and plan the steps needed to eliminate the pay gap between women and men before December 31, 2010. A diagnosis of these differences was also required. In case of a lack of commitment to "fair and serious" negotiation, based on information provided by trade unions, penalties were envisaged. Furthermore a branch agreement without a provision for the abolition of wage differentials could not be extended and firm wage

agreements will be registered only if negotiations were initiated on the subject. Finally, the Government would submit to Parliament if needed, a bill establishing a contribution-based payroll penalty for companies that had not opened negotiations.

Data on the establishment of branch agreements show the strong impact of the 2006 law on the incidence of agreements, given the relatively slow pace of agreements following the initial 2001 bargaining requirement (figure 1). On the other hand, the rate of enterprise agreements shows the rate picking up with the passage of the 2006 law and prior to its adoption with the frequency peaking in 2007 (Figure 2).

<FIGURE 1 HERE>

<FIGURE 2 HERE>

The most recent national data for France on the gender pay gap not only confirm the picture presented in the harmonised European data of table 1 of relative stability but also one of male salaries rising more quickly than those for women between 2007 and 2008 (the most recent published data) (INSEE 2010). The gender pay gap remained at 18% for 2006, 2007 and 2008 for all employees but the data across occupational groups show a slight deterioration of intermediate professionals (20% to 21%) and slight employees (14% to 15%) but an improvement for manual workers (18% to 17%). The pay gap for cadres remained at 21% across the three years (ibid).

In July 2009, with the 2010 deadline approaching, the government entrusted a preparatory report on *The consultation with social partners on professional equality between women and men* to Ms. Gresy (Inspector IGAS) (Gresy 2009). Among the 40 proposals presented in

her report, the penalties for a lack of negotiation were proposed but were left for negotiations or legislation.

The Gresy report contained the possibility for two kinds of penalties. Firstly a two stage sanction with a penalty for not having completed the report (RSC) and secondly a penalty on non-compliance in negotiating an agreement or unilateral plan. The report proposes "10 levers of equality" to be addressed in these negotiations (the number ranging from 2 to 10 depending on the size of the company). In addition, two penalties were proposed. Firstly, possible cuts in social security: the law on income from December 3, 2008 already provides that the general relief from payroll taxes are paid only on condition of fulfilling the annual obligation to negotiate wages. The size of the exemption would be reduced by 10% in the first year of default and completely removed after three years. However, the Act of March 23, 2006 provides that wage negotiations should also address the elimination of wage differentials. In the absence of bargaining on wage inequality, this principle of the abolition of relief can be applied. Secondly a penalty based on a percentage of pay-roll, as provided for in the 2006 Act, was proposed at 1% of payroll for non-compliant companies (as already the case for organisations not applying the plan for older workers).<sup>3</sup> This fund could be used to train actors and inspectors in equality issues.

It was proposed that these penalties would apply from the first year if no RSC was published and renewed annually. Sanctions would also be extended in the absence of an agreement or plan for reducing inequalities, even where a report was provided. The first

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<sup>3</sup> The Gresy Report identified the example of a company with a 1000 employees, earning on average, 1,500€ per month. In this case the sanction would be of the order of 180,000€ and this would be a minimum since the inclusion of higher level employees (cadres) would raise the payroll.

penalty (reduction of payroll tax relief) would be monitored by the Social Security agency (URSSAF) while the second would be under the control of the Labour Inspectorate.

The proposed provisions were subject to new negotiations among social partners which followed tri-partite conferences on the subject in 2007. With employers reluctant to introduce sanctions, the decision on the final sanctions was left until the October of 2010 and the controversial legislation amending retirement ages in France. The revised legislation (due to be adopted in April 2010) reduces the demands to eliminate the gender pay gap and simply requires that enterprises with at least 50 employees have an agreement on occupational equality and in the absence of an agreement, targets and measures in the form of a plan of action. However the penalty set at a maximum of 1% of remuneration remains. The 2010 revision is a significant weakening of the 2006 provision to close the gender pay gap and these changes may well undermine the collective agreements established in the period up to the 2010 deadline. Furthermore the mechanisms, and resources, for monitoring the requirements of the revised act will be crucial in determining its success.

## **5. Conclusions and Discussion**

The shift in focus from hard law to soft law, from governmental action to social partner action reflects the realpolitik of European institutions with a more limited focus on promoting equality goals, a high concern for creating jobs and a large and heterogeneous Member State membership. This timidity in relation to gender quality goals has been noted in the wider employment strategy (Fagan et al. 2006; Smith and Villa 2010) and is clearly evident in the 2010 re-launch of the Strategy as EU2020 (see for example EC 2010b).

By creating obligations on social partners to negotiate to close gender pay gaps, there is at least in principle the possibility to address some of the root causes of gender pay inequalities that have evaded more than 30 years of equal pay legislation. By creating obligations on organisations the concern for equality becomes a proactive one rather than a reactive issue when complaints of unfair treatment are received. Hepple (2007:225) describes the importance of shifting “from negative duties towards positive duties to promote equality” and outlines a pyramid of responsibilities that can be used by public authorities ranging from informational campaigns to the use of public procurement to encourage positive behaviours. Zeigler (2006) also advocates a more proactive system where there is regular monitoring of compliance rather than a reliance on individuals to initiate complaints. Creating obligations addresses one of the problems with individual complaint-based system where the worst offenders rarely surface (Colgan et al 1996). A system based on obligations permits equality organisations to initiate their own investigations and requires employers to be proactive (op cit). Evidence from Canada in the 1990s suggests some employers take the opportunity to change while others are encouraged because of a legal requirement to be active. The obligations on social partners to bargain on equal pay in France created a potential pressure for change in wage determination. However, the 2010 revisions to the legislation, and the nature of subsequent implementation, may have neutralised the effects of the legislation. The potential for social partners to leverage such legislation to close gender gaps remains but the motivation to do so may not be forthcoming.

Just as women themselves have been described as “swimming up stream” in their individual progress against the gender pay gap (Grimshaw et al. 2001; Whitehouse 2003) we can also see some of the same challenges facing Trade Unions as actors to challenge

the existing order, promote gender equality and specifically close gender pay gaps. As Hyman (2005) points out, trade unions have two dimensions – movement and organisation – while the former can be a force for change, the latter helps maintain the status quo, including gender inequalities in pay. Furthermore the decline in trade union coverage and wages negotiated at the collective level means that a social partner mechanism to close gender pay gaps is also in decline. Widening wage inequalities undermines women’s advances in occupational attainment, qualifications and experience. There is nevertheless positive evidence of social partner action. For example 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. However the shift of the burden for closing the gender pay gap from the European and nation state to social partners can be regarded as something of a shedding of responsibility by the state for what could be considered a human right.

In 2003 Rubery et al. suggested that the renewed multifaceted approach to the gender pay gap was perhaps a signal for a stronger approach towards pay equality in the European and also offered a number of reasons to remain sceptical. They argue that the structure and supply-side principles of the EES were ill equipped to address pay gaps routed in organisation, occupational and sectoral wage structures. The subsequent re-launch of the EES and focus on quantity rather than quality approach in the employment policies of the EU (Fagan et al. 2006) could be considered a further weakening of the possible mechanisms to close gender gaps in pay. Indeed the revised EES in the form of the 2020 strategy makes such progress even harder with a greater concentration on tight spending controls and wage moderation (EC 2010b). Furthermore Member State policies are to

stimulate the growth of low-wage work, for example in Germany, act against closure of the gender pay gap. In the German context these mini jobs are also frequently excluded from trade union negotiated benefits (Mair and Carl 2010). The focus on creating jobs at the lower end of the pay distribution has disproportionately affected women and the further concentration on increasing the number rather than quality of jobs will only serve to exacerbate rather than close gender pay gaps.

The context of the crisis provides an additional pessimistic layer for progress against the gender pay gap and the likely role of social partners. In the current employment crisis, the gender pay gap does not appear to be a priority target for the social partners' actions as the protection of jobs. Furthermore the tight financial controls of the Growth and Stability Pact, and the low visibility of gender equality goals in the EU2020 policy architecture means that women and trade unions fight for equal pay will continue to swim upstream for the foreseeable future.

### **Acknowledgements**

Thanks to members of the Expert Group on Gender and Employment for comments and advice on an earlier version of this paper. Thanks also to Wissal Ben Arfi at Grenoble Ecole de Management for research assistance.

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**Table 1 – Gender Pay Gap in the EU**

	2002	2006	2007	2008	2009
EU27	:	17,7	17,6	17,5 (p)	17,1 (p)
Belgium	:	9,5	9,1	9	9*
Bulgaria	18,9	12,4	12,4	13,6	15,3
Czech Republic	22,1	23,4	23,6	26,2	25,9
Denmark	:	17,6	17,7	17,1	16,8
Germany	:	22,7	23	23,2	23,2
Estonia	:	29,8	30,9	30,9	30,9**
Ireland	15,1	17,2	17,1	17,1	15,7 (p)
Greece	25,5	20,7	21,5	22	22*
Spain	20,2	17,9	17,1	16,1	16,1 (p)
France	:	15,4	16,9	17,1	16,5 (p)
Italy	:	4,4	5,1	4,9	5,5
Cyprus	22,5	21,8	23,1	21,6	21
Latvia	:	15,1	15,4	13,4	14,9
Lithuania	13,2	17,1	20	21,6	15,3
Luxembourg	:	10,7	12,5	12,4	12,5
Hungary	19,1	14,4	16,3	17,5	17,1
Malta	:	5,2	7,6	8,6	6,9
Netherlands	18,7	23,6	23,6	19,6	19,2
Austria	:	25,5	25,5	25,5	25,4
Poland	7,5	7,5	7,5	9,8	9,8
Portugal	:	8,4	8,3	9,2	10
Romania	16	7,8	12,7	9	8,1
Slovenia	6,1	8	8,3	8,5	8,5*
Slovakia	27,7	25,8	23,6	20,9	21,9
Finland	:	21,3	20	20	20,4
Sweden	:	16,5	17,9	17,1	16
United Kingdom	27,3	24,3	21,1	21,4	20,4

Note:

1. p = provisional : = not available
2. 2008 data \*\* 2007 data

Source: Eurostat (2010)

**Table 2 – Women’s representation Among European Social Partners**

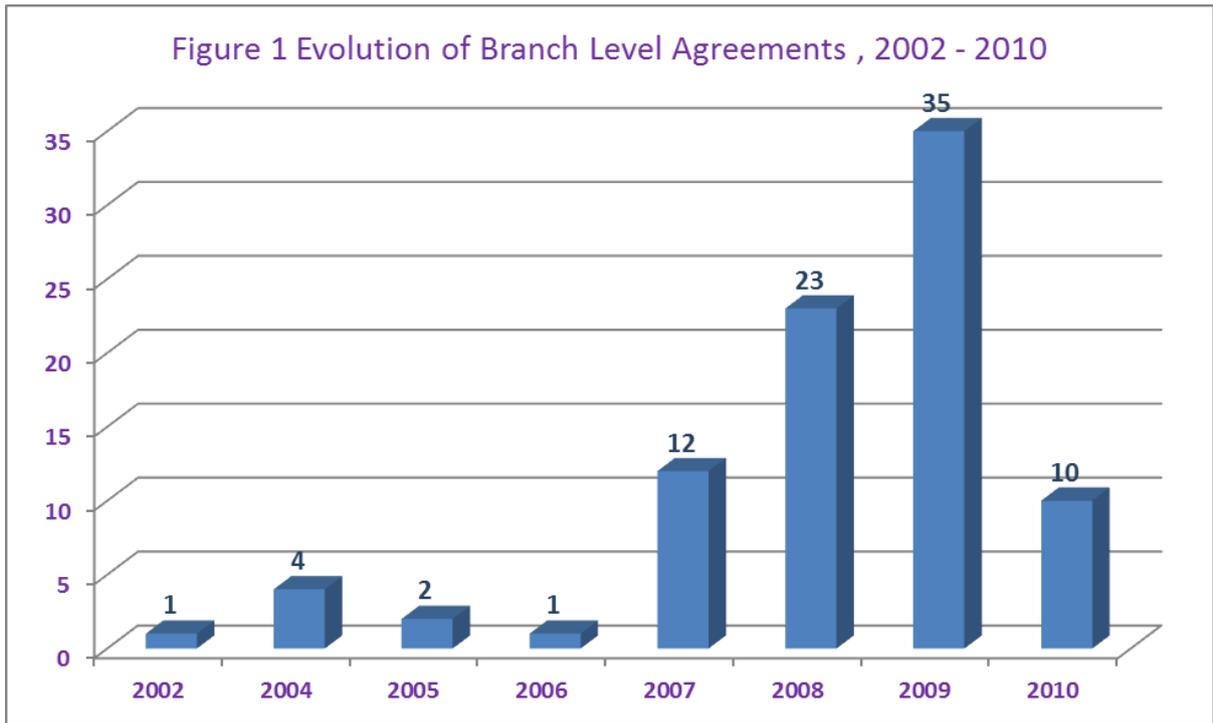
	Presidents	Members	Executive Head
employer organisations	3 of 60 posts	164 of 1192 posts (14%)	15 of 60 posts (25%)
employee organisations	5 of 18 posts	155 of 519 posts (23%)	3 of 12 posts

Note:

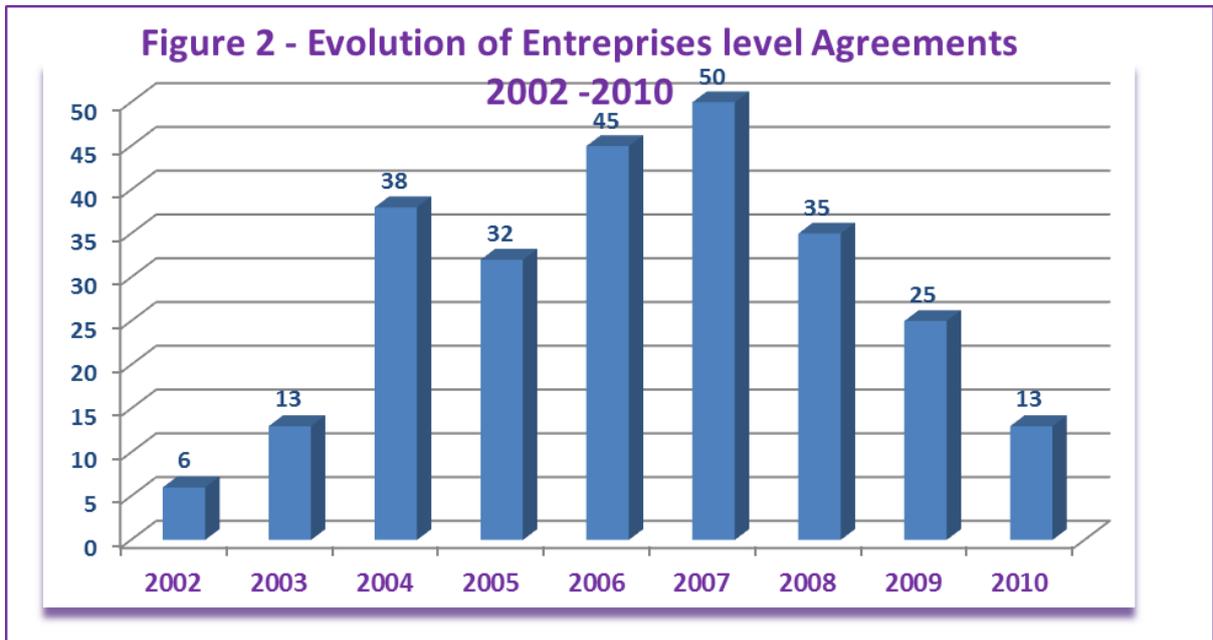
1. Employer and trade union organisations at EU level which engage in the European social dialogue - i.e. discussions, consultations, negotiations and joint actions taking place between employers and trade unions at European level as well as between them and EU institutions

2. President: Head of highest decision-making body, Members: Members of highest decision-making body (count includes the president), Executive head: usually designated as the secretary-general or managing director

Source: EC 2010c



Source: [www.egaliteprofessionnelle.org/index.php?p=dialogue&r=presentation](http://www.egaliteprofessionnelle.org/index.php?p=dialogue&r=presentation)



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