



The EU Mutual Learning Programme in Gender Equality

**Tackling the
gender pay gap**
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Tackling the gender pay gap in the Netherlands

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1. Country context

According to information from Eurostat¹ the gender pay gap in the Netherlands amounts to 16 %. This is almost the same as the average gender pay gap in the EU and considerably larger than the Belgian pay gap (9 %). In the Netherlands, the gender pay gap is widely discussed, in the media, by women and human rights groups and in Parliament, but there are only few hard rules. The focus lies on the company level and on actions to be taken by individual employers and employees.

The Dutch equal treatment laws forbid discriminatory employment conditions in general and also, more specifically, unequal pay for equal work or work of equal value. Article 7:646(1) Dutch Civil Code states that the employer is not allowed to make a distinction between men and women with respect to employment conditions. This includes equal pay for equal work or work of equal value. In Article 7(2) of the Act on Equal Treatment of Men and Women (ETA) the concept of pay is defined as “any remuneration owed by the employer to the employee in return for the labour of the latter.” In Article 7(1) ETA it is explained that, when comparing the pay of a male and a female employee, a comparison must be made with an employee of the other sex who does equal work or work of equal value.

The Netherlands do not have an equivalent to the Belgian Gender Pay Gap Law.

In the Netherlands, trade unions and employers’ organisations negotiate on employment conditions at sectoral and company level. At the national level, general directions are given by the social partners, but the actual collective bargaining agreements (CBAs) are entered into at sectoral or company level. CBAs at the sectoral level may be legally extended by the Minister of Social Affairs and Employment.

Equal pay for men and women appears not to be an (important) topic in the negotiations between the social partners anymore. It was more so in the beginning of the century. In 1999/2000 the Ministry of Social Affairs and Employment developed, together with the social partners and the holders (creators) of job classification and evaluation systems, an instrument through which it could be assessed whether job evaluation systems were gender neutral. According to one of the largest trade unions, FNV Bondgenoten, various job evaluation systems were tested subsequently, but no (indirect) discrimination was found.² This conclusion can also be found in a letter by the Minister of Social Affairs and Employment of 11 June

¹ http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/gpg_country_factsheet_nl_2015_en.pdf, accessed 26 September 2016.

² FNV Bondgenoten, “Hoe werkt functiewaardering? De ins en outs van functiewaardering, versie 2011.” Can be accessed at https://www.fnv.nl/site/brochures_en_folders/hoer_werkt.pdf, 26 Sept 2016.

2007, stating that in 2006 a special working group examined, together with the holders of job evaluation systems, whether these systems (still) caused pay differences and concluded that this was not the case.³

The focus has subsequently shifted from the national and sectoral level to the company level. As pointed out above, no (new) legislation has been introduced. The initiatives that have been taken fall into the categories of raising awareness (inter alia through media campaigns), research, training, and facilitating (inter alia a website on equal pay). Worth mentioning is the research that has been done by the Netherlands Institute of Human Rights (NIHR), in 2011 into equal pay of men and women within hospitals and in 2015 into equal pay within six Colleges.⁴ The NIHR found that the gender pay gap in the hospitals varied from 1.6-7.1 % and amounted to 10.8 % in the colleges.

For practical purposes it is relevant that the NIHR defined neutral and non-neutral criteria for determining the height of the salary. Non-neutral criteria are, with respect to the starter salary: (1) attaching insufficient weight to previous work experience, (2) determining the salary on the last-earned salary elsewhere and (3) basing the salary on negotiations. Non-neutral criteria in the case of increase of salary and promotion are, inter alia: (1) the existence of salary guarantees, (2) incorrect or no application of the percentage of increase of the salary in case of promotion and (3) giving insufficient weight to obtained work experience.

To summarise, Dutch law contains a prohibition on unequal pay, but no further legislation in which this prohibition has been fleshed out. The focus lies on soft law and the provision of tools: recommendations, training, raising awareness, check lists and instructions (through internet) on how to prevent unequal pay. Recently a bill has been introduced which aims to bring about some change in this respect, but the bill has been received very critically, as will be explained below in section 2.

2. Policy debate

A bill has been submitted to the Parliament in 2014, which (1) gives a right of consent to the works council with respect to regulations on equal pay for men and women, (2) introduces an obligation for the employer to provide the works council yearly with information about the height of the pay of women compared to the pay of men within the same job category, and (3) requires companies to publish information about the pay of women in their company compared to the pay of men in their annual report.⁵ The bill is an initiative of an MP, thus not a proposal by the government itself. The MP in question (Ms Yücel) aims to reduce the gender pay gap at a faster speed than so far, as it is clear from various research efforts that the gender pay gap in the Netherlands is only very slowly becoming somewhat smaller, and is larger than the EU average.

³ TK 2006-2007, 27099, no. 18.

⁴ "Equal pay of men and women within general hospitals in the Netherlands", NIHR, April 2011, and "Does a man earn more? Equal payment of men and women within Colleges." NIHR, January 2016. Both reports can be found at www.mensenrechten.nl, accessed 26 September 2016.

⁵ The parliamentary documents can be found under the number: TK 2014-2015, no. 33 922. (https://www.eerstekamer.nl/wetsvoorstel/33922_initiatiefvoorstel_yucel, accessed 27 September 2016).

The bill has been received very critically. Several political parties have expressed doubts about the usefulness and the necessity of the proposed measures and whether these measures will have an added value compared to the rules that already exist. This point of view can also be found in academic literature.⁶ The last state of affairs is that MP Yücel has promised the Lower House to provide more information, especially practical details about organisations that already collect data about equal pay and the results thereof. Perhaps the Belgian experiences might be interesting in this respect as well.

At this moment of time it is not certain whether the bill will be adopted by Parliament. There are no other future developments in the field of legislation relating to the gender pay gap. As mentioned in section 1, most of the present plans and initiatives can be characterised as soft law: recommendations, training, media campaigns, raising awareness, etc.

3. Transferability of the Belgian approach to the Netherlands and vice versa

3.1. Belgium => Netherlands

The main difference between the Belgian and the Dutch approach appears to be that Belgium has enacted, in addition to the equal treatment legislation, a formal law to reduce the gender pay gap, whereas in the Netherlands the focus lies more on soft law. Secondly, in Belgium the emphasis lies more on the sectoral level, while in the Netherlands the focus is more on company level.

It is hard to say what works best, but in view of the fact that the gender pay gap in Belgium has been reduced to 9 %, while in the Netherlands it is more than 16 %, the Belgian approach appears to be preferable. Of course there may be more causes for the difference in pay gap between Belgium and the Netherlands, but the Gender Pay Gap Law may be one of these causes, or at least partly.

In view of this the introduction of a Dutch Gender Pay Gap Law might be a good idea, but the chance that such an idea would be accepted in the Netherlands is, in my opinion, very small. In the first place it has been concluded by the Minister, by the social partners and by the holders of job evaluation systems (see section 1) that the Dutch job evaluation systems are gender neutral and are, therefore, not the cause of the gender pay gap. Secondly, as I pointed out in section 2, the proposal for a law on equal pay by MP Yücel was received very critically, especially because other MP's do not expect that a new law will reduce the gender pay gap, as there is already legislation on equal treatment. The proposed law is seen as merely symbolic legislation.

Since MP Yücel has been asked to take another critical look at her proposal, it might be worthwhile to bring some of the Belgian elements to her attention. From the parliamentary documents it is not clear whether the situation in other countries, like Belgium, has been taken into account when the proposal was drafted. The proposal focuses on the role of the works council, but an alternative – or an extra element –

⁶ E.g. in I. Zaal, "Medezeggenschap als middel tegen maatschappelijke onrust: medicijn of placebo?" (Participation as a means against unrest in society: medicine or placebo?), TRA 2015/89.

could be to oblige the social partners at the sectoral level to assess periodically, on the basis of an inquiry, whether the job evaluation systems used are (still) gender neutral or can be improved in this respect, and to make this information publicly available. The same obligation can perhaps apply where a CBA is entered into at the company level.

Worth noting is also that the Belgian obligation to submit a social balance sheet applies to nearly all Belgian firms with employees and to large associations with more than 20 FTE, whereas the obligation in Yücel's proposal to publish information about the pay of women in the company compared to the pay of men applies only to companies that do not meet two of the three following criteria: a total balance of not more than 4,400,000 EUR, a net turnover of not more than 8,800,000 EUR and 50 employees or less. The scope of Yücel's proposal is thus considerably smaller than the scope of the Belgian law.

In view of the criticism that has already been expressed, it can be doubted, however, if there would be sufficient support for a stricter version of the bill.

3.2. The Netherlands => Belgium

As Belgium appears to be more active in the field of the gender pay gap than the Netherlands, there is not so much that Belgium can learn from the Netherlands. It is not clear to me whether Belgium has an equality body that is comparable to the Dutch NIHR. The NIHR has quite a relevant role, in my opinion. As mentioned in section 1, the NIHR carried out research into unequal pay in Colleges and in hospitals and developed on the basis thereof directions which are useful in practice, e.g. that employers should avoid to automatically determine the salary on the last-earned salary elsewhere, that extra benefits should be awarded as supplements and not through placing an employee in a higher salary scale and that it is better to grant an employee the maximum salary within a specific salary scale, if that is the scale his job falls into, than to apply a higher salary scale as a means to increase the pay. It would be good if these standards would come to play a role in court cases about equal pay. That is not really the case yet.

What is also helpful is that a worker who is unequally paid can submit a complaint to the NIHR and that the NIHR can subsequently ask her job evaluation expert to carry out an investigation. The job expert then examines the pay structure of the employer, the way jobs are evaluated within the company and whether the jobs of the worker and her comparator are of equal value. This is very helpful, as it is difficult for an employee to do this type of research herself. Besides, no costs are involved for the employee, whereas such an examination would be quite costly if another expert would have to be engaged. Also the employer is obliged to provide the NIHR and the persons engaged by it with the documents and data the NIHR and her experts require. This is very helpful as well.

A good initiative is also the website www.loonwijzer.nl (part of www.wageindicator.org) which gives very elaborate information about (equal) pay, suggestions for a fair pay structure, insight into the height of salaries, etc. The website receives subsidy from the Government.

4. Recommendations

At the national level, in the Netherlands, more binding law could be adopted, like in Belgium, although probably that would not solve the matter, as unequal pay is often not a matter of overt discrimination, but rather of preconceptions about the value of a man's work compared to that of a woman. But legislation may be helpful, even if it only helps to increase awareness. In that respect it would be good if the proposal by Yücel would be adopted, even if it is to some extent symbolic legislation. For the rest it is important to continue to ask attention for equal pay. What might also be helpful is to have women in high positions, so that they may be role models. On the other hand it is not surprising, in my view, that women are not always interested to fulfill these positions. I am always surprised that men are.

The European Union is rather active in the field of equal pay. It would be good if the EU continues in that way, perhaps with specific attention for enforcement. However, a bigger problem than unequal pay is, in my view, the increase of what is called precarious work: work that is insecure and badly paid. The largest part of this work is done by women. Their contracts, if they have one, can often easily be terminated, e.g. because they are temporary or because the women are said to be self-employed or are hired from a payroll agency or other third party. That makes it difficult for them to claim equal pay. The EU has so far not done much in the field of precarious work, also because the regulation of employment relationships falls primarily in the competence of the Member States, but it is an area that deserves considerable attention if one wishes to safeguard the rights of working women.⁷

⁷ See also <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2016-001464&language=EN>, accessed 3 October 2016.