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The Gender Pay Gap in Belgium: policy beyond the rules of law

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Abstract

It is not well known that the policy outcome regarding wage inequality between men and women in Belgium is positive. The current gender pay gap stands at 20% in gross wages, but just 4.5% among full-time workers. For all but the oldest age groups, the hourly wage gap in Belgium ranks among the lowest in Europe. Nevertheless, full equality remains high on the policy agenda, and this continued ambition may be driving the decent results thus far. In this discussion paper, I try to shed a light on the different facets of wage setting and gender legislation with respect to the labour market, and stress the importance of the interplay between regulation, institutions, and social dialogue. Reflecting on recent legislation in Iceland, I suggest that singling out one policy measure will not lead to similar outcomes, yet objectifying payment schemes and investing in capacity building may contribute to increased gender inequality in other countries.

1. Equal pay for men and women in Belgium: relevant country context

Equal rights are deep-rooted in the Belgian society. Across the political spectrum, the equality of men and women is recognised. In 1994, the Smet-Tobback Law required political parties to have at most 2/3 of candidates of the same sex on voting lists for elections. Gender equality was taken up in the constitution in 2002, which imposes the presence of women in the federal government. In three additional 'parity' laws in 2002, equal representation on the list for the federal, European, and regional elections was required, and it is stipulated that the first two candidates on the list should be of a different gender. As a result, the political participation and representation of women has increased. At the federal level in 2014, 42.4% percent of the members of parliament are women (compared to 23.9% in 1995), while the Michel I government consisted of 4 and later 5 women out of 18 ministers and state-secretaries (compared to 2 out of 17 in 1995).

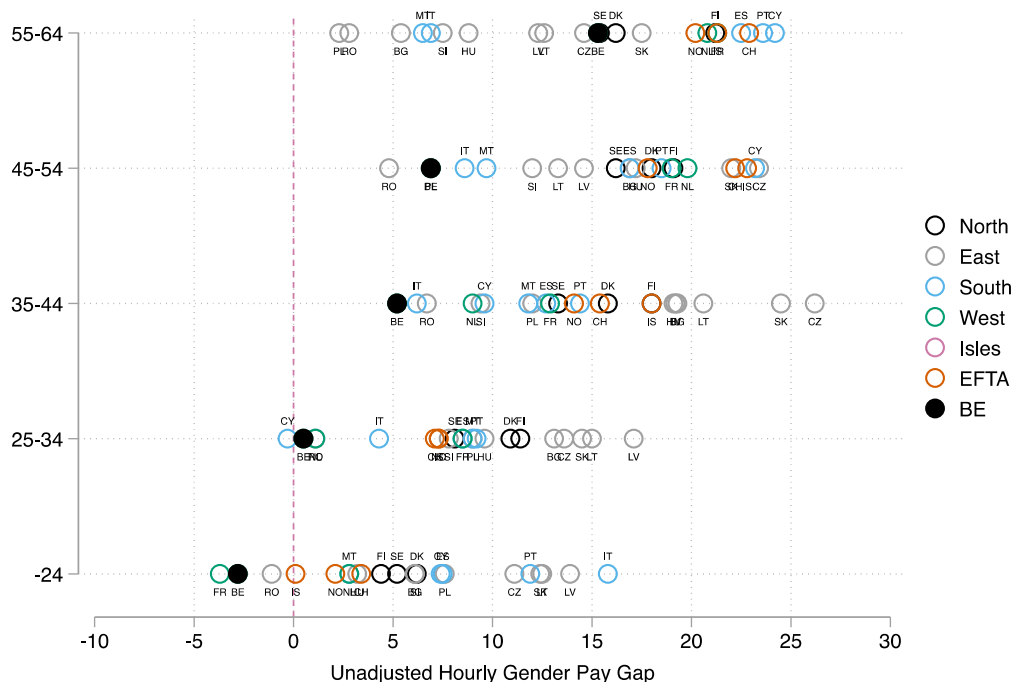
In the labour force, the employment rate in Belgium remains below the Europe 2020 target of 73.2%, and this is due to the low employment rate of women. However, while the employment rate of men has somewhat stalled in recent years (from 77.8% in 2008 to 79% in 2018) and full-time employment of men decreased since the crisis, the employment rate of women has increased from 62.7% in 2008 to 67.4% in 2018 (source: Eurostat). Besides a cultural shift in the role of women in society, the growth of the service industry and white-collar work on the demand side, and the higher

educational attainment of women compared to men on the supply side are driving this catch-up movement. Still, 43.9% of women are working in part-time employment, compared to less than 9.6% of men, and this is motivated differently, with women working less in order to take care of the household (IGVM, 2017).

Following the EU directive no. 75/117, the national collective bargaining agreement no. 25 recognised the principle of equal pay for equal work, and urged companies and sectors to use gender-neutral evaluation methods, which was further established in the interprofessional agreements of 1998, 2000 and 2007 (Vandekerckhove & Knipprath, 2016). The 2012 gender pay gap law closed the circle by requiring companies to register the payroll by gender, and screening sectoral CBA's (see below). As reported in the 2017 wage gap report of the Institute for the Equality of Women and Men, the gender pay gap for full-time workers in Belgium is 4.5% in 2014 (compared to 10.2% in 2006 and 15% in 2000), while the unadjusted pay gap is 20.6%. The difference is therefore mainly due to differences in labour volume, although non part-time, full-year workers also earns less per hour.

Eurostat reports the hourly wage gap (i.e. equalised for differences in working time) based on the Structure of Earnings Survey (private sector, companies with at least 10 employees) by age, which reveals that the gender pay gap in Belgium is comparatively low, decreasing over time, but appearing with age from the age of 35 onwards (linked to household responsibilities and childcare) and sharply rising for workers over 55, although in that age group labour market outflows strongly bias the composition of the workforce (figure 1). While the wage increase linked to seniority remains stronger for men than for women, over time and for younger cohorts, the gender pay gap is decreasing, despite the simultaneous catch-up trend in the employment rate. This refutes the classic explanation that the larger wage gaps in the Nordic countries are due to full employment for both sexes, which includes (female) workers with lower earnings potential. Rather, the female labour force participation is higher in social-democratic welfare states because the public care sector is larger and takes over household duties.

Figure 1: The gender pay gap by age group in the EU-28+EFTA, by region (2017)



2. Moving to the next level in the policy debate on gender

Despite the reasonably favourable evolution of the female workforce participation and gender pay differences, policy makers in Belgium remain determined to further eradicate unequal treatment of men and women. Moreover, some organisations like the socialist Zij-Kant ("her side") aim for equality and refer to the unadjusted pay gaps, i.e. the outcomes rather than the fairness of the process. However, it is difficult to properly measure the gender differences in pay as constraints on wage setting and tax avoidance have steered away from basic pay to other (fringe) benefits and training opportunities. Based on the social balance data gathered in light of the gender pay gap law, the Christian trade union ACV-CSC has shifted the focus to these issues. The 'dynamic' inequalities (sticky floors and glass ceiling) are discussed, but receive less emphasis among social partners. The glass ceiling mainly affects a smaller share of women that are represented by managerial unions, and a solution for sticky floors may be dominated by a fight for job security in low-paying firms.

In the 2017 gender pay gap report, the Institute for the Equality of Women and Men repeats the demand to (1) increase female labour market participation; (2) reduce involuntary part-time work; (3) apply the gender pay gap law and make payments schemes gender-neutral; (4) make the gender pay gap law more efficient; (5) increase the competence of the social inspectorate with regard to discrimination in companies; (6) invest in data processing; (7) improve the work-life balance for both men and women; (8) increase the representation of women in representative bodies; (9) tackle segregation at the roots.

Other suggestions that are put forward are equal maternity and paternity leave or shared take-up, and the mainstreaming of shorter working hours, as the standard work week in Belgium is 38 hours, but many women opt for part-time work, either to have time for household work, or because no full-time work is offered.

Finally, there is a heated debate on the situation of migrant women on the labour force. While both left wing and right wing voices advocate gender equality, the former point to the double discrimination of migrant women in many aspects of life ("multiple discrimination"), and the latter point to cultural oppression of women in religious minorities. These debates tend to be emotional rather than rational and are given much exposure in politics and popular press. However, it is clear that there is an important gap between the employment rates of non-EU28 women (44.9% in 2018) and native women (68.7%), whereas the non-EU28 men have an employment rate of 62.9% compared to 73.9% for native male workers. These gaps are steady over time.

3. The interplay between social dialogue and the state as a good practice

Typically, in Christian-democratic welfare states, democracy goes beyond elections and public institutions go beyond the state. Two important principles are subsidiarity, which is the independence of lower bodies of authority, and the freedom of organisation, which give much leeway to civil society. Both principles actually reinforce each other. The legislation on equal pay is a prime example of this interconnection.

The Law of 1968 sets out the lines for collective bargaining in Belgium (Vandekerckhove, 2018). Essentially, wages are collectively determined in joint committees consisting of recognised trade unions and employers' federations, supported by the Ministry of Labour. Together with two incentives for trade union membership (the administration of unemployment benefits and a premium for unionised workers), this has led to high and stable unionisation rates, and strong social dialogue. Gender equality is one of the themes that is taken at heart by the social partners, who have developed expertise in screening agreements on discrimination and representing women's rights. However, the crucial element in creating equality among workers is the fact that collective bargaining values functions, not persons, and collectively agreed wages in Belgium account for the largest part of a workers' total wage. The consequence of this is that the egalitarian narrative is reinforced.

The state then directly and indirectly supports gender equality through watchdog institutions such as the Institute for the Equality of Women and Men (IGVM)¹, which is a government agency, the Council for Equal Chances for Men and Women, which consists of the social partners, the Advisory Council Gender and Development which

¹ Publications in English, including the 'checklist gender neutrality in job evaluation and classification', are listed on the website: <https://igvm-iefh.belgium.be/en>

unites ngo's, and subsidised or recognised non-governmental organisations such as the expertise centre and feminist library RoSa,² among many others, which are represented in the 'Women Council' umbrella organisation. This creates a tightly woven critical mass that keeps politics as well as the labour market in check.

It should be clear from the discussion that the 2012 Gender Pay Gap Law introduced is the cumulating point of this process of interplay, rather than a stand-alone practice. Its aim is to create transparency and a framework for discussion in order to tackle the gender pay gap at the company level. Five different practices of particular importance were emphasised by this law: (1) The inclusion of a section on the gender pay gap in the biannual macro-economic Technical Report of the Central Economic Council; (2) (screening of) gender-neutral job classifications; (3) a gender breakdown of the social balance sheet filed with the National Bank; (4) a biannual company report on the pay structure; and (5) the role of the gender mediator within the company. These practices are expected to increase transparency of wage formation and to increase awareness of the gender pay gap at different levels of wage negotiations (i.e. the national, sectoral and company level). As such, and in spirit of the tradition of social dialogue in Belgium, the social partners (i.e. representatives of trade unions and employers' organisations) are pivotal actors in the implementation of the law. A consequence, criticised by the IGVM, is that there is no centralised follow-up and hardly any sanctioning in case of non-compliance. In many cases, the figures are spiked by dividing the wage mass proportionally over both sexes, leading to 30% of companies having a gender pay gap of exactly 0%, according to the ACV-CSC union.

4. Transferability aspects: the same, but different

The 2012 Gender Pay Gap law in Belgium predates the 2018 law in Iceland that was promoted as the 'first equal pay law', and on first sight, the two laws appear to be similar. However, the fact that despite the comparatively favourable figures, Belgium is rarely praised for its gender equality, and ranks below the Nordic countries in gender equality indicators (e.g. EIGE Gender Equality Index, WEF Global Gender Gap Report), shows a difference in approaches.

First of all, the positive promotion of the gender pay gap law in Iceland illustrates greater cultural and political gender mainstreaming, and a more voluntarist approach, whereas political sentiment in Belgian is perhaps better labelled as 'cynical'. Secondly, we find a more legalist, hard-law approach in Iceland, compared to the institutionalist, soft-law approach in Belgium, which has been criticised above. Because of the mechanical character, legalist thinking has an intuitive appeal and across Europe, there is a trend of increasing judicialisation. This does not always lead to the desired outcomes. Thorgeirsdóttir (2019) discusses issues such as the lack of transparency, the outsourcing to a (single) private auditor, and the high cost of

² A timeline and fact sheets on gender issues can be found on the English webpage of RoSa: https://www.rosavzw.be/english_site/facts.htm

implementing the law. This does not take away the fact that increased political efficiency, including structured data collection and disclosure, might counteract the cynical attitude in Belgium that transmits into the political and socio-cultural sphere.

In order to realise equal labour market outcomes, the institutional approach steers towards the combination of objectification of wage setting on the one hand, and capacity building of representative organisations and watchdog institutions on the other. *Objectification* relates to the use of transparent payment schemes and job categories, and the possibility to measure gender differences at that level. It is important to note that men and women can be perfectly equal within those schemes – which by international law, they should – but that the schemes may not be neutral. In fact, this is almost by definition impossible within company or sector negotiations, who may value the same function differently in light of the (fair) distribution of rents. However, the inequality reducing effect within sectors dominates the inequality increases between sectors, sectoral employment shifts are favourable to women, and there are means to harmonise the sectoral wage developments (i.e. the national wage norm in Belgium).

Still, one needs to be careful not to fall into the trap of hiding behind an unsound label. For instance, the idea that work of equal value should be paid equally may run into the tautology if one relies solely on the market wage to value work. Decentralised wage bargaining and the increase of individual rewards based on ‘efforts’ will undermine gender equality. The gender pay gap law in Iceland leaves room for this error (Thorgeirsdóttir, 2019). Moreover, there may well be no wage gap within companies, but gender segregation and inequalities between companies. In contract, as wages are collectively determined, those inequalities decrease. For instance, according to a recent Eurofound report on seniority-based entitlements (Eurofound, 2019), the age-earnings profile in Belgium is weaker than in most other European countries, despite the widespread use of seniority pay schemes in collective bargaining agreements. Paradoxically, sector-wide, fixed arrangements reduce the inequality between young and old workers, as well as between men and women.

Capacity building is an important addition to the availability and monitoring of data based on objective schemes. Data may contribute to consensual decision-making, but the capacity to organise labour levels the power relations. Means to do so can take different forms, from giving incentives for unionisation, to establishing centres of expertise, releasing progress reports on inequalities, and protecting workers’ self-organisation and actions, such as the right to strike. Yet it is not sufficient to have equal rights in order to execute them, and total (legal) control is only possible when reducing the complexity of a system. Women may still be disadvantaged. For instance, besides pressure from the employer and household time constraints, women working in care work or in the service sector in general, also refrain from taking contentious actions that affect the clients directly, unlike in the manufacturing sector where one is dealing with objects. Furthermore, trends such as telework and the platform economy, spurred by the adoption of technology, create what is called ‘fissured labour’ (Weil, 2014), i.e. workers that operate in a fragmented and

sometimes competitive way. It is therefore not easy to empower (female) workers in today's western economy, even if the need for protection and representation increases in ever more complex labour markets.

5. Conclusions and recommendations

The European Union can and does promote gender equality within the sphere of its competences, for instance through the Social Scoreboard and the Pillar of Social Rights. Whereas the spontaneous organisation of workers in other countries, because of the power balance between workers and employers, or because of traditional gender roles barring the interest of women in particular, is unlikely to occur, the European Union can take the initiative to promote the theme of gender equality and to assign representative organisations. This recognition may foster further development of institutions and civil society, as has been the result of the interplay between the state and the social partners in Belgium. On the other hand, clear labour standards as in Iceland will promote the enforceability of the law, allow monitoring of tendencies, and have a voluntarist signalling effect. At the same time, one should be careful when reducing the degrees of freedom on the labour market, as this may suffocate the economy. Recognizing the independence of social partners from politics, while providing the tools and targets for monitoring, as well as support in terms of intermediation and social protection of representatives, seems a reasonable option.

Today, two simultaneous challenges remain pressing: first, to increase the female labour force participation and guarantee fairness on the labour market (through objectification and capacity building). Second, to carefully monitor the labour market position of any target group that does not benefit from the growth of the knowledge-intensive service sector (low-schooled, migrants), and age-inequalities, both within each sex. The delicate task at hand is to move the balance to a steady state that leads to a zero pay gap and employment gap between sexes. The amount of force to be applied will therefore differ between countries, according to the structural economic development and traditional cultural patterns.

Whereas the current discourse does not subscribe to the aforementioned full equalisation of the gender pay gap, instead advancing the idea of a 'fair' pay gap based on personal choices and worker characteristics (e.g. schooling, effort, working time), productivity is the result of teamwork, sustainable working hours may be less than full-time, and changes in labour demand are beyond the control of workers. Such explanations should not be called upon to justify labour market differences between sexes. To capture and cope with what is happening on the shop floor, one needs boots on the ground rather than merely data in a cloud.

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