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Closing the gender pay gap: A review of the issues, policy mechanisms and international evidence



Gender,
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CLOSING THE GENDER PAY GAP: A REVIEW OF THE ISSUES, POLICY MECHANISMS AND INTERNATIONAL EVIDENCE

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PREFACE

Closing the gender pay gap is an aspiration found in many international policy documents. The principle of equal remuneration for men and women for work of equal value, as set out in the Equal Remuneration Convention, 1951 (No. 100), needs to be implemented if gender equality and decent work for all is to be achieved. However, while the principle of equal pay for work of equal value has been widely endorsed, and is included under Goal 8 in the 2030 Sustainable Development Agenda, a key problem is that the policy mechanisms needed to achieve this objective are not well understood and in fact are both multifaceted and vary according to the institutional context. Specific gender equality policies are certainly required, but these are only likely to be effective if embedded within a general policy environment which is promoting equal and inclusive labour markets.

For example, trends towards greater inequality in wage structures, more individualised pay determination and more variable working hours in higher level jobs are likely to be increasing the gender pay gap, offsetting to some extent the more beneficial effects of women's rising educational attainment and more continuous participation in employment.

While the gender pay gap is difficult to measure, the ILO estimates that if the current trends prevail, it will take more than 70 years before the gender wage gap is closed completely (ILO 2016). This paper aspires to review key issues, policy mechanisms and international evidence with respect to closing the gender pay gap. Furthermore, as the gender wage gap is unrelated to a country's economic development, research is needed to understand how an equitable distribution of economic growth can be achieved (ILO 2016).

This working paper was commissioned by the Gender, Equality and Diversity Branch (GED) of the ILO in Geneva. It was written by Jill Rubery, Professor at the Alliance Manchester Business School, University of Manchester and Aristeia Koukiadaki, Senior Lecturer, University of Manchester's School of Law. It has benefited from the technical comments of various ILO experts.

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EXECUTIVE SUMMARY

This report aims to review the key issues, policy mechanisms and international evidence with respect to closing the gender pay gap. The core focus of this report is on wage setting institutions and their impact on inclusive and gender equitable labour markets.

Policy measures are analysed using a three-level framework covering i) four types of measures (legal, social dialogue and collective bargaining, voluntary and social policy); ii) gender specific and general measures to promote more equal, inclusive and transparent environments; iii) policy developments at four levels (international, national, sector, company) and involving key actors (the state, employers, trade unions, community groups, individuals etc.). Reviews of legal, collective and voluntary measures to promote gender equitable and inclusive labour markets are followed by consideration of the mediating effects of social policy, policy mix and enforcement. The final chapter reviews the key policy implications and provides recommendations.

Conditions conducive to gender equal, inclusive and transparent labour markets can be characterised as requiring: i) high coverage of employment standards and ii) supportive wage practices. These labour market conditions need to be complemented by social policies, to support and facilitate women's continuous employment integration. Ideally these should be funded by the state not employers, and serve both to engage fathers in care and reduce discrimination against mothers.

The key message from this report is that gender pay equity needs to be pursued through a policy package that promotes an inclusive and transparent labour market alongside specific measures to address gender pay equity. Strengthening and extending employment standards, through higher minimum wages, more equal rights for non-standard workers and more extensive and inclusive collective bargaining need to be combined with effective gender specific measures to address the undervaluation of women's work and extend duties on employers to actively promote gender equality. To bring these two elements together and widen support and understanding of gender pay equity policies, consideration should be given to generalising a right to fair pay and equal pay for work of equal value within an employing organisation, though this should not be allowed to detract from efforts to remedy the undervaluation of women's work.

Legal mechanisms can be expected to have an impact on the gender pay gap in a number of ways. They may have a symbolic impact and constitute a driving force for gender equality standards. They may also have an indirect impact when dealing with the structural reasons influencing pay inequality. Legal mechanisms, mostly gender-specific, have a crucial role to play in addressing structural discrimination in the labour market but there are limits to a conventional approach to gender equality centred around a negative prohibition on discrimination rather than a positive duty to promote equality. Significant problems still persist with respect, among others, to the under-development of the principle of equal

pay, the scope for comparison and for justifying unequal pay, as well as the sanctions and remedies available in many legal systems.

Limitations of current legal mechanisms for promoting inclusive labour markets are evident in respect of income inequality and inclusive coverage. Minimum wage policies often fail to include uprating mechanisms to keep rates in line with prices or average earnings. Further, large numbers of women are still excluded from the protected scope of legislation.

Social dialogue and collective bargaining are most likely to promote inclusive and gender equal employment systems where the bargaining is coordinated and conducted at a national or sectoral level. Although trade unions have not always been regarded as acting to promote gender equality, there is very limited evidence that the alternative, employers acting on their own, is beneficial for gender pay equity. Indeed, collective regulation may both reduce and reinforce gender pay inequalities. Where coverage is limited, the effects may be more mixed but trade unions often campaign for general equality policies such as minimum wages or more universal social protection. Voluntary actions that result in improvements in women's pay may be initiated by employers or in response to pressure on employers and/or their clients exerted by the state, trade or employers' associations, community or consumer groups or other NGOs.

Traditional forms of collective organisation may not be best at promoting the interests of disadvantaged or excluded groups and social dialogue needs expanding to include new campaigning groups. New initiatives and new thinking is also needed. The efforts at organising and protecting domestic workers by the ILO, national and local actors provide a key example. Further actions could include stronger enforcement of employment rights across supply chains, setting of minimum wages compatible with the notion of decent work or promotion of a general principle of equal pay for work of equal value within organisations, provided that this built on prior initiatives to address the undervaluation of women's work.

Voluntary actions can and do play a role in promoting gender pay equity and inclusive labour markets but these actions are most effective when they fill gaps in institutional frameworks left by traditional social partners. Voluntary codes of conduct have spread within global supply chains under pressure from consumer groups, trade unions and other NGOs. The codes differ greatly in their ambitions for employment rights and their governance structures, but compliance problems can occur when they conflict with other business priorities.

Research has found incentives to be more effective than negative punishments but many employer initiatives lack ambition and are partial in their effects. Commitment is stronger where employers perceive a business need to recruit and retain women.

In developing countries women in the informal sector or domestic workers often organise outside traditional institutional structures to pursue gender equality issues. The distinction between trade unions and NGOs may blur if these new structures develop into effective trade unions for women in the informal sector.

Social policy can be expected to have an impact on the gender pay gap. It is more likely to have a positive impact the more it facilitates mothers' pursuit of continuous careers in their current job; enables work and family reconciliation; moderates traditional gender roles; recognises the value of unpaid care work and acts to limit rather than promote the gendered supply of labour for informal or non-standard work. These influences derive from both gender specific policies and from the overall design of social protection systems.

Without social policy support for social reproduction, closing the gender pay gap is unlikely, except through increased inequality among women themselves. Inclusive social policy can have strong

impacts on women's overall lifetime income and reduce labour market segmentation. High social wages reduce pressure for family wages but are also at risk under austerity.

Gender-specific social policy has most direct impact on the motherhood pay gap but policy impacts are not straightforward: paid leaves can be too short or too long, and only available to mothers and to formal sector employees; specific leave for fathers is growing but is only effective at a high wage replacement rate; formal childcare has more impact where informal care from family networks is limited; early childcare focused on children's education may not support mothers' economic activity; women's interest in flexible working varies across national contexts, dependent upon wage levels and the normalisation of part-time working; and those with family responsibilities often value regular not variable hours to assist planning.

There is a general drive, particularly in developing countries, towards more inclusive forms of social protection, spurred in part by recognition of women's unequal access, and aimed at promoting both gender equity and indirectly child welfare. The ILO's new Social Protection Floors Recommendation (2012) is more universal, no longer only for those in employment. Four issues are of particular importance for gender equality in social protection systems: how unpaid work is valued; how non-standard forms of employment (NSFE) are treated, due to women's overrepresentation in these forms; whether social rights are individual or household based; and whether there is social support for the costs. Four main issues need consideration in designing the policy mix: how to complement action on wage structures and labour markets to close gender pay gaps by support for care work; how to take into account interactions of gender and social class; targeting the policy mix to fit the country context; and how to adjust policies to the changing context as the achievement of gender pay equity is not a fixed but a constantly moving target

There is growing awareness of intersectional effects by social class and employment status in both developed and developing countries. Thus policies apparently promoting better pay and working conditions may have very skewed impacts due to gender segregation or a small formal sector. This suggests it is important not to focus only on aggregate gender pay gaps but to identify where the source of problems lies in a particular context and prioritise actions.

Policy mechanisms to promote equal pay without strong enforcement and means to monitor progress are unlikely to be successful. Individual enforcement is always likely to be a more risky option for workers compared to actions taken by the state or workers' representatives to change wage practices. Nevertheless the state, trade unions and NGOs need to provide support for complainants. Enforcement of rights to equal pay is more likely if there is high quality data available.

The effectiveness of anti-discrimination legislation is dependent on the willingness and ability of individual litigants to bring actions. Litigation is becoming more important as collective bargaining declines but problems arise from the complexity and costs of litigation and the difficulty of establishing proof.

Minimum wage compliance is a function of both state enforcement mechanisms and its level. Compliance is higher where minimum wages are set at a low level but due to more limited impact on pay. Labour inspectorates vary in their extent, focus and effectiveness and not all have competence with respect to pay.

Employers are more active in enforcing general terms of collective agreements or minimum employment standards than gender pay equity. The main enforcement roles for NGOs are in promoting awareness of rights, publicising abuse and mobilising new groups of workers to organise. Individuals need to be aware of their rights, have access to enforcement mechanisms and protection against

victimisation in order to be able to participate successfully in enforcement activities. Monitoring of gender pay gaps is also important and is easier the greater the transparency over pay.

In summary this report is concerned with promoting an institutional environment conducive to gender pay equity to counter the emphasis on individual preferences, behaviour and productivity. The three main wage setting mechanisms – legal, collective and voluntary – should be considered potentially complementary rather than competitive. Legal regulation is more necessary where collective regulation is patchy but legal regulation on its own is hardly ever sufficient. Collective organisation needs expanding to include new campaigning groups and new initiatives and new thinking are needed. To promote inclusive and transparent labour markets to close the gender pay gap employment standards need strengthening and extending, through higher minimum wages, more protection for non-standard forms of employment and more inclusive collective bargaining combined with effective gender specific measures to reduce the undervaluation of women’s work and to extend duties on employers actively to promote gender equality. Generalising a right to fair pay and equal pay for work of equal value within an employing organisation should be given consideration, though this should not detract from efforts to remedy the undervaluation of women’s work.

ABBREVIATIONS

CB	Collective Bargaining
CJEU	Court of Justice of the European Union
CSR	Council-Specific Recommendations
DWU	Domestic Workers United
EPSU	European Public Service Union
ETI	Ethical Trading Initiative
ETUC	European Trade Union Confederation
FENATRAD	Federação Nacional das Trabalhadoras Domésticas (Domestic worker's Federation in Brazil)
GUF	Global Union Federation
IFA	International Framework Agreement
MNC	Multinational Company
NGO	Non-governmental Organization
NHS	National Health Service
NSFE	Non-Standard Forms of Employment
PCBU	Person Conducting a Business or Undertaking
PSECA	Public Sector Equitable Compensation Act
SEWA	Self-Employed Women's Association
SMIC	Salaire Minimum Interprofessionnel de Croissance
TFEU	Treaty on the Functioning of the European Union
USR	Unilateral State Regulation

1

CLOSING THE GENDER PAY GAP: THE CONTEXTUAL FRAMEWORK

1.1. INTRODUCTION

Closing the gender pay gap seems to be an elusive goal. The gender pay gap still persists, even as women's behaviour has changed. They have become more continuous and better educated members of the workforce, diversified the subjects they study at university, taken on dual breadwinner roles in households and joined trade unions, often to the same extent as men when they work in organised sectors. Social policy support for women's employment has also expanded with more mandated state paid leave and more childcare support (see box 1.1).

There are perhaps two core reasons why the gender pay gap is an ongoing problem which cannot be resolved by the efforts of women alone in changing their behaviour. The first is that efforts to close the gender pay gap are taking place against a changing environment, which may make gender equality more difficult to achieve. Indeed the persistence of the gender pay gap does not necessarily imply there has been no change but rather that it may have been reconstituted in a different form. Progress towards equal pay may, therefore, not be linear but may involve reversals. Nor is it in any sense inevitable: gender inequality does not only arise out of a legacy of female subordination such that, as societies modernise and move forward, inequality can be expected to decline. Instead it is also reinvented in new forms of inequality, in new forms of non-standard forms of employment (NSFE) and in expanding activities such as paid care work. The second and related reason is that a more equal distribution of pay requires a political will towards redistribution. This involves not only redistribution from men but also from capital as the wage share in societies has declined just as more labour – and mainly female labour – has entered the labour market. Gender equality also requires more sharing of care work with men or more social support for care work through publicly-subsidised services (Pearson 2014).

For all these reasons the focus in this report is on changing the structural conditions to promote gender equality rather than on the efforts and behaviour of the women themselves. The latter has been the primary focus of research but these efforts may be made against an increasingly unfavourable environment. Our focus is more on changing the behaviour of employers and the state who shape the opportunity structure for women. The outcome of the focus on individuals, rather than the environment in which they are operating, is that the differences among countries and changes over time in the institutional context are ignored or given more limited attention than issues such as differences in productivity characteristics of men and women and difference in rates of return to those characteristics.

Box 1.1. The gender pay gap: trends and levels.

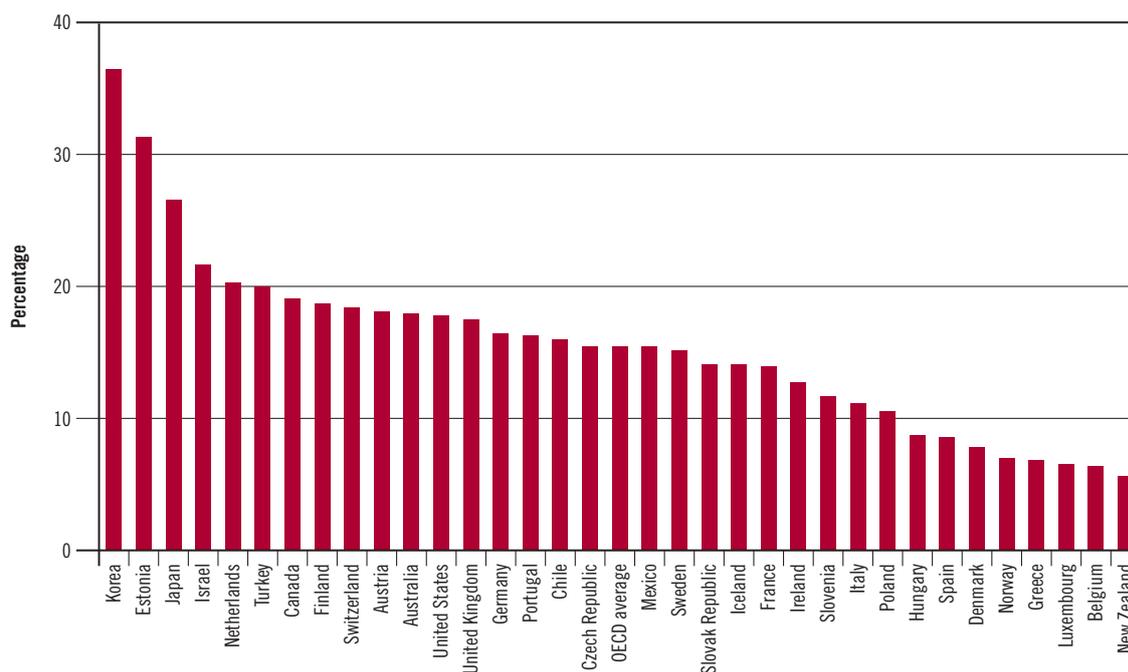
There are major problems in providing good data on the size of the gender pay gap. This is because of a lack of gender disaggregated earnings data, a lack of associated information on working hours and disagreements about whether it is better to present the raw gender pay gaps, to compare median or average earnings between men and women, or to adjust raw gaps for differences in the characteristics of the male and female working populations and/or differences in the employment arrangements under which they work. There are clear problems in simply comparing averages when the participation rate of women is very low compared to that of men as it could be the more advantaged and educated women who work or the most in need of wage income. Either way gender gaps do not provide a good indicator of the state of gender equality. Where women frequently work in the informal economy, wage data is usually not collected for this group, thereby creating problems of interpretation of the wage gap data. However, adjustments for education and experience on the one hand or for occupation, industry or employment contracts on the other hand raise the issue of whether these variables are independent of gender discrimination and the gendered pattern of pay or endogenous choices shaped by the labour market environment and gender regime in which women are embedded.

Although this debate continues, there is nevertheless fairly widespread agreement that, whatever measure is used, the gender pay gap persists and is not fully explicable by differences in personal characteristics such as education. Indeed, as women have narrowed the educational and work experience gaps with men, the gender pay gap has not closed as much as anticipated such that in some countries the adjusted gender pay gap exceeds the raw gender pay gap (ILO 2014, Rubery and Grimshaw 2015). Thus, even though there is a general trend towards closure of the gender pay gap¹ this is not necessarily evidence that the problems are being overcome as the trend decline may be less than could be expected given changes in women's behaviour and integration into wage work. Furthermore, since the European economic crisis the gender pay gap has been reduced through downgrading of men's pay rather than upgrading of women's (Bettio et al. 2013). There are also major differences between countries in whether the gender pay gap is wider at the bottom end or the top end of the distribution – the glass ceiling. Figure 1 provides the most up to date information on the raw gender pay gap in OECD countries. This shows a wide variation from over 30 percent in Korea and Estonia to under 10 percent in Hungary, Spain, Denmark, Norway, Greece, Luxembourg, Belgium and New Zealand. In the sample of emerging and developing economies investigated by the recent ILO Global Wage Report, the gaps were even higher with only Vietnam registering a gap below 20 per cent and the Russian Federation recording a gap of over 30 per cent.

Another topic area we do not cover in any depth is the extensive debates on how changes to employment regulation and wage structures may have trade-off effects on employment opportunities. This is because this argument, even if valid, could be used to justify not closing the gender pay gap. As the undervaluation of women's work is embedded in existing market and pricing structures, efforts to close the pay gap that do not just lead to other disadvantaged groups taking up the jobs that women move out of will require changes to markets and prices which may have some short term impacts on employment.

Rationalist or productivity-based explanations of the gender pay gap assume that women earn less than men because they are less productive, and the gender pay gap therefore makes sense in economic terms (see for a review Grimshaw and Rubery 2015). However, we start from the basic proposition that women are as talented and potentially productive as men so that there is no long term reason why

¹ <http://www.oecd.org/gender/data/genderwagegap.htm>.

Figure 1. Gender pay gap in OECD countries

Source: OECD (November 2015) <http://www.oecd.org/gender/data/genderwagegap.htm>

(Latest year available for each country in October 2015)

a gender equal society, in which wage structures are compatible with gender pay equity, should not be consistent with goals of long term economic competitiveness. The exception would be where a country or a sector is trading primarily on the basis of undervaluation of women's work; this may be a reality in some sectors and countries. However, it is important to make clear in discussing the barriers to gender pay equity that the problem is not women's inherently lower productivity levels but the low value attached to women's work that is embedded in markets and prices.

The prime focus is therefore on what can be done to develop a supportive environment for gender pay equity. At least three factors can be considered important in constituting such an environment: First, gender equality measures should not have to compensate for general widening wage inequalities which not only slows progress in closing the aggregate gender pay gap but may also increase wage inequalities among women as well as between women and men. Second, a supportive environment also implies some general public support for the principle of gender equality; this may be more likely if gender pay equality issues are aligned with wider progressive equality agendas to extend support and synergies. Third, a supportive environment is also a transparent environment; without transparency progress is not only difficult to measure and monitor but the causes of inequality remain hidden and obscure.

1.2. THE ORGANISATION OF THE REPORT

This report on how to close the gender pay gap takes a wider perspective on regulatory and policy measures than is usual in discussion of gender pay gaps; it focuses not only on gender specific

measures but also on how to combine these with more general policy measures to create a more conducive environment for gender equality. Not only are gender specific policy measures more likely to be effective in a supportive environment but there may also be contexts in which general policy measures may even substitute for gender specific policies – though the need for vigilance against gender discrimination is always needed.

We adopt a three level framework for analysing policy measures: First we identify the various types of policy measures that can impact directly on the gender pay gap: legal measures, social dialogue and collective bargaining and voluntary measures. Within each chapter we discuss not only gender specific policy measures but also general policy measures that may promote more equal and inclusive environments, including measures for making labour markets more transparent. We also identify the different levels at which measures may be developed (international, national, sector, company etc.) and the actors concerned (the state, employers, trade unions, community groups, individuals etc.).

This report is divided into eight chapters including this introductory chapter. The next three chapters review evidence in turn on legal, collective and voluntary measures taken at international, national and local levels to promote both gender pay equity and inclusive labour markets. This is followed by a review of the role for social policy in chapter 5, a consideration of the issue of policy mix, complementarities and trade-offs in chapter 6 and a review of enforcement and monitoring issues in chapter 7. The final chapter reviews the key conclusions and identifies the policy implications for the individual chapters and for the report as a whole.

Before embarking on this review of policy measures we need a clearer view of the characteristics of the institutional and policy environment that might support and deliver gender pay equality. Without a vision of what a gender equal labour market might look like, we cannot assess measures for their appropriateness or likely effectiveness. This exercise may be considered utopian but some understanding of utopia is needed to develop the policy imagination.

1.3. TOWARDS GENDER EQUAL, INCLUSIVE AND TRANSPARENT LABOUR MARKETS

To characterise the labour market conditions conducive to gender pay equality, we refer to gender equal, inclusive and transparent labour markets. Table 1 captures the core dimensions for inclusivity. On the horizontal axis we represent coverage of employment standards – coverage of workers at the bottom line and coverage of organisations at the top line. Inequalities can arise from the exclusion of small firms or weakly organised sectors (e.g. employers of domestic workers) from all employment standards or by the establishment of very different employment standards for each sector. Exclusion may equally apply to specific groups or types of workers (informal, standard workers, agricultural or domestic workers, migrants) who are not covered by employment standards or by standards that vary by group or type. Many of these forms of exclusion disproportionately affect women, so extensive coverage by both workforce group and type of employing organisation matters.

Inequalities also arise from differentials within formal wage work; the column on the left side indicates that inclusive labour markets need high minimum standards (relative to average conditions in the labour market) to reduce penalties for disadvantage or discrimination and also limits on top earnings to constrain ‘winner takes all’ developments in labour markets that impact on equality outcomes. However, gender equality also requires more than adherence to minimum standards but also pay differentials that reflect the value of work – including skills and experience- to implement the equal pay for work of equal value principle. This is easier to achieve if there are structures for wage differentials that go beyond minimum standards and maximum limits. These general principles

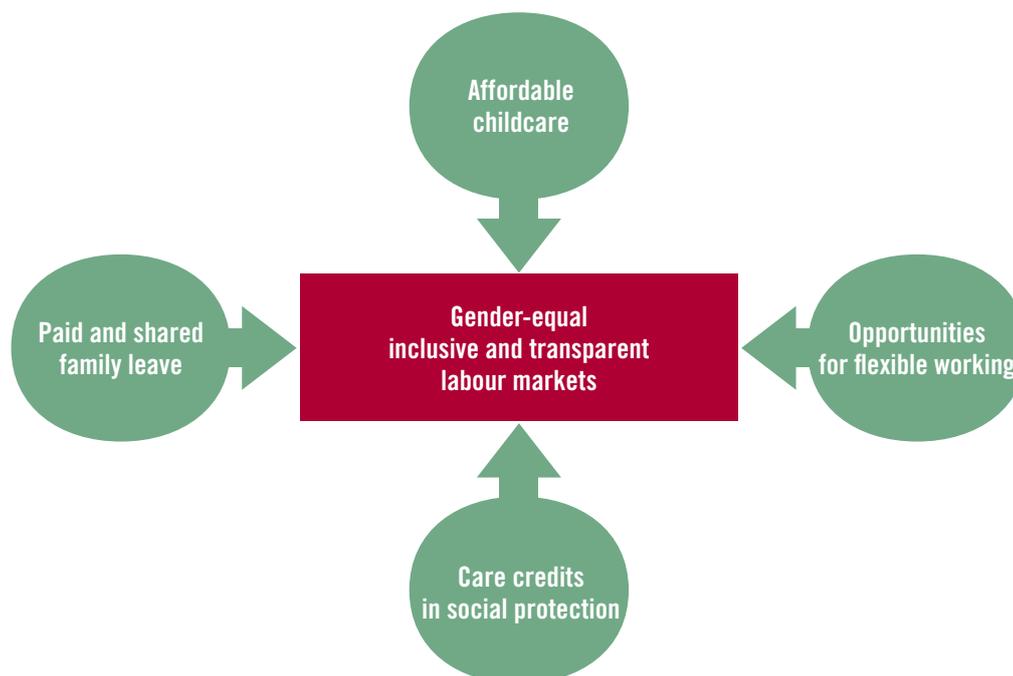
Table 1. Inclusive labour markets for gender equality

Inclusive employer coverage and low inter-organisation/inter-sector differentials		
Limits to high earnings	Gender-equal inclusive and transparent labour markets	Gender sensitive job evaluation
Differentials for skill/experience		
High minimum standards		
Inclusive labour force coverage – non-standard forms of employment/domestic workers/migrants		

for wage differentials then provide the framework for developing gender sensitive adjustments to pay structures to ensure appropriate valuation of women's work.

This representation of an inclusive labour market, however, treats the labour market as isolated from other social and support structures. One main contribution of feminist perspectives on employment has been to highlight the interactions between social policy and employment systems and between wage work and unpaid reproductive work. Table 2 indicates the kinds of social policy arrangements needed to ensure that women can participate on equal terms with men within an inclusive labour market system. These represent how social policy can support women's involvement in wage work on an equal basis, by providing alternatives to women's domestic labour, promoting sharing of care work among men and women and reducing penalties from engaging in care work. The four identified mechanisms include: (i) paid leave, which must be paid at a high level to enable continuity of careers and enable the higher earner in the household to take leave, not just the lower earner, coupled with rights to shared paid leave in order to normalise the taking of leave and reduce employer discrimination against women; (ii) affordable childcare provision; (iii) flexible work options to allow for two earner households; and (iv) care credits for social protection to reduce the penalties of undertaking unpaid care work (or alternatively disconnecting social protection from employment status and record though not from employer funding of social protection (Martínez Franzoni, J. and Sánchez-Ancochea, D. 2013; Rubery 2015)). These policies are discussed further in chapter 5.

While the closing of the gender pay gap does depend to a large extent on addressing the unequal sharing of care work and reducing the high penalties imposed by current labour market organisation on those undertaking care work, the problems of women's domestic burdens is perhaps more widely recognised as a cause of pay differences than the organisation of labour markets and associated pay structures and inequalities. Thus although we look at the need for complementary social policies, the core focus of this report is on the measures needed to make progress towards gender equal, inclusive and transparent labour markets. To provide a first overview of the kinds of measures this could require, tables 3 to 5 look in turn at measures of inclusiveness, measures for gender equality and measures for transparency.

Figure 2. Social support to facilitate equality of participation in inclusive labour

In outlining measures for inclusive labour markets in table 3, we identify the types of measures, the main actors who might implement the measures, the levels at which they may be implemented and the likely outcomes for gender equality. We divide the measures between wage standards and coverage. For wage standards we include the four types of measures already mentioned – namely high minimum wages (defined as a high level relative to median earnings – the Kaitz index), measures to keep low differentials between sectors and organisations, rewards for skill and experience and maximum earnings limits. The likely beneficial outcomes for gender pay equality are outlined in the third column: high minimum wage standards across the labour market reduces incentives for outsourcing or the use of non-standard employment that has been associated with the concentration of women into low paying organisations and sectors. Similar minimum pay rates between sectors and organisations could reduce inequalities in the distribution of economic rents between and within sectors which is associated with gender inequality, particularly in deregulated labour markets (Simón 2010). They also reduce the problem that even if women are equally treated within an employing organisation they may be concentrated in organisations that pay low wages to the majority of their employees.

The development of wage differentials appropriate to skill and experience could guard against the compression of wages towards the legal minimum wage which has been found to affect women in particular (Grimshaw 2013) and could also underpin the notion of equal pay for work of equal value. Moreover, if this principle were adopted as a general principle for wage determination for all wage structures and groups, it could generate wider support for the enforcement of the gender-specific right to equal pay for work of equal value and ensure that higher management pay is more proportional to value rather than paid at rates well above any notion of relative worth. This should not, however, detract attention from the specific issue of remedying the undervaluation of women's work.

All of these measures need actions from a range of actors; the state is vital in setting minimum standards, in establishing mechanisms for restricting maximum pay either directly or through new

Table 2. Inclusive labour markets

Mechanism	Actors (levels)	Outcomes
a) Income inequality		
<i>High minimum standards</i> – high minimum wage etc.	State, social partners, living wage campaigns, consumer campaigns (international level – supply chains – national level, local level)	Reduce incentives for low cost outsourcing and gender segregation in low paying sectors and organisations
<i>Low differentials between organisations/sectors</i>	Social partners, state (international, national, sector, company)	Reduce impact of industry/firm economic rents on earnings Reinforce equal pay for work of equal value across the labour market
<i>Differentials for skill and experience</i> – based on general principle of equal pay for work of equal value	Social partners, state supporting extension of agreements by sector – (company and sector)	Mobilise wide support for equal value principle. Avoid compression towards the minimum rate.
<i>Limits to high earnings/maximum pay</i>	State, company boards, shareholder and consumer organisations (international, national, company)	Limit to overall wage inequality
b) Inclusive coverage		
<i>Wage standards and social contributions for all workers</i> – not just employees or full-timers	State, trade unions – company and sector –, community organisations (international, national, local)	Reduced incentives to differentiate by employment contract or to outsource
<i>Wage standards and social contributions to cover all occupational groups/sectors e.g. domestic work</i>	State, trade unions-company and sector, community organisations (international, national, local)	Formalise employment in areas traditionally excluded
<i>Access to social protection to be widened to those not in formal employment</i>	State (international, national)	Harmonise social contributions by employers for all employment type to reduce incentives for NSFE (e.g. tax employers on total wage bill) Expand protection for those engaged in care work and informal work

shareholder rights, and in generalising wage standards set by collective agreements through extension mechanisms. The roles of other actors vary by type of measure; for example shareholder activism may be important to exercise pressure on high earnings while community groups and NGOs have been important in promoting higher minimum wages through living wage campaigns. Social partners have potentially important roles to play in all measures but particularly in establishing wage structures at sector and company levels that appropriately reward skills and experience. High minimum standards and limits to high earnings need to be established at a national level to be effective although local activism may exert pressure on national policy, while other measures may involve more sector or company level action.

Table 3. Gender equality within inclusive and transparent labour markets

Mechanisms	Actors (Levels)	Outcomes
<i>Gender pay audits, and action plans</i>	Social partners, state (international, national, sector, company)	Increase awareness of processes giving rise to gender pay differences – pay structures, starting salaries, pay and promotion progression, access to additional payments and bonuses etc.
<i>Wage differentials – gender-sensitive job evaluation</i>	Social partners, state (international, national, sector, company)	Revalue women’s work- supported by reduced inter-organisational wage differences and equal pay for equal value for all
<i>Payment systems – scrutiny for gender bias in discretionary payments (starting salaries, bonuses, increments etc.)</i>	Social partners, state (company)	Greater gender equal access to and outcomes from discretionary payments
<i>Working time – limits to long hours working Flexible working opportunities for all (rights to reduce hours but also to return to full-time)</i>	Social partners, state (international, national, sector, company)	Opportunities for reduced hours in high level jobs Normalisation of flexible working
<i>Gender segregation – gender balanced recruitment and promotion panels, rights to flexible working at point of hire.</i>	Social partners, state (international, national, sector, company)	Limit use of gender stereotyping Increase opportunities for returners
<i>Gender equality duties</i>	State, employers , social partners (international, national, sector, company)	More holistic approach to promoting gender equality at the sector or organisation level.

Coverage is as important as the application of inclusive standards, particularly as women are concentrated in often excluded groups such as NSFE workers and/or employed in the informal sector, domestic and agricultural workers or employees or family helpers in small firms. Comprehensive coverage requires action at a national level by the state but local level activism, to organise excluded groups and increase awareness of rights, also aids universal coverage. Extending access to social protection to those who do not have continuous employment in the formal sector may also reduce the negative effects of exclusion and reward women’s unpaid work. Furthermore there may need to be efforts to reduce employer incentives to use NSFE where these attract lower social contributions; one possibility is to harmonise rates on all contracts or to levy a charge on the aggregate wage bill including subcontracting fees.

The measures for inclusivity provide the framework in which gender specific measures (see table 3) may be more effective, in part as they may not need to be so intensive. The measures identified include gender pay audits which, if appropriately conducted, should expose the whole range of processes that generate gender pay gaps, from job grading to starting salaries, additional payments, pay and grade progression etc. Job evaluation can be used to address issues of the valuation of women’s work and measures such as mandatory gender quotas on promotion and selection committees can improve progression and access to jobs and limit the influence of gender stereotyping (including stereotyping of mothers (Grimshaw and Rubery 2015).

Also important are measures on working time. Overall policies to limit unpredictable and very long working hours can improve women's access to higher level jobs, both on a full or part-time basis. Opportunities for flexible working, particularly if available to both sexes, may also enable women to retain their job position. However, where this involves reduced working hours, there should also be opportunities to return to full-time wage work once the intense period of care responsibilities is over to avoid entrapment in 'mommy tracks'. Complementary policies to reduce gender segregation both horizontally and vertically may involve arrangements to minimise bias in implementation of a wide range of employment practices, including recruitment and promotion policies, such as the specification of gender quotas.

Finally, there is the emerging requirement, particularly for public sector organisations, to promote gender equality in a more holistic sense; gender equality duties may cover not only employment but also issues related to goods and services and imply the need to develop a package of measures to promote not just equal pay but also complementary policies on work life balance, gender segregation and the like. These gender equality duties are likely to be introduced by the state but to be effective they need strong implementation by employers which is more likely to occur when trade unions or works councils are also involved.

Indeed, all these gender specific measures need support from the state but for effective implementation at the local level there also needs to be active commitment from employers which in turn may require active engagement by trade unions or worker representatives (also with appropriate female representation). Expending efforts to improve women's position at the local level is also likely to have greater rewards where there are measures in place to reduce the possibilities or incentives for employers to take action to evade the impact, for example by outsourcing women's jobs to organisations that are free to pay lower wages. Thus local initiatives are dependent for success on more macro measures to establish and maintain inclusive labour markets.

Measures to create inclusive and gender equal labour markets are unlikely to be effective without more transparency in labour markets. Table 5 sets out three types of mechanisms that could aid transparency. The first is the most frequently used in relation to gender pay issues and that is a pay audit explicitly designed to uncover gender pay gaps. Such audits can provide a platform for change as they have the potential to affect employers' reputations and also to reveal the core problems within the organisation. However, pay audits may be too aggregate to provide much transparency; involvement of trade unions or employee representatives in the audit process is probably necessary to achieve improved understandings of the processes through which gender pay gaps emerge. A second transparency measure is to publish wage structures – at company or sector level- which set out minimum and maximum pay levels by job or grade, together with information on more discretionary or additional pay supplements linked to performance or working conditions. Without information on the structure and the principles on which it is to be implemented, it may be hard to apply scrutiny to the practice of wage setting within organisations. Unfortunately, with the decline of collective bargaining in some countries, for example the UK, the available information on wage structures has declined.

A third approach is to collect and publish individual pay data in some form. This could be provided through income tax returns as is the case in Sweden where all income tax returns are public. At the company or workplace level it may involve more information on the distribution of pay within grades and jobs without this necessarily being linked directly to individuals. Making wage data public may act as an indirect constraint on pay setting within organisations; even, as in Portugal, a requirement on companies to provide pay data for a comprehensive data base on private sector pay may have some impact on discretionary pay arrangements and/or highlight pay anomalies that need amendment.

Table 4. Transparent labour markets

Mechanism	Actors (levels)	Outcome
<i>Pay audit</i>	International or national state-mandated company level audits- (company plus trade union scrutiny)	Reputation effects Basis for action plan for change
<i>Published wage structure</i>	Collective bargaining partners (sector or company)	Limits to pay differentials for same job/grade; scrutiny of fairness across grades
<i>Disclosure of individual pay data</i>	International state action to support disclosure By state-e.g. tax returns/pay data survey By company- distributions within grades/jobs	Influence of social norms and fairness norms on pay decision making

This overview suggests the types of policy programmes that could contribute to both a conducive environment for gender equality and effective gender equality measures. It is unlikely that we will find specific labour markets that meet all these conditions but a vision as to where we might want to go also provides a framework for assessing existing initiatives and policies which we turn to in the following chapters.

2

LEGAL MECHANISMS

The contribution of equality law to gender equality was initially considerable but there is now evidence to suggest that deeper structures of discrimination are resilient, raising doubts about the role of law in effecting social change (Fredman 2013a:139). There is a complex relationship between equality and human rights law and the gender order. Against this context, “a formal conception of equality, such as equal pay, even if embedded in a substantive right, such as affirmative action policies, may not address the underlying wage hierarchy that gives rise to inequalities in the first place” (Albertyn et al. 2014:423). Pay equity hence requires a multi-faceted legal approach that is sensitive to the socio-economic context of discrimination and influences the institutional environment so as to promote substantive equality.

Informed by these considerations, legal mechanisms can be expected to have an impact on the gender pay gap in a number of ways. First, they may have a symbolic impact and prompt a reconceptualization of employment policies in respect of pay; here, law may be witnessed as having ‘symbolic’ significance, bringing about attitudinal change and operating in an agenda-setting function (Dickens 2010). Secondly, legal mechanisms can directly ensure that equal work or work of equal value receive an equal pay. Third, they may have an indirect impact when dealing with the structural reasons influencing pay inequality, e.g. family-friendly policies.

This section of the report will seek to identify existing shortcomings but also good practices with respect to the scope, operation and effectiveness of international and national legal mechanisms designed to address the gender pay gap directly and indirectly. In line with the conceptual approach of the paper, the analysis of the legal mechanisms will relate to the notion of gender equal, inclusive and transparent labour markets. With respect to the notion of inclusive labour markets, two issues are pertinent here: The first is concerned with the relationship between inclusiveness and income equality; the second relates to the nature and extent of legal protection afforded to NSFE. With respect to the notion of gender equal markets, legal mechanisms, mostly gender-specific, have a crucial role to play in addressing structural discrimination within the labour market. With respect finally to the notion of transparency, attention will be paid to mechanisms designed to shed light on policies and practices for measuring organisational progress in implementing gender equality and equal pay.

2.1. LEGAL MECHANISMS FOR INCLUSIVE LABOUR MARKETS

2.1.1. INCOME INEQUALITY

The role of law in countering income inequality between men and women is multi-fold. Legal mechanisms aimed at minimum wage levels are crucial for a number of reasons, including most

notably that women are more likely than men to be concentrated in minimum wage jobs and in sectors where there is limited scope for collective bargaining (Rubery and Grimshaw 2011: 196). Minimum wage policies have long been recognized as a means to lift workers out of poverty, and have also been shown to protect women's incomes and close gender pay gaps. But it is also true that such policies may also produce discrimination by setting minimum wages for certain sectors or occupations, which are female-dominated, lower than others (see, for instance, Oelz and Rani 2015 concerning the low minimum wage rates of domestic workers in developing countries). Bearing in mind the potential limitations of such initiatives, three issues are salient when evaluating the role of minimum wage policies in gender equality: (1) the way the minimum wage is set; (2) the level at which the minimum wage is set and; (3) the scope of the minimum wage legislation with respect to the coverage of types of workers or organisations. These issues will be examined in respect of both international and national legal mechanisms.

At the international level, the ILO Constitution refers in its Preamble to “the provision of an adequate living wage” as one of the conditions for “universal and lasting peace... based on social justice”.² ILO Convention 131 on Minimum Wage Fixing was adopted in 1970 and extended minimum wage machinery to all wage earners; it also provides that wages should be fixed according to the needs of workers and in light of the economic condition. Importantly, ILO Convention 131 allows for a wide variety of practices in terms of mechanisms for wage determination, ranging from statutory minimum wages to the use of extension procedures in the case of collective agreements.³ But it refrains from providing substantial guidance as to what an adequate minimum wage level should be and associated recommendations to make levels appropriate to guarantee adequate living standards are often non-specific (Brosnan 2011:223).⁴ Against this context, the ILO could go further than it has so far to promote better minimum wage legislation. This would include a Convention “requiring that *all* workers be entitled to a minimum wage and that it backed up by some level of enforcement... a convention could require countries to have minimum wages set at a specific level, which increases over time to allow the governments and employers in low-income countries to make the necessary adjustments” (Brosnan 2011:227, emphasis in original). However, as the ILO is a tripartite organisation, this would require consensus across employers, trade unions and governments.

At the regional level, the most extensive guarantees regarding wage issues are found in the (revised) European Social Charter, particularly article 4 (on the right to a fair remuneration).⁵ The Council's European Committee of Social Rights (ECSR) has since put forward a definition according to which determined that a ‘fair’ or ‘decent’ wage is at least 60% of the average net wage – and certainly not below a level of 50% of the average net wage. It has to be stressed here that while the original formulation of a decent wage was at least equivalent to 68% of the national average wage (Adams and Deakin 2016). However, it was later suggested that this reading of Article 4(1) had privileged a male breadwinner model of the household, which was not “conducive to promoting equal opportunities of

² See also Article 7 of the International Covenant on Economic, Social and Cultural Rights on just and favourable working conditions, which requires that remuneration ensures fair wages and a ‘decent living’ for workers and their families, Article 10 on the protection of the family and Article 11 on the right to an adequate standard of living. In monitoring states, the Committee on Economic, Social and Cultural Rights (CESCR) has stressed that the minimum wage should apply universally, irrespective of industry or geographic area (for an analysis, see Saul et al. 2014).

³ The ILO advocates leaving to specialised bodies “the detailed working out and application of precise and detailed provisions” (UNGA Third Committee, A/C.3/SR.714 (17 December 1956), 164 (ILO).

⁴ While ILO Convention 26 has been ratified by 105 countries, which is one of the highest rates of ratification, ILO Convention 131 has so far been ratified only by 52 countries. See also ILO Recommendation No 135 on Minimum Wage Fixing, Convention No 95 on the Protection of Wages and Convention No 173 on the Protection of Workers' Claims (Employer's Insolvency).

⁵ See also Articles 2 (on the right to just conditions of work) and 3 (on the right to safe and healthy working conditions) of the European Social Charter. For other regional examples, see Article 15 of the African Charter on Human and People's Rights 1981, Article 27(1) of the ASEAN Declaration on Human Rights 2012 and Article 34(2) and (4) of the Arab Charter on Human Rights 2004.

women in the labour market”.” (Adams and Deakin 2016). Despite the emphasis on the decency of the wage levels, of the Contracting Parties of the Council of Europe ratifying Article 4(1), most currently fail to comply with it. Problems of lack of compliance by the contracting states have been identified, as a result of factors including statutory minimum or actual wages which are too low in relation to the threshold, and gaps in coverage (ECSR 2014:20-1). At the EU level, the idea of a European minimum wage is gaining ground against a background of a common European internal market and an increasingly integrated European economy (Eurofound 2014a).⁶ In aiming at preventing the threat of cross-border wage dumping, a phenomenon to which the low-wage sector is particularly vulnerable, a European minimum wage policy would, it is argued (Schulten et al. 2006:373), make an important contribution to implementing the principle of “equal pay for equal work at the same place”.

Aside from legal mechanisms aiming directly at determining minimum wage levels, law can provide a supportive framework for the development of collective bargaining as a mechanism to determine wage levels. In this respect, legal rights to freedom of association and collective bargaining are essential tools for empowering women and securing their place in information sharing, consultations and negotiations (ILO 2009).

At the international level, ILO Conventions (98 and 154) concerning collective bargaining and the right to organise have been instrumental in recognising the significance of bargaining for determining wages and terms and conditions of employment.⁷ Importantly, the principle of collective autonomy, as recognised by the ILO, crucially encompasses the freedom of the industrial relations actors to choose the most appropriate level for the conduct of bargaining (Gernigon et al. 2000).⁸

The EU approach to collective bargaining differs substantially from the one adopted by the ILO. While collective bargaining is explicitly excluded from the EU competences (Article 153(5) TFEU), a range of recent developments have indicated the pervasiveness of EU law regarding issues of collective autonomy. The first development was the so-called ‘*Laval Quartet*’ case law by the Court of Justice of the European Union (CJEU) that has challenged the scope for collective bargaining and industrial action in cross-border situations.⁹ The second development concerns the institutional response of the EU as a whole and of specific EU institutions (most notably, the European Central Bank and the European Commission) to the economic crisis in Europe.

EU institutions have been instrumental in promoting structural labour market reforms aimed, among others, at the decentralisation of bargaining to company level in the EU Member States most affected by the crisis (Koukiadaki et al. 2016). On top of these, other forms of intervention, notably the Euro Pact Plus and the Council-Specific Recommendations (CSRs), have steered labour market changes in other EU Member States that have not been the recipients of financial assistance programmes as such. A number of EU Member States have been required to review aspects of their wage-setting mechanisms, including the degree of centralisation in the bargaining process and the indexation mechanisms used (European Council 2011:16; Marginson and Welz 2014). While these developments have challenged primarily the use of collective bargaining as a means of wage determination (see also

⁶ As president-designate, Jean Claude Juncker referred to the idea of Europe making sure that a minimum wage exists in each member state in his speech before the European Parliament. It has to be stressed here that Article 153(5) excludes issues of pay from the competence of the EU and there is no reference to a right to a minimum wage in the EU Charter of Fundamental Rights.

⁷ ILO Convention 98 has been ratified by 164 countries and Convention 154 has been ratified by 46 countries.

⁸ In a similar vein, the European Social Charter has recognised the right to collective bargaining (Article 6(2)) and emphasises that state intervention should only be contemplated insofar as ‘necessary and appropriate’ (Dorssemont 2016).

⁹ Case C-346/06, *Rechtsanwalt Dr. Dirk Rüffert v Land Niedersachsen* [2008] ECR I-1989; Case C-438/05, *International Transport Workers’ Federation, Finnish Seamen’s Union v Viking Line ABP, OÜ Viking Line Eesti*, [2008] IRLR 143; Case C-341/05, *Laval un Particulier Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundet, avd. 1, Svenska Elektrikerförbundet*, [2007] ECR I-11767; Case C-319/06, *Commission v Luxembourg* [2007] ECR I-4323. For an analysis, see, among others, the collection of essays in Bücker and Warneck (2011).

the analysis below in chapter 3), from a gender perspective, the CSRs relating to wage composition have reduced over time the attention paid to gender pay inequalities in the labour market (Smith and Villa 2013). With the exception of CSRs targeting a small number of countries (e.g. the 2011 CSRs for Cyprus), the majority of the recent CSRs tend to focus instead on equalising the pensionable age for men and women and creating the necessary conditions to enhance women's labour market participation (Clauwaert 2014).

The promotion of a 'socially responsible procurement' can act in a complementary way here to limit the extent of income inequality that may arise in the case of subcontracting. By incorporating social objectives in public procurement, labour costs are not only removed from being used as an element of competition among bidders for public contracts but it is also ensured that public contracts do not exert a downward pressure on wages and working conditions (ILO 2008a).

At the international level, ILO Convention No. 94 ensures respect for minimum labour standards in public contracts.¹⁰ The Convention addresses socially responsible public procurement by requiring bidders/contractors to align themselves with the locally established prevailing pay and other working conditions as determined by law or collective bargaining; only 64 countries have ratified it so far.

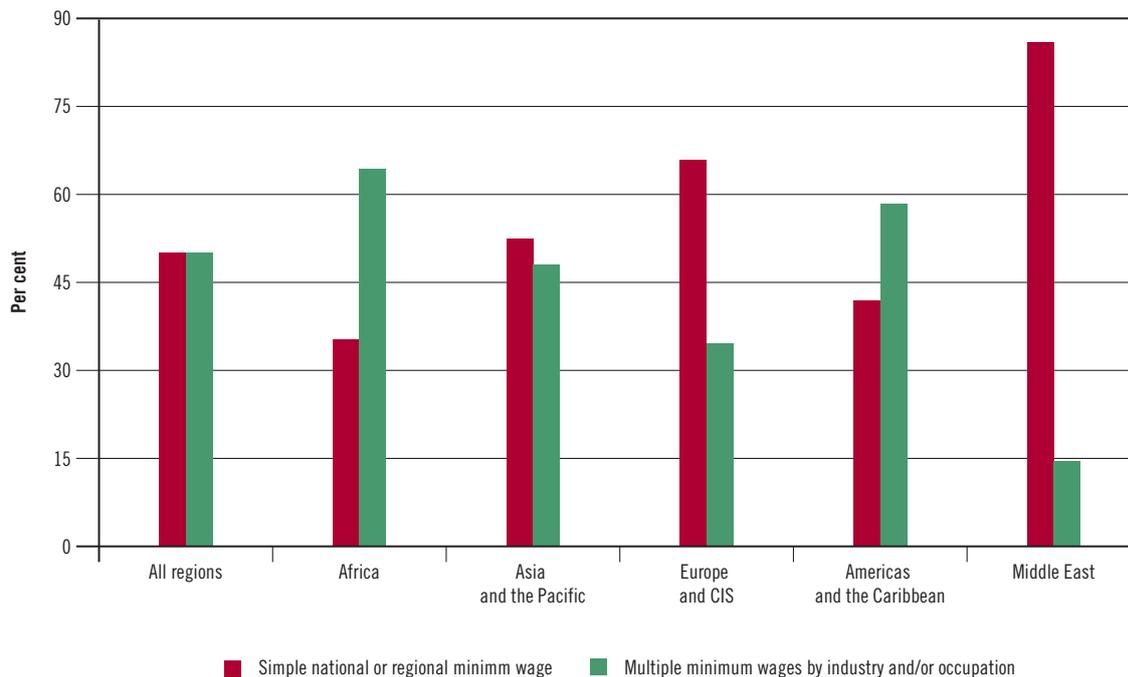
At the EU level, the recent adoption of a new set of EU Public Procurement Directives has the potential to enlarge the scope for the realization of social objectives in procurement (Barnard forthcoming). Among the changes introduced, the 'labour law' clause in Article 18(2) of Directive 2014/24/EU¹¹ requires Member States to take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X. Annex X importantly refers to international social conventions that reflect ILO's core labour standards, including equal remuneration. The Recitals to the Directive suggest an even more supportive approach towards social provisions (Barnard forthcoming). Among others, Recital 98 provides that contract performance conditions might also be intended to favour the implementation of measures for:

[the] promotion of equality of women and men at work, the increased participation of women in the labour market and the reconciliation of work and private life, ... and to comply in substance with fundamental International Labour Organization (ILO) Conventions, and to recruit more disadvantaged persons than are required under national legislation.

At the national level, and in the context of wage-setting structures, it is possible to identify nine categories of minimum wages (as analysed by Bronsan 2011:221-222): a statutory minimum wage with full application (e.g. New Zealand); a system of statutory regional minimum wages with full application within each region (e.g. Canada, Thailand); a statutory minimum wage with exemption for certain industries or workers (e.g. South Korea, US); a system of statutory regional minimum wages with exemption for certain industries or workers (e.g. Japan); a national minimum wage negotiated through collective bargaining but with full or nearly full coverage (e.g. Belgium, Finland); selective intervention with orders that provide for specific legal minima in certain industries or occupations (e.g. Australia); reliance on collective bargaining but with extensions of collective agreements to other workers (e.g. Italy); combinations of the models above: for example, a statutory minimum wage with full application, which acts as a floor, but additional higher minima in certain industries or occupations (e.g. Mexico) or a national minimum with a higher minima in some regions (e.g. US); no official wage but a strong tradition that establishes a going rate (e.g. Kiribati) (Brosnan 2011).

¹⁰ See also ILO Recommendation 84.

¹¹ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L94/65 28.3.2014.

Figure 3. Minimum wage systems across the world

Source: ILO 2013a: Figure 3.1. Source: ILO Working Conditions Law Report.

Figure 3 shows that out of 151 countries reviewed by the ILO only about half operate a simple national or regional minimum wage with the remaining half having systems of multiple minima which vary by occupation and sector and which tend to have lower coverage of the workforce than the simple national or regional minimum wage systems (Rani et al. 2013; ILO 2013a). Another study of 118 low and middle income countries with data available on minimum wages, found that 81% had a minimum wage policy in place with established minimum wage levels during the 1999-2013 period (Mendoza Rodríguez et al. 2014:4). No systematic study exists regarding the differences in the impact between the different minimum wage-setting mechanisms and gender pay equality. In their analysis, Rubery and Grimshaw (2011) found that minimum wage levels can have a positive role on gender equality when combined with an ‘inclusive’ industrial relations system. At a broad level, empirical evidence suggests that the most important factors affecting earning differentials between men and women in terms of wage-setting institutions are the presence and influence of unions, the governability and enforcement of collective agreements, at which level bargaining takes place, who is covered by collective bargaining agreements and in terms of wage-setting structures the level of minimum wage (Schäfer and Gottschall 2015).

There is some evidence of increasing reliance on statutory intervention for the setting of wage levels. Under the Minimum Wage Act (MiLoG), a nationwide minimum wage of EUR 8.50 was enacted in Germany as of 1 January 2015 with the objective primarily of reducing low-labour cost competition. Of great significance is the requirement that companies must bear the responsibility not only for paying the statutory minimum wage to their own employees, but also for ensuring that the minimum wage is paid by any subcontractors. Under the statutory rule, a business enterprise, which engages another business enterprise to create a work product or perform a service, is liable to the extent the latter business enterprise, a subcontractor or an employee placement firm does not pay the statutory

minimum wage to its employees.¹² On the other hand, countries that were affected significantly by the Eurozone crisis have proceeded to make significant amendments in their wage-fixing mechanisms, again reinforcing the role of statute in wage issues. The primary example here would be Greece, where Law 4093/2012¹³ provided for the replacement of the wage rates set in the national general collective agreement with a statutory minimum wage rate legislated by the government in consultation with social partners (Koukiadaki and Kokkinou 2016).

Even where they exist, minimum wage policies in many countries have yet to guarantee minimum wage levels that can adequately protect working women and their families from poverty and material deprivation (Mendoza Rodríguez et al. 2014). Moreover, wage policy must regularly adjust to changing price levels. Empirical evidence seems to support the statement that countries with a higher minimum wage relative to median earnings have lower gender earning gaps than countries with a low value minimum wage or no minimum wage (Schäfer and Gottschall 2015; Rubery and Grimshaw 2011; Grimshaw 2013). When examining the country patterns, we see significant variation both with respect to levels and trends. In 11% of the 92 low and middle income countries with complete data, the minimum wage level was not high enough to guarantee an income that is above the international poverty line of US\$2/day per individual, for a family consisting of one working mother and one dependent child (Mendoza Rodríguez et al. 2014:1). Between 1999 and 2013 real minimum wage levels increased in seven out of ten countries among the 80 for which data are available but fell within the remaining countries. Since the economic crisis, minimum wage cuts have also taken place in Europe including, for instance, a 22% cut on the minimum wage level in Greece (Koukiadaki and Kokkinou 2016). On the other hand, the UK has recently announced a significant increase in the national minimum wage moving closer to a ‘living wage’, albeit associated with significant cuts in working tax credits. In terms of wages being adjusted to changing price levels, only few systems allow for this. Among others, French legislation governing the definition of the *salaire minimum interprofessionnel de croissance* (SMIC) stipulates that the minimum wage should, in principle, be updated or increased on a yearly basis so that it keeps up not just with prices but also with at least half the increase in the purchasing power of the average wage.¹⁴ The fact that the SMIC is tied to average wages assists in ensuring that low-waged workers do not lose out on social and economic gains made in the wider working population (Adams and Deakin 2016).

An important limitation here is that very few countries set out the principle of equality of remuneration between men and women expressly in legal texts respecting minimum wages (ILO 1986, para. 217). But evidence of recent progress includes the case of the United Republic of Tanzania, where pursuant to the Labour Institutions Act, wage boards are to take into account the constitutional right to equal remuneration and relevant ILO Conventions and Recommendations.¹⁵ Further, under the Fair Work Act 2009 in Australia, the Fair Work Commission acquired the power to make orders for increased wages across specific sectors. In addition, it is obliged to take the principle of equal remuneration into account in its annual minimum wage determinations and has similar obligations regarding the minimum safety net of terms and conditions established in national employment standards and industry awards (Charlesworth and MacDonald 2015:423).

¹² Section 13 MiLoG in combination with section 14 of the Act on Mandatory Employment Terms and Conditions for Cross-Border Postings of Employee (AEntG). The business enterprise is liable to the impacted employee in the form of a surety which has waived its legal defence to compel the obligee to first proceed against the principal obligor. This means that an employee who incurs wage deficiencies may assert his or her claim directly against the customer of his or her employer, without having to first enforce its claims against the employer itself.

¹³ Ratification of Mid-term Fiscal Strategy 2013-2016, Urgent Regulations relating to the Implementation of Law 4046/2012 and the Mid-term Fiscal Strategy 2013-2016.

¹⁴ Code du travail, Art. L. 3231-1 et seq.

¹⁵ United Republic of Tanzania – CEACR, direct request, 2006. See also Australia – CEACR, observation, 2011 (Fair Work Act, 2009).

Different pay equity outcomes of interaction between minimum wage and collective bargaining features have to be taken into account as well (Grimshaw 2013). In this respect, the role of legal support for collective bargaining and the imposition of statutory minimum wages for sectors (including through the operation of extension mechanisms) is important in the context of gender pay equality (for a more in-depth analysis see chapter 3 on social dialogue). The case of Europe illustrates the importance of state support for collective bargaining. Although union density has been reduced significantly in Europe over recent decades, many European countries still have particularly high and stable levels of binding collective bargaining coverage. As Schulten et al. (2015) identify, the main reason behind this is state support for collective bargaining through the instrument of the declaration of general applicability, which makes it possible to extend collective agreement coverage even to non-unionised workplaces. Two approaches may be distinguished here: First, in order to prevent workplaces bound by collective agreements from sidestepping this coverage by taking on non-organized employees, most European countries have a legal *erga omnes* provision for such cases. The second approach is the extension of agreement coverage to unorganized workplaces, usually through a Declaration of General Applicability, through which the State, by a legislative act of its own, extends the scope of the collective agreement beyond those workplaces that are direct members of the contracting party (e.g. France) (Schulten et al. 2015).

Aside from considering the role of legislation in directly setting decent wage levels through statute and/or enabling collective bargaining to act to that end, the promotion of gender-responsive public procurement law would complement a pay equity strategy. For example, following recent amendments to state procurement law in Germany, equal pay provisions for agency workers is now a point of reference in eight subnational public procurement regulations and the public procurement law of Rhineland-Palatinate explicitly mentions equal pay for men and women as one possible social criterion that can be used in procurement. More broadly, some state laws include provisions intended to foster the advancement of women or equal opportunities. Some do this by assuring equal treatment¹⁶ and others take into account measures that are bound to the advancement of women¹⁷ (Sarter et al. 2014). In the UK, local authorities, especially in Scotland and Northern Ireland, have adopted included clauses in respect of equality rules in their procurement contracts as part of the public sector equality duty (Barnard forthcoming).¹⁸

However, progressive regulatory developments are not solely confined to the case of public procurement. The case of supply chain regulation in the textile, clothing and footwear industry in Australia represents an interesting example of the developments in the private sector. In this case, mandatory contractual tracking mechanisms within state and federal labour laws have been introduced. These mechanisms follow the allocation of textile, clothing and footwear work, tie in liability and legal responsibility for fair working conditions throughout entire supply chains and integrate minimum standards for pay, hours and working conditions. In conjunction with new duties introduced by the Work Health and Safety Acts on each “person conducting a business or undertaking” (PCBU) in relation to all ‘workers’ who carry out work for the PCBU, these developments require retailers and their clothing

¹⁶ For instance, Bremen stipulates that a tenderer that fosters equal opportunities of men and women in working life, is given priority over equivalent offers from other tenderers which don’t have similar measures (Sarter et al. 2014).

¹⁷ Since 2010, legislation in the state of Berlin stipulates that tenderers have to ensure that they engage in measures that foster the advancement of women. It also makes explicit reference to the federal law on equal opportunities, which stipulates specific thresholds in public procurement for measures regarding the advancement of women (Sarter et al. 2014).

¹⁸ See also the UK Public Services (Social Value) Act 2012, which requires local authorities, when entering into public procurement contracts, to give greater consideration to economic, social or environmental wellbeing. For the London East London Line project, the Transport for London Authority requested that contractors demonstrate that they could deliver equality and supply-chain diversity before they could proceed to the next stage of the bidding process. Their action plan on equality became part of the final contract (<http://www.michaelrubenstein.co.uk/default.aspx?id=1111206>) (Barnard forthcoming).

suppliers to track exactly which workers, including outworkers, are performing the work, and to ensure their health, safety, correct pay and other labour law entitlements (Nossar et al. 2015).

2.1.2. INCLUSIVE COVERAGE

On the international level, the focus of labour law on collective bargaining and employment standards in the formal labour market has meant that marginalised workers, who also tended to be members of the social groups traditionally protected by anti-discrimination law including women, have been often excluded (Fudge and Owens 2006).¹⁹ For instance, ILO Convention No. 175 on part-time work allows a contracting member “after consulting the representative organisations of employers and workers concerned, exclude wholly or partly from its scope particular categories of workers or of establishments when its application to them would raise particular problems of a substantial nature” (Article 3). In this respect, criticisms are made regarding the limited approach of international labour law, which focuses on the ‘standard employment relationship’ to the exclusion of the informal economy and precarious labour markets (see, for instance, Vosko 2004). Importantly, ILO Convention No. 100 on equal pay does not permit exclusions or reservations. Its scope includes migrant workers whether permanent or temporary, whether regular or irregular, workers in agriculture, family undertakings and domestic service and all sectors are covered. However, it does not seem to address the situation of bogus self-employed persons and workers in the informal economy (see here the proposal by Brosnan (2011:223, emphasis in original) regarding a new Convention “requiring that *all* workers be entitled to a minimum wage”).

More recently, there is evidence that international labour law is increasingly expanding its remit to include the consideration of the concerns and needs of such marginalised groups. Within the ILO, more sustained efforts have been made with a view to increasing the ratification of existing Conventions (e.g. Migrant Workers Supplementary Provisions Convention No. 143). These efforts have taken place in conjunction with the launch of the Decent Work initiative that recognises “people on the periphery of formal systems of labour and social protection as requiring greater attention” (Vosko 2004:18). Another confirmation of the level of inclusiveness on the part of the ILO concerns the definitional approach adopted in identifying the workers to whom ILO Convention No. 183 on maternity protection applies (Countouris 2007:154). Article 2(1) provides that the Convention “applies to all employed women, including those in atypical forms of dependent work”. Further, ILO Convention on Workers with Family Responsibilities Convention No. 156 applies to all branches of economic activity and to all categories of workers.

The recent developments with respect to the issues of home work and domestic workers also point to novel regulatory ways for dealing with employment protection gaps. With respect to the former, i.e. home work, it is becoming increasingly common as a result of globalisation and the growth of supply chains, affecting not only low-skilled but also high-skilled workers. However, the employment and working conditions of home workers tend to be inferior to those enjoyed by other workers doing similar work in the enterprise setting. Guidance on determining whether a person is a dependent home worker is provided, among others, by ILO Convention No. 177 on Home Work: the Convention requires countries to adopt a national policy on the subject with special attention to equality of treatment between home workers and other wage earners. But problems with respect to the effectiveness of the Convention exist, as very few countries (ten in total) have ratified it so far. With respect to domestic work, it still remains a women-dominated occupation that has become infamous for its poor working conditions and limited recognition and protection under the law (D’Souza 2010).

¹⁹ As referred to in Saul et al. 2014, the Committee on the Elimination of Discrimination against Women (CEDAW) (2011, para 33) has emphasised the problem of women concentrating in the informal economy, with no access to social security or other benefits.

Against this context, ILO Convention No. 189 and ILO Recommendation No. 201 were adopted in 2011 to ensure decent work for domestic workers.²⁰ Convention No. 189 requires that Members take measures to ensure that domestic workers enjoy fair terms of employment as well as decent working conditions,²¹ enjoy minimum wage coverage²² and be paid directly in cash.²³ Requirement is made that Members set a minimum wage for domestic workers,²⁴ ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence,²⁵ has the right to a safe and healthy work environment,²⁶ and of social security protection, especially in respect to maternity.²⁷ However, both the Convention and the Recommendation still enable the exclusion of groups of domestic workers (e.g. those working for diplomats) from their scope (Albin and Mantouvalou 2012).

Further, one of the most important features of the gendered division of labour at present is the disproportionately high number of women in atypical work compared with men: although such work permits them to remain in the labour market while managing family responsibilities, it can have a detrimental impact on their pay, career development, promotion prospects and pensions (Ashiagbor 2006). Forms of work previously regarded as atypical, including part-time work, fixed-term work, agency work and home working, are now occupying a greater role in the public policy discourse on employment regulation. ILO Conventions dealing with different types of atypical employment include ILO Convention No. 175 and ILO Recommendation No. 182 on part-time work, ILO Convention No. 181 and ILO Recommendation No. 188 on Private Employment Agencies, Convention No. 158 on Termination of Employment and ILO Recommendation No. 166, which regulate and provide guidance on the use of fixed-term or temporary employment contracts.

At the regional level, the greatest example of developments in this area is in the EU, where there has been a long tradition of legislation in the area of NSFE. In response to the increasing use of such forms of work in Europe in the 1980s and 1990s, EU legislation has provided a legal framework for non-standard employment contracts (Ashiagbor 2006; Barnard 2012). A framework agreement on part-time work was signed on 6 June 1997 and implemented in Council Directive 97/81/EC. In 1999, the European social partners also signed a framework agreement on the rights of workers on fixed-term employment contracts; the Council of the European Union subsequently adopted Council Directive 1999/70/EC, transposing the agreement into EU legislation. These were then followed more recently by the adoption of Directive 2008/104/EC on agency work.

The move towards regulating forms of atypical work has been interpreted as endorsing a “dual policy of liberalisation/protection”, with the states removing barriers to the use NSFE while enacting a right to equality of treatment with workers employed under a standard employment contract (Deakin 2013:1). In this context, the regulation of atypical employment has the potential to limit the extent of gender pay gaps but this is dependent on the institutional design of the legislation and the extent to which it is complementary to other legal and institutional mechanisms and social norms. As Deakin (2013) has shown, the reform of fixed-term work in Italy, for instance, increased the options for the conclusion of such contracts and led to an increase in the use of fixed-time contracts whilst failing to ensure an adequate quality of working (i.e. low pay rates and few opportunities to change to a

²⁰ To date, the Convention has been ratified so far by 22 countries, although in some of these the Convention will enter into force in 2016 (e.g. Belgium, Finland and Panama).

²¹ Article 6.

²² Article 11.

²³ Article 12.

²⁴ Article 4.

²⁵ Article 5.

²⁶ Article 13.

²⁷ Article 14.

regular contract).²⁸ Further, in the case of the EU Directive on Part-time Work, national laws fail to protect the return from part-time to full-time work (see, for instance, the case of the UK here; Deakin 2014). The availability of exemptions, e.g. the exclusion of equal treatment for workers with regular and continuous contracts of employment with their agencies, hinders further the effectiveness of such measures for particular workers (Deakin 2013).

At the national level, the effectiveness of legislation designed to address discrimination at work is significantly constrained if the scope of the legal mechanisms is narrowly defined. With respect to the scope of equal pay laws, despite the fact that ILO Convention No. 100 refers expressly to the duty of member states to ensure the application to all workers of the principle of equal pay, several legal systems confine the right to ‘employees’ or ‘workers under contracts to perform personal services’ (Fredman 2013b). In Europe, coverage under national legislation varies significantly in terms of *ratione personae* (Foubert et al. 2010:12): most equal pay legislation covers employees but some systems go further to cover also independent contractors as long as these provide personal services (e.g. the UK). Some legal systems have gone further by introducing a statutory presumption of employment status unless proven otherwise (e.g. Brazil, Greece and South Africa). As Fredman (2013b:7) has suggested, the definition of ‘employee’ for the purpose of equal pay legislation should be broad and inclusive, so as to ensure that precarious and vulnerable workers are protected and to remove the incentive on employers to re-characterise the employment relationship to avoid application of the principle of equal pay and attention should also be paid to the factual relationship rather than the written documents.

The coverage of the minimum wage is a further issue. In some countries, the minimum wage only applies to the private sector, leaving thus out a large segment of female workers who are employed in the public sector (Brosnan 2011). Female-dominated groups at risk of exclusion from minimum wages include also those that are the most vulnerable to wage discrimination, such as domestic and agricultural workers, and workers in export processing zones. Table 6 provides the ILO’s estimates of the share of countries that include domestic workers within the standard national minimum wage, operate a separate and lower national minimum wage for domestic workers or exclude them from the national minimum wage. The differences among the regions could not be more stark with almost no countries in the Middle East and Asia and the Pacific including domestic workers in the standard minimum wage and 88% to 99% not providing any minimum wage for domestic workers, while in the remaining regions between 83% and 95% of countries include domestic workers in the statutory minimum wage (ILO 2013b). Domestic workers are not only at risk of being paid below the minimum wage, in all countries but especially where they are excluded from coverage, they also risk long working hours because the law often does not stipulate the length of their working day and working time may be difficult to measure.²⁹

The problems for domestic workers extend beyond minimum wages with around 30% currently excluded from all national labour legislation and 36 per cent are not entitled to maternity protection (ILO 2013b; UN Women 2015). Migrant domestic workers are especially marginalized, frequently lacking support and protection under the law in both sending and receiving countries. Labour law does not cover, for instance, migrant domestic workers in the majority of countries in the Middle East and North Africa. The particularities of the sector, including isolation of domestic workers, conditions of extreme inequality and lack of union representation, necessitate the development of legal regulation that should reflect the ambiguous nature of the relationship between the individual worker and employer. In the case of South Africa, this would require, according to Du Toit (2013), a fundamental rethink

²⁸ Decree No. 368 of 6 September 2001, on the fixed-term contract, implementing Directive 1999/70/EC, published in OJ No. 235 of 9 October 2001.

²⁹ In the area of homework, a growing number of countries (e.g. New Zealand) cover this in policy and laws (ILO 2008b).

Table 5. Minimum wages for domestic workers

	Statutory minimum wage for domestic workers is the same or higher than for other workers	Statutory minimum wage for domestic workers is the lower than for other workers	No statutory minimum wage applicable to domestic workers	Information not available or federal countries with differences between states
World	51.3%	5.9%	42.6%	0.2%
Developed countries	86%	0%	12%	2%
Eastern Europe and CIS	95%	0%	5%	0%
Asia and the Pacific	2%	10%	88%	0%
Latin America and the Caribbean	95%	4%	1%	0%
Africa	83%	4%	13%	0%
Middle East	1%	0%	99%	0%

Source: ILO 2013b Figure 6.4

of the meaning of the right to engage in collective bargaining, determining terms and conditions of employment in line with decent work, extending protection to all domestic workers and providing effective dispute resolution mechanisms, which establish an appropriate institutional framework and develop the necessary capacity to represent workers, or provide them with representation.

Recognising the key role that domestic workers play and their vulnerability to exploitation, several countries have recently taken steps to recognise and regulate domestic work (see Box 2.1). Wider legal mechanisms that are designed to address the gender pay gap, such as family-friendly policies, should adopt an inclusive approach so as to cover women in atypical and informal work. The coverage gaps for maternity leave and cash benefits are particularly large in the Middle East and Asia. Even where domestic workers are included in social insurance schemes that provide maternity benefits, restrictive eligibility criteria or lack of enforcement can hamper access to benefits in practice. However, several countries in Latin America, the Caribbean, Africa and parts of the industrialised world have already extended to domestic workers the same minimum protections that apply to workers generally (see Box 2.1).

Finally, aside from legal mechanisms designed to promote family-friendly policies and flexible working, corporate governance regulation and company law have focused recently on promoting pay equity and gender equality more broadly. On the basis that boards of governance play a central role in setting ethical norms of corporate behaviour (Clarke and Clegg 2000), policies have been recently developed to address the role of women on corporate boards.³⁰ At national level, Norway and France, among others, have already enforced quotas for corporate boards with some striking results. In the case of Norway, legislation was introduced in 2004 and set quotas of no less than 40 per cent women (or men) on all company boards (European Women's Lobby 2012). Non-compliance is set against heavy legislation threatening fines and, in extreme cases, liquidation. It is though important to stress here that more diversity at boardroom level alone may, at least initially, have insufficient

³⁰ At EU level, the European Parliament and Council have issued a draft Directive which would place a binding obligation to secure a minimum of 40 per cent female board members (COM 2012 614).

Box 2.1. Legislative developments concerning domestic workers

The 2013 Domestic Workers Act in Philippines was a landmark labour and social law for recognising the rights of domestic workers, as well as the need to protect and improve their working conditions. The legislation provided, among others, for the use of a formal contract that outlines the responsibilities of both the employer and employee and a mechanism for the settlement of disputes, the setting of a minimum wage and its future adjustment, and the provision of compulsory social security benefits for domestic workers (Philippine Migrants Rights Watch and International Labour Organization 2014). A number of other countries have amended their legislation to provide greater protection to domestic workers. In Argentina, a new law defined domestic workers' labour rights, including overtime pay, sick leave and maternity leave; in Brazil, a constitutional amendment gives domestic workers the same rights as other workers; in Namibia, a wage commission has been created to set minimum wages for domestic workers; in Spain, a new Royal Decree replacing previous legislation on domestic work regulates minimum wages, working hours and severance pay, and; in Thailand, several labour law provisions were extended to domestic workers, including a weekly day of rest, annual leave and sick leave (ILO 2013b).

impact to challenge widespread discriminatory culture, including in issues of pay, within the ranks of the corporation (Fairfax 2006:593). More broadly, recasting unequal pay as a corporate concern via reforms in corporate governance and company law has been pursued in some legal systems (see, for instance, Article 172(1) in the Companies Act 2006 institutionalising an 'enlightened shareholder value' approach in the UK). However, the potential of such reforms is minimised if not combined with a wider review of the 'shareholder primary' model that is dominant in a number of corporate governance systems (Russell 2012).

2.2. LEGAL MECHANISMS FOR GENDER EQUAL MARKETS

Measures directly aimed at dealing with the issue of pay discrimination between men and women have a long history and have been the driving force for gender equality standards across the world. Influenced by ILO developments in this area, a number of countries have explicitly introduced equal pay principles in their legislation. However, as we describe further below, the scope of some legal mechanisms is in some cases still limited (e.g. some countries do not recognise the principle of 'equal pay for work of equal value'). More importantly, only few systems have supported and introduced positive equality duties in their policies on gender equality. At a broader level, equal pay legislation only addresses a part of the problem, namely unequal pay for work of equal value. It does not address discrimination encountered by women in promotion, training, education, which keep disadvantaged groups in lower paid jobs (Fredman 2013b:2) nor does it address the issue of unpaid care work. To genuinely address the pay gap between advantage and disadvantaged groups, it is necessary to complement equal pay legislation with other measures to address discrimination in the workplace (Fredman 2013b).

2.2.1. INTERNATIONAL LEGAL MECHANISMS

The concept that men and women should be paid equally for equal work or work of equal value³¹ was addressed by international law before that of equal treatment in employment and occupation. The most important and far-reaching international developments here have been two ILO Conventions, No 100

³¹ The section uses the terms 'pay equity' and 'equal pay' interchangeably.

on Equal Remuneration of Men and Women for Work of Equal Value (1951), which represented the first systemic attempt to address the gender pay gap, and No 111 on Discrimination in Employment (1958), which prohibited discrimination in employment and more broadly in ‘occupation’ that covers self-employment (Cornish 2007:227).³² By using the notion of ‘equal value’, ILO Convention 100 went beyond the concept of ‘equal work’, used in the Universal Declaration of Human Rights,³³ and later in Article 119 of the Treaty of Rome (1957). The ILO currently takes the position that measures formulated exclusively as “equal pay for equal work” do not satisfy the requirements of the Convention.³⁴ Further, ILO Convention 100 appears to contemplate that some sort of job evaluation or assessment system will be used to arrive at an objective measure of the nature of work associated with various jobs and that this systematic analysis of jobs will be actively promoted. The concept of remuneration has been interpreted widely by the ILO Committee of Experts clarifying that numerous elements of remuneration, such as wage differentials or increments, family allowances and benefits in kind would fall within the definition of ‘any additional emoluments whatsoever’ that is included in Convention No. 100.³⁵ But the ILO experiences a challenging implementation of the concept of ‘equal pay for work of equal value’ even today: in the 2007 ILO Committee of Experts Report it was noted that ‘difficulties in applying the Convention in law and in practice result in particular from a lack of understanding of the scope and application of the concept of ‘work of equal value’.³⁶ More broadly, while a number of countries have ratified ILO Convention 100, only a much smaller number have actually passed implementing laws (Cornish 2007). According to a United Nations (UN) report, 59 countries had passed laws stipulating equal pay for work of equal value by 2014 (UN Women 2015). Recent years have seen an increase in the protection of vulnerable groups of women, including importantly domestic workers. ILO Convention No. 189 and Recommendation No. 201 directly address the issue of domestic work. Importantly, none of them provide solutions to the key issue of identifying comparators for the purposes of equal pay or sex discrimination claims of domestic workers (Albin and Mantouvalou 2012).

In addition to international labour standards, equal pay has been promoted at regional level, the most notably in the European Union.³⁷ Similar to the ILO, where the principle of equal pay predated that of equal treatment, the equal pay rule was already included in the EC Treaty by 1957 (see now Article 157 of the Treaty for the Functioning of the European Union, TFEU). The significance of Article 157 became apparent in the case of *Defrenne (No.2)*³⁸ (Barnard 2012:297). The Court ruled that the provision was horizontally and vertically directly effective and as such could give

³² The Conventions also form part of the core labour standards enshrined in the ILO’s Declaration on Fundamental Principles and Rights at Work. Besides, by recognising that pay equity strategies are an essential way to establish the overall conditions for women’s equality, the 1966 International Covenant on Economic, Social and Cultural Rights (United Nations. International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 U.N.T.S. 3. See also Article 26 of the International Covenant on Civil and Political Rights (United Nations. International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171)) enshrined the right to pay equity in general human rights instruments but also obliged the states subscribing to it to take active and progressive action to implement these rights See also the UN Convention of 1979 on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the 1995 Beijing Declaration and the Platform for Action (United Nations Fourth World Conference on Women, Report of the Fourth World Conference on Women. (1995). Chap. I, Resolution 1, Annex I (Beijing Declaration) and Annex II (Beijing Platform for Action). Beijing: United Nations Publications, Sales No. E.96.IV.13, 4-15 September 1995).

³³ Article 23(2).

³⁴ Measures formulated exclusively in terms of equal pay for equal work do not satisfy the requirements of Convention No. 100 (ILO Committee of Experts on the Application of Conventions and Resolutions. (2002), Individual Observation Concerning Convention No. 100, 1951 – Mexico).

³⁵ ILO, Equal remuneration, General Survey of the CEACR on the Equal Pay Convention, 1951 (No. 100) and Recommendation, 1951 (No. 90) Report III (Part 6B) International Labour Conference, 72nd Session, Geneva, 1986, paras 16 and 17.

³⁶ ILO Committee of Experts 2007 General Observation concerning Convention No. 100.

³⁷ See also the inclusion in NAFTA’s NAALC of two labour principles, one on equal pay and the other on the elimination of employment discrimination.

³⁸ Case 43/75 *Defrenne v Sabena (No 2)* [1976] ECR 455.

rise to individual rights which the court could protect. Following the Social Action Programme 1974, three important Directives were adopted: first, Directive 75/117/EEC on equal pay for male and female workers, affirming the principle of ‘equal pay for equal work’ laid down in Article 157 TFEU and introducing the concept of ‘equal pay for work of equal value’; Directive 76/207/EEC on equal treatment with regard to access to employment, vocational training, promotion and working conditions³⁹, and; Directive 79/7/EEC on equal treatment with regard to statutory social security schemes. Further, Article 23 of the EU Charter of Fundamental Rights now recognises the principle of equality between women and men in all areas, not merely in those areas dealt with by the existing Directives. The preamble to the single Equal Opportunities Directive 2006/54/EC clearly states that “the principle of equal pay for equal work or work of equal value as laid down by Article 141 of the Treaty and consistently upheld in the case-law of the CJEU constitutes an important aspect of the principle of equal treatment between men and women and an essential and indispensable part of the *acquis communautaire*, including the case-law of the CJEU concerning sex discrimination”. The definition of ‘pay’ under EU law draws on the definition provided by the ILO in Convention No.100 and has been interpreted purposively by the CJEU.⁴⁰

However, a number of significant limitations have been identified in respect of the EU legal mechanisms. First, in relying on the doctrine of ‘single body’, the CJEU has limited considerably the extent of comparison for the purpose of equal pay claims.⁴¹ Secondly, an exception to the principle of equal pay is permitted where the employer can prove objective reasons unrelated to sex.⁴² Third, the requirement that in order to qualify as ‘pay’ the consideration must come, either directly or indirectly, from the employer has presented a problem in relation to the very important issue of whether pension benefits fall within Article 157, a matter which has been dealt by the CJEU on a number of occasions.⁴³ Finally, while the principle of equal pay, as articulated at EU level, is generally well-implemented in national legislation, its application and enforcement has been problematic, as acknowledged by the European Commission (2007:5). This is despite the fact that the EU possesses more efficient measures of control and enforcement than the ILO (Landau and Beigbeder 2008).

Still in the context of Europe, the legal mechanisms available within the Council of Europe (i.e. European Social Charter and the European Convention of Human Rights⁴⁴) clearly recognise the principle of equality, including with respect to pay. Under the (revised) European Charter, in particular, the right to equal pay without discrimination on grounds of sex is guaranteed in Article 4(3); this overlaps with Article 20 and as such is regarded as an aspect of the right to equal opportunities in employment.⁴⁵ ‘Remuneration’ under the Charter is defined broadly to include basic or minimum wages or salary, plus all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter’s employment (Kollonay-Lehoczy 2016). The European Committee of Social Rights has emphasised its expectation that ratifying States should permit comparison of wages beyond the given enterprise or undertaking; this is justified on the basis that if comparison could only be made with reference to the salary scale of the same enterprise it would amount to a restrictive

³⁹ These two Directives, together with Directive 97/80 on the Burden of Proof and Directive 86/378/EEC on equal treatment in occupational schemes of social security, were recast into a single consolidated Directive 2006/54/EC.

⁴⁰ See, among others, C-218/98 *Abdoulaye* (maternity benefit) [1999] ECR I-5723., C-281/97 *Krueger* (Christmas bonus) [1999] IRLR 808 and C-360/90 *Bôtel* (compensation for attendance of training courses of staff councils) [1992] ECR I-3589.

⁴¹ C-320/00 *Lawrence and Other* [2002] All ER (D) 84 and C-256/04 *Allonby* [2000] IRLB 645.

⁴² This is provided for also by ILO Convention No 100 (Article 3(3)).

⁴³ See, for instance, the decision of the Court in C-262/88, *Barber v Guardian Royal Exchange Assurance Group*, [1990] ECR I-1998. For an analysis, see Ellis and Watson (2012).

⁴⁴ Article 14 and Protocol 12.

⁴⁵ According to the Appendix, Article 20 is wider in scope than the principle of ‘equal pay for work of equal value’ under Article 4(3).

application of the principle of equal pay.⁴⁶ The Committee's view that it may be necessary to consider looking outside the enterprise for an appropriate comparison is of fundamental importance for a system of objective job evaluation in particular in enterprises where the workforce is largely, or even exclusively, female'.⁴⁷

While international rules on equal pay are arguably broad, the difficulty lies in fashioning the equal pay mechanisms that will deliver the promise of these standards (Cornish 2007:231). Importantly, none of the international legal instruments have gone so far so as to incorporate a positive duty on employers to advance equality of opportunity that could supplement the limited often reach of anti-discrimination legislation. While mainstreaming of policies has been promoted at the international level (see, for instance, the 1995 Beijing Declaration and the Platform for Action) a major problem with these is that they are 'soft law' initiatives (O'Connell 2005). In this respect, it is also crucial that equal pay law "must address the complex task of regulating both individuals *and* institutions" (Sheppard 2012:8, emphasis in original). Against this context, the development of a positive duty of equality would correspond to the recognition of the need of treating closing the gender pay gap and eradicating pay discrimination as a human rights priority. In the words of Hepple (2014:61), "as part of the ILO's future reflections, the Organisation should examine how the equality conventions could better support transformative equality".

A positive duty to equality is distinguished by a number of characteristics. The first is the objective: positive duties are designed to make organisations give due consideration as to how their policies and practices might impact upon the aim of achieving greater equality of opportunity across all of their field of activity as well as establish the promotion of equality of opportunity as a core objective for the organisation (Hepple et al. 2000). As the European Commission stated in 2008, positive duties "means mobilising all general policies and measures specifically for achieving equality by actively and openly taking into account at the planning stage their effects on women and men and by assuming that a transformation of institutions and/ or organisations may be necessary." In this respect, the nature of the institutional design of the positive equality duties is consistent with a reflexive law approach (Rogowski and Witlhagen 1994) that places emphasis on indirect means of regulation that facilitate self-reflexion and self-regulation.

The second characteristic is the focus of the duties. Rather than deriving from an individual right of a victim or group of victims against specified perpetrators, "proactive models place responsibility on bodies which are in a position to bring about change, whether or not they have actually caused the problem" (Fredman 2013a:139); the initiative hence lies with policy-makers and implementers, service providers or employers (Fredman 2011:299). In the gender context, the existence of a duty may also serve to compel organisations to adopt gender equality initiatives even where the perception exists that gender inequality is no longer a 'real problem' (Rhode 1991). The third is the range of actors involved in the process. A distinctive feature of these models is the recognition of the need to incorporate "opportunities for those directly affected to participate, through information, consultation and engagement in the process of change" as a basic principle of anti-discrimination law (Hepple et al. 2000:para 2.19). In this context, it would be also important to give consideration to the inclusion of the principle of equal pay in international trade agreements (e.g. the proposed Trans-Atlantic Trade and Investment Partnership) and the existing equality promoting reporting and planning mechanisms that are required at the international and regional levels (Cornish and Faraday 2004). Finally, from an enforcement perspective, McLaughlin and Deakin (2012) argue that more resourceful regulatory strategies such as anticipatory and proactive equality duties and gender pay gap audits at the level of

⁴⁶ Conclusions XIII-3, Chapter 4, Article 1, Finland pp. 419- 420

⁴⁷ Conclusions XIII-5, pp. 259, 265 and 269, reiterated in Conclusions XVI-2, Portugal, pp. 680-681

public and private sector organisations could more usefully be deployed to remedy the problems of the existing individual litigation-driven model that has been based on symmetrical treatment.

2.2.2. NATIONAL LEGAL MECHANISMS

National states continue to play a role not only in the implementation of international pay equality standards but also in going beyond those in some cases to address the causes of structural inequalities. In a number of countries, the principles of equality and non-discrimination, as formulated by the ILO but also regional organisations (e.g. the EU) have been incorporated into national legislation. In the EU, Member States have implemented the equal pay principle largely through equality legislation and labour codes, several have embedded the principle in their constitutional provisions, a few have passed laws specifically implementing the principle of equal pay and some have transposed the provision by way of collective labour agreements (European Commission 2013a).

More recently, legal instruments have started to address both equal pay and equal treatment taking a more holistic approach (Bronstein 2009:132). An ILO study, which studied various key models involving proactive policies, found there are three main design models (Chicha 2006): a model combining the achievement of equal opportunities and that of equal results (Sweden and Quebec); a model focusing more on equal opportunities without requiring the achievement of pay equity within a given timeframe (UK and the Netherlands); and a model that combines measures aimed at countering the pay gap resulting from productivity characteristics of female workers with other more limited measures that target the discriminatory pay gap (France and Switzerland). In the same study, three sources of variation between the models were reported: content of the process intended to ascertain whether pay discrimination exists; definition of the reference standard to ascertain whether pay discrimination has been corrected; level of compliance by organisations (Chicha 2006:25-26).

Despite the adoption of comprehensive legal mechanisms aimed at equal pay for women, the EU currently shows an average gender pay gap of 16% (Eurostat 2014). In the USA, Canada and Australia it is around 18% (OECD 2014). While it is true that the existing gender pay gap is primarily a socio-economic problem, particular shortcomings in equal pay legislation have limited progress in this area.

First, coverage under national legislation varies in terms of the subject-matter. Very often, pay is made up of different elements that top up basic pay. However, legal systems may define pay narrowly. For instance, while a number of EU Member States have followed the definition of pay by the CJEU on the basis of Article 157 Treaty on the Functioning of the European Union (TFEU), some systems include occupational pensions in the definition of ‘pay’ while some systems do not (Foubert et al. 2010). A common feature of some systems is the absence of clarity in terms of the benefits and emoluments that are included in the definition of pay. Greater transparency regarding the scope of application, e.g. including productivity pay and bonuses, would support the appropriate application of the principle of equal pay (Fredman 2013b).

Secondly, the concept of the ‘employer’ is also ambiguous. It is traditionally understood as involving a single workplace and a single employer. This definition fails to reflect the range of conditions under which women work. As Prassl has argued, the law relies on an understanding of the employer as a singular and unitary notion, and where powers of control over labour issues stem from more than one locus, it could lead to the breakdown of employment law coverage (2015). A process of “engendering the meaning of ‘employer’” (Cornish 2007:235), would here require “examination of the many ways that business enterprises seek to avoid responsibility for the ‘employment’ and affording of labour rights to women through outsourcing, networked enterprises and disguised employment” (Cornish 2007:235-236). An employer practice that illustrates this is where employers transfer from directly

employed to agency workers or other atypical workers to avoid equal pay comparisons (e.g. in the UK). Several legal systems have dealt with this problem by expressly giving agency workers the right to the same pay and conditions as permanent workers. In the EU, Directive 2008/104/EC prompted the introduction of relevant legislation in all EU Member States, albeit the extent of the protection afforded varies between states (e.g. in the UK, it is only after a 12-week qualifying period that an agency worker will be entitled to the same basic conditions of employment as if they had been directly employed by the hirer on day one of the assignment, including pay). Similarly, it would be crucial to ensure that part-time workers be entitled, pro rata, to equal pay as full-time working doing work of equal value (Fredman 2013b).

A third issue relates to the protected characteristics of the individuals suffering from discriminatory pay. While evidence confirms that there is a problem of under-valuation of work traditionally done by disadvantaged groups (e.g. migrants) and a problem of intersectional discrimination (e.g. for black women), the primary focus of national legal systems is on equal pay for work of equal value for men and women (Hepple et al. 2000; Fredman 2013b). As such, the risk of underpayment and exploitation of such disadvantaged groups is significant. In Canada, the existence of a racialized workplace has the effect of lowering male comparator wages (Fudge 2015). The problem is also illustrated in the case of the posted workers in the EU. Following the CJEU's distinction between posted workers and migrant workers,⁴⁸ posted workers have been deprived of the protection afforded under the Treaty rules on freedom of movement, which crucially include equal treatment including pay. This is to be contrasted to the approach of the European Committee of Social Rights, which recently held that posted workers fall within the scope of the application of Article 19 of the Charter and have the right, for the period of their stay and work in the host State to receive treatment not less favourable than that of the national workers of the host State in respect of remuneration, other employment and working conditions, and enjoyment of the benefits of collective bargaining.⁴⁹ In this respect, calls have been made by a number of EU Member States for ensuring that all posted workers are entitled to 'equal pay, for equal work in the same place' (Asscher 2014).⁵⁰

Outside the EU, a number of jurisdictions include in equal pay legislation other protected characteristics aside from gender (e.g. the Brazilian Constitution prohibits differences related to wages, the performance of duties and hiring criteria by reason of sex, age, colour or marital status).⁵¹ However, the risk with expanding the protected characteristics in the case of equal pay is that "the central thrust of the principle [of equal pay for men and women] will be diluted and instead become a principle of 'fair pay', in which courts and arbitration bodies are reluctant to intervene" (Fredman 2013b:9). The case of India illustrates this, whereby an initially strong recognition of the principle of equal value under the Constitution was reversed when the Indian Supreme Court considered that it was creating havoc and has adopted since then a very narrow view of the equal pay principle whereby equal pay is only applied where there is "complete and wholesale identity between the two groups".⁵² While other disadvantaged groups should be included in order to provide for intersectional discrimination claims, the primary focus should still be on undervaluation of the pay of women (Fredman 2013b:10).

⁴⁸ C-113/89, *Rush Portuguesa v. Office national d'immigration* [1990] ECR I-1417; C-341/05, *Laval un Partneri Ltd v. Svenska Byggnadsarbetareförbundet* [2008] IRLR 160; C-346/06, *Dirk Ruffert v. Land Niedersachsen* [2008] IRLR 467; C-319/06, *European Commission v. Luxembourg* [2009] IRLR 388; C-438/05, *Viking Line ABP v. The International Transport Workers' Federation and the Finnish Seaman's Union* [2008] IRLR 14.

⁴⁹ *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden Complaint*, No. 85/2012, para 134.

⁵⁰ A similar situation has arisen in the Middle East and North Africa regions with respect to pay discrimination against migrant workers (ILO 2007).

⁵¹ See examples of different systems in the survey analysis by Fredman (2013b).

⁵² See *S.C. Chandra v Statke of Jharkhand* [2007] SCC 279, as analysed by Fredman (2013b).

A particularly problematic issue concerns the choice of the comparator. In many systems, the comparison is, in principle, restricted to the workplace or company where the individual employer works, or to the same collective agreement and many systems do not permit cross-employer or cross-sector comparison (see also Fredman 2013b and Foubert et al. 2010). But the flexibilisation of the relations of production and the resulting fragmentation and rapid adaptation of working patterns away from the traditional bilateral relationship implies that the potential for equal pay legislation to apply is minimal to non-existent, inasmuch as it insists that a female claimant must select a male comparator working for the same employment (Cabrelli 2014).⁵³ Different responses have been developed to deal with this issue.

A first response concerns the requirement for an actual comparator. Italian legislation refers to “neutral factors, which disadvantage more the workers of one sex compared to the workers of the other sex”.⁵⁴ No quantitative elements are necessary anymore and the attention has shifted from the group to the individual. The French *Cour de Cassation* stated in 2009 that the existence of discrimination does not necessarily imply a comparison with other workers (Foubert et al. 2010: 20).

Another way to deal with the problem would involve extending the basis of comparison and improving the methods of assessing the relative value of jobs (Hepple et al. 2000). McColgan (2000) has argued that some method is needed in order to measure the extent to which female jobs are undervalued that would avoid some of the problems identified with the absence of a male comparator class in cases of occupational segregation. In this respect, Ontario’s Pay Equity Act allows for ‘proportional value’ comparisons. Under this, if a female job class cannot be directly compared to a male job class of equal or comparable value or one that has a lower value but is more highly paid, an indirect comparison method (proportional value) must be used to determine if pay equity exists for the female job class. Proportional value comparisons are done by plotting a male wage line (or conducting regression analysis) which measure the ratio of job value to pay for all male job classes. The female job classes are then also plotted. If they fall below the male wage line, the female wages must be raised to bring them up to the male wage line.

In Australia, the undervaluation principle was developed in several jurisdictions by State tribunals (Whitehouse and Rooney 2011). The concept of undervaluation does not require proof of discrimination against women; nor does it presume strict male–female comparability. Rather, undervaluation may be demonstrated to exist via feminisation indicators, including occupational gender segregation and low unionisation, or via a detailed award history showing how earlier decisions devalued (or failed to properly value) the work (ASU 2011:20–21; Whitehouse and Rooney, 2011:113). An essential difference is that “indicators of possible undervaluation, rather than male comparators, [are] used to argue a case for pay equity” (Austen et al. 2013:62). In the national system, the Fair Work Act (s. 300) imposes no requirement for valid male comparators or for discrimination to be established as a basis of equal remuneration claims and rulings (Healy and Kidd 2013). But it has been argued that it is uncertain to what extent case-law has established positive precedents for equal pay interventions in female-dominated occupations (Charlesworth and MacDonald 2015:433). This is because the Fair Work Committee refused, in a case involving employees in the female-dominated social and community services sector, to establish a general principle for making equal remuneration orders and rejected much of the unions’ arguments about the nature and extent of under-valuation.

Another way to deal with the problem of comparison would be through the use of ‘proxy’ adjustments requiring the comparison of wages between different employers: for those workplaces, which are so overwhelmingly female that no comparison can be made, a ‘proxy’ approach could achieve significant

⁵³ See the decision by the CJEU in C-320/00 *A.G. Lawrence and Others v Regent Office Care Ltd*, IRLR 822 ECJ.

⁵⁴ Article 25 of the Code for Equal Opportunities.

improvements in pay, especially for those women at the lowest wage levels (Hepple et al. 2000). Ontario's Pay Equity Act again allows proxy comparisons to be used only in the publicly funded broader public sector, which includes services such as day care, nursing homes, and community support services. These publicly funded jobs are compared to the same jobs in specified public sector institutions that have been able to identify pay equity wages using either job-to-job or proportional value comparisons.⁵⁵

A further important issue concerns the necessity that “pay equity must break the cycle of systemic discrimination by providing a framework to challenge systemic assumptions and practices that lead to the undervaluing and under-compensating of women's work” (Cornish 2007:229). The role of gender neutral job evaluation is here crucial. The selection of criteria and their weighting should be free from gender bias, so as to not undervalue traditionally ‘female’ activities (such as caring) or overvalue ‘male’ work (like manual labour) (ILO 2009). In a number of countries, legislation refers specifically to job evaluation and within some (as in Sweden and Quebec), job evaluation methods are examined with a view to removing the underpinning discriminatory aspects (Chicha 2006:9). In this respect, it is important that clear guidance should be included in the legislation as to how to conduct an objective job evaluation system (Fredman 2013b). The same principles should apply when job evaluation schemes are used to design or adjust sectoral or occupational minimum wage schemes, i.e. that job evaluations are free from gender bias and the choice of factors for comparison, the weighting of these factors and the actual comparison carried out are not inherently discriminatory.⁵⁶ An area where the use of job evaluations is particularly challenging is in the case of domestic workers, as there is absence of job evaluation methods in this area.⁵⁷ Best practice from different legal systems suggests the need for participation by the stakeholders and social partners (Fredman 2013b).⁵⁸ An example here would be Ontario: if the workplace is unionised, the union has equal representation on the joint committee that develops evaluation methods and compare women's jobs to men's that are the same or less value but paid more; if there is no union, the employer develops a plan and employees have 90 days to review and comment upon it.

Further, it is worth emphasising that the principle of equal value is underdeveloped in some countries (Fredman 2013b).⁵⁹ In some, the legislation does not explicitly refer to equal value while in others, while there is a statutory definition of the principle, this has become subject to restrictive interpretations by the courts, reading down the right to comprise only the same or substantially similar work (see also Foubert et al. 2010:12). As such, it is crucial that legislation gives specific guidance to the meaning of ‘equal value’ and that it is clearly differentiated from work that is the ‘same or substantially similar’ (Fredman 2013b:3). Examples of good practice here include the Korean Equal Employment Act, which specifies the criteria applicable including skills, efforts, responsibility and working conditions required to perform the work. In this respect, it is also important to bring attention to the problem of ‘justified proportionate inequality’. In establishing equality, legal systems seek to treat people of equal worth equally, rather to treat those of unequal worth unequally in a fair and proportionate manner (Honeyball 2000). For instance, the UK Equality Act 2010 does not seek to ensure that employees are paid what they are worth irrespective of their sex, but merely that they are paid the same as other employees who are of equal value to them. However, a number of discriminatory policies and

⁵⁵ In 1996, the government repealed the proxy comparison method with the passing of Bill 26, Savings and Restructuring Act, Schedule J. However, a legal challenge (*SEIU Local 204 v. Attorney General* [1997]) was brought against this legislation, and the Ontario Supreme Court decided that repealing the proxy method violated the Charter of Rights and Freedoms. The court declared that Schedule J had no force or effect, reinstating the proxy method in the Pay Equity Act as though it had never been repealed.

⁵⁶ For a guide on gender-neutral job evaluations, see ILO (2008c).

⁵⁷ See Lebanon – CEACR, direct request, 2008. See also Syrian Arab Republic – CEACR, direct request, 2011.

⁵⁸ On this, see also ILO Recommendation No. 90 on Equal Remuneration and CEDAW, General Recommendation No. 13 (3 March 1989).

⁵⁹ The report examined the situation in seven countries, the UK, Canada (focusing on Ontario), India, Brazil, Kenya, South Korea and South Africa.

practices relate exactly to this issue (Fredman 2013b), i.e. women not valued in the proportion that they should be entitled to where the differences in their worth compared with other people is not reflected in the treatment afforded to them and this is because of a protected characteristic, i.e. sex.

More broadly, a traditionally essential feature of the legal mechanisms regarding gender equality has been a negative prohibition on discrimination, rather than a positive duty to promote equality. But in recent years, there has been increasing evidence of a so-called “fourth generation of legislation prescribing positive duties on public authorities, employment and pay equity plans, and contract compliance regimes” (Hepple et al. 2000:6). The introduction of a hard law approach would respond to the problem that employers tend to be reluctant to move from unequal to equal pay on a voluntary basis (Hepple et al. 2000). Ontario was the first jurisdiction to apply such positive duty legislation to both public and private sectors. A number of models have developed since, including fair employment legislation in Northern Ireland, employment and pay equity legislation in Canada, affirmative action for women in Australia and employment equity legislation in South Africa. According to Lemiere (2006:87), the Quebec Act on Pay Equity represented the most advanced policy in the sphere of pay equity (see Box 2.2). Evidence suggests that the mandatory pay equity policy has enjoyed considerable success, especially in the public sector (Chen 2011:133).

The exact content of these specific duties is very important here. This is illustrated with respect to the UK public sector equality duties provisions. Problems with the interpretation of the ‘due regard’ provision by the courts and the narrow and deferent character of the duty have limited the effective promotion of equality standards in the sector (Fredman 2013b).⁶⁰ As O’Cinneide (2005) has put forward, a more ambitious model of duty with respect specifically to public sector equality duties can be promoted instead. This would entail central governments setting their own nationwide sex equality targets, e.g. eliminating the gender pay gap in the public service. They would then use their range of powers (including financial controls), to implement these targets, with other public bodies setting their own appropriate goals to complement the overall national targets. Rather than constituting legal commitments, such measures would be only political but would be backed by the imposition of positive duties of the normal model and would limit the extent to which the positive duties would just add to a ‘tick-box’ mentality” (O’Cinneide 2005:100).

The collective dimension of pay equality should be examined as well. The case for employee representation and collective bargaining in issues of gender equality has been advanced at different time periods (see, for instance, McColgan 2000; Hepple et al. 2000 and Deakin et al. 2015). In several EU Member States, legislation has been introduced that requires the social partners to address inequalities in pay between women and men. This involves provisions in Labour Codes and specific equality legislation covering collective agreements (Foubert et al. 2010). Equal pay legislation, for example, in Cyprus, Ireland and the UK, contains specific provisions aimed at prohibiting discriminatory job classification systems and collective agreements. More positively, legislation in France originally adopted in 2006 and amended in 2010, introduced compulsory bargaining on equality with a requirement to define and plan the steps needed to eliminate the pay gap between men and women. Recent (2012) legislation in Belgium on tackling the pay gap between women and men requires that control measures against the wage gap be negotiated at three levels: interprofessional, sectoral and company. Enterprises employing more than 50 workers have to put together a report of wage structure in the enterprise, every two years. The objective is to determine whether the enterprise follows a gender neutral remuneration policy. Evidence by Deakin et al. (2015) on the British Equal Pay Act suggests that “litigation and collective bargaining are best regarded as complements, in the

⁶⁰ Germany has also introduced a duty on public sector organisations to promote equal opportunity and to report on the outcomes. France has introduced a general requirement for gender parity in recruitment committees and in 2008 adopted a charter for gender equality in the public sector, which resulted in some ministries developing action plans for gender equality (Rubery 2013).

Box 2.2. Equal pay legislation in Quebec

Quebec adopted a proactive Pay Equity Act in 1996 covering both public and private sectors, in addition to its Charter on Human Rights and Freedoms that prohibits discrimination based on gender. The Act requires employers to redress differences in compensation suffered by people who occupy positions in the predominantly female job classes. It identifies wage discrimination through a comparison between female-dominated and male-dominated jobs for the same employer or the same establishment, an evaluation of these jobs using a non-discriminatory method of analytical job evaluation, and an estimate of the pay gap between these jobs. It then assigns responsibility for the employer to ensure gender pay equity which increases with the size of the company. The Act obliges employers with more than 10 but fewer than 50 employees to adjust compensation in order to afford the same remuneration for work of equal value to employees occupying positions in the female-dominated jobs (s 34 of the Pay Equity Act of 1996). Employers with more than 50 employees are obliged to set up a pay equity plan (s 31). Employers employing 100 employees or more have to establish a pay equity committee (s 16). Bipartite sector-based committees may be set up to facilitate the establishment of pay equity plans in a particular sector (Chapter III). Pay equity plans must be developed in four steps: 1. The identification of predominantly female and predominantly male job classes; 2. The description of job the job evaluation method and instrument; 3. The job evaluation exercise and the determination of the necessary adjustments in compensation; 4. The determination of the terms and conditions of payment (Chen 2011).

In the fall of 2006, the government of Québec issued a report on 10 years of application of the Québec Pay Equity Act (Quebec Commission de l'équité salariale 2006). It was found that one out of two businesses (47%) had completed the pay equity exercise and in 70% of cases, the impact on the payroll of the private business was lower than 1.5%. More importantly, employers found that pay equity exercises had many beneficial effects: improvement of the work environment and labour relations, greater fairness within the enterprise, better knowledge of the various jobs allowing an update of wage policies, increased productivity, etc. 82% of private enterprises stated that they would not have carried out a pay equity exercise if they had not been required to do so by the legislation. From the perspective of the workers, the average pay adjustment was of 3.9% for unionized employees and 6.4% for non-unionized employees. The legislation therefore had positive effects especially on non-unionized workers. The legislation also had a major benefit in reducing the wage gap between men and women from 16.1% in 1997 to 13.9 % in 2004 (according to the average hourly wage) (Côté and Lassonde 2007).

sense that litigation is unlikely to be effective in advancing an equality agenda in the absence of well-functioning arrangements for collective wage determination”. Conversely, collective bargaining ‘in the shadow of the law’ is likely to lead to more egalitarian and equitable outcomes than would be obtained from a purely voluntary approach based on the autonomy of the wage determination process’ (Deakin et al. 2015:382).

Many legal systems explicitly allow employer defences/justifications against equal pay claims. For example, the UK legal system permits the employer to justify discrimination if they can show that the difference is due to a material factor not connected to the sex of the worker. The recently adopted California Pay Act 2015 provides an interesting approach to the issue of the employer's defence to an equal pay claim. It requires the employer to show, first of all, that “the pay differential is based upon one or more of the following factors: (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; or (iv) a bona fide factor other than sex (such as education, training, or experience) that is not based on or derived from a sex-based differential in compensation, is job related with respect to the position in question, and is consistent with business necessity.” The requirement that the factor relied upon must be ‘job

related' to the post in question means that this is a narrower defence than under legal systems, such as UK equal pay legislation. More importantly, the Act requires the employer also to show that "each factor relied upon is applied reasonably" and that "the one or more factors relied upon account for the entire wage differential", requiring that any differential between men and women employed on equal work has to be objectively justified. A related issue here concerns allowing employers defending discrimination on the basis that equal pay would be too costly (Fredman 2013b:13). Case-law in Greece and the UK has accepted employers' defences against equal pay claims that rely on budgetary constraints. Further, a number of employer policies, practices and criteria may discriminate indirectly women (e.g. in the case of women taking time out following birth). For instance, Article 31(3) and (4) of the Portuguese Labour Code allows objective criteria for the assessment of work that justify differences in pay, including quality, productivity, seniority and leave of absence. As such, it is crucial that the notion of discrimination should include indirect discrimination.

2.3. LEGAL MECHANISMS FOR TRANSPARENT LABOUR MARKETS

In many legal systems, information regarding pay, especially in the private sector, is considered private or confidential information under data protection and privacy legislation. As a consequence, such information generally cannot be released by employers, and neither can employees be obliged to do so. However, "shining a light on an organization's pay systems can reveal gender bias and empower employees, employers, unions, and other equality seeking organizations to take appropriate action" (Cornish 2014:17). Gender equality plans and audits enable companies to measure their progress in implementing gender equality and equal pay. According to the Workplace Gender Equality Agency (Australia), the pay gap is almost non-existent when pay is set transparently as compared to 20.6 per cent when pay information is withheld (Brown 2014). The role of legislation is here multi-fold (Estlund 2014:784-785; Ramachandran 2012). First, it can promote enforcement of, and compliance with, legal mandates. In this respect, in the absence of any legislative support for transparency in pay practices, a claimant has no way of knowing whether a colleague is paid more. The decision of the US Supreme Court in *Ledbetter*⁶¹ illustrates the problem: in this case, discriminatory salary disparities were held immune from legal challenge because they had existed, unbeknownst to the plaintiff, for too long. In this context, transparency would also help in preventing wage disparities from arising: in union and public sectors, where transparency is the norm, empirical evidence suggests that there are significantly lower disparities linked to sex or race (Estlund 2014, citing Elvira and Saporta 2001; Agesa and Agesa 2007). Secondly, pay transparency may improve the efficiency of labour markets by informing employees' labour market decisions and redressing the imbalance in power between the employer and the employee, especially since women are significantly less likely to bargain over salaries (Estlund 2014:788). Finally, pay transparency may generate public pressure on corporations to improve wages at the bottom and provide a basis for assessing employers' compliance with emerging norms of corporate social responsibility (Estlund 2014:790). It is important to stress here that of itself, transparency is not enough to ensure the elimination of bias against women and the implementation of equal pay. Chicha (2006), for example, has noted that information on remuneration range and average monthly remuneration provide a general insight into pay discrimination but unless related to the value of corresponding jobs, does not help identify pay discrimination.

⁶¹ *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007).

2.3.1. INTERNATIONAL LEGAL MECHANISMS

The issue of transparency has gradually come to the centre of gender pay debates at international level. In the context of Convention No. 100, the ILO Committee of Experts on the Application of Conventions and Recommendations has recently laid emphasis on the importance of transparency for the elimination of gender pay gaps, “including through the publication of enterprise-based wage information”.⁶² At the regional level, the Council of Europe’s European Committee of Economic and Social Rights has also ruled that states are under a positive obligation to take steps to narrow the gender pay gap including the publication of relevant statistical data.⁶³

Significant developments have recently taken place at EU level as well. The 2006 Recast Directive stated that member states should encourage employers to provide regular gender pay information to employees/their representatives which may include: “an overview of the proportions of men and women at different levels of the organisation; their pay and pay differentials; and possible measures to improve the situation in cooperation with employees’ representatives. “Taking into account the slow progress on closing the gender pay gap since then, the EU Commission has adopted a broad range of pay transparency measures. Following the adoption of a recommendation focusing on pay transparency in 2014,⁶⁴ Member States had until 31 December 2015 to inform the Commission as to the steps they have taken to implement the Recommendation, after which the Commission would assess the progress made and any need for further action. A broad range of measures addressing wage transparency were outlined in the recommendation including the following: 1) an employee right to request information on pay levels broken down by gender, including variable pay such as bonuses; 2) an obligation on employers to regularly report on average remuneration by category of employee or position, broken down by gender (applies only to large and medium companies); 3) an obligation on large companies to undertake pay audits and make them available to workers’ representatives and social partners on request. The explanatory statement to a recent report by the European Parliament on the application of the recast Directive recommended that “mandatory inclusion of this tool based on common European definition would make a positive impact as it would on one hand raise the awareness of employees of existing remuneration and benefit disparities while at the same time provide an instrument for victims to initiate court proceedings in discrimination cases” (European Parliament 2015).

2.3.2. NATIONAL LEGAL MECHANISMS

At the national level, it is possible to distinguish the developments in pay transparency in three ways. The first is the legal nature of the measures. A number of countries have introduced legislative requirements for employers to carry out gender equality plans and audits. In Denmark, the Equal Pay Act 2014 requires that companies with a minimum of 10 employees make gender-disaggregated pay statistics (see also chapter 3 for the cases of Austria and Germany). The UK has also now decided to activate powers in its 2010 Equality Act to require mandatory reporting (for companies with more than 250 employees after only five companies participated in a voluntary initiative trialled from 2011-2015). In Spain legislation introduced in 2007 made it compulsory for enterprises to draw up and apply an Equality Plan in companies with more than 250 employees or if a company is obliged by a collective agreements, even with fewer employees than 250 as well as allowing for the provision of technical assistance to implement voluntary Equality Plans in enterprises that are not legally bound to do so, alongside other measures such as creating an equality label, corporate social responsibility

⁶² Observation (CEACR) – adopted 2009, published 99th ILC session (2010), Equal Remuneration Convention, 1951 (No. 100), Austria.

⁶³ Conclusions XVII-2, Czech Republic, 113-114.

⁶⁴ C(2014)1405.

actions on gender equality and steps to promote the inclusion of women on the boards of commercial companies. Furthermore, the labour authority could also decide to replace the sanctions resulting from violations of the principle of equality with the obligation to prepare an Equality Plan.⁶⁵ Although the legislation came into force in March 2007 no specific deadline was set for compliance and the obligation of negotiating Equality Plans and was deferred to the time when each company or sector would have to negotiate the next collective agreement. Due to the adverse economic situation and the effect this had on social dialogue, more than 2000 collective agreements have not been renegotiated following expiration two years ago. Plans have been implemented in those agreements that have been renewed, usually through the creation of Commissions for Equality. The result is that less than 5% of the more than 4 500 companies for whom implementation of an Equality Plan is compulsory have complied with this obligation (Valdés de la Vega 2010).

The second is the focus of the legal mechanisms. In some systems, the mechanisms address directly employers by obliging them to provide information on staff pay, albeit with significant variety in terms of the nature of the obligation. On the one hand, Belgium requires employers to outline how differences in labour costs between women and men should be included in companies' annual audits, which are made publicly available; companies with more than 50 employees should compare their wage structure for men and women every two years. Where the analysis reveals that women earn less than men, employers are obliged to create an action plan to close the earnings gap (European Commission 2013a). Proposed legislation on mandatory reporting in the UK is, however, unlikely to require employers to carry out detailed equal pay audits. Other mechanisms focus on the individual employees by allowing them, upon their choice, to disclose their pay terms and be protected from retaliation from the employer. Iceland has adopted legislation that explicitly allows employees, upon their choice, to disclose their pay terms (Foubert et al. 2010:13). In the U.S., the White House has been advocating for the passage of the Paycheck Fairness Act which, although twice blocked by the Republicans, would protect employees who share their own salary information from employer retaliation.⁶⁶ While that legislation has stalled at federal level, California recently passed legislation, the Fair Pay Act 2015, which enables female workers to openly ask for and discuss co-workers' salary information, while explicitly protecting them from employer retaliation, a protection that did not exist before.

The third is the extent to which other actors (including most notably employee representatives and the state) are involved in the process. In some systems, the reports required to be submitted by employers may be examined by a monitoring body, and sometimes be published and/or become the subject of consultation or delivered to workers' representatives (see also Foubert et al. 2010). Again, the degree of involvement may differ significantly. In Quebec, pay equity plans for organisations with between 50 and 99 employees have to be formulated jointly by the employer and the relevant trade union, and organisations with 100 or more employees have to establish a pay equity committee consisting of two-thirds employee representatives, at least half of whom are women. This approach provides both a mechanism for identifying pay discrimination and for eliminating pay gaps, identified by Chicha (2006) as key to a model that can achieve equal opportunities and equal outcomes (Charlesworth and Macdonald 2015:430). In some cases (e.g. the Netherlands), a public authority has been given the right to require from the employer the release of specific pay information on a more ad hoc basis, so as to enable an employee to bring a successful equal pay claim (Foubert et al. 2010:14).

⁶⁵ Equality Law 3/2007.

⁶⁶ But see the US Lilly Ledbetter Fair Pay Act 2009, which states that the 180-day statute of limitations for filing an equal-pay lawsuit regarding pay discrimination resets with each new pay check affected by that discriminatory action. The law directly addressed *Ledbetter v. Goodyear Tire & Rubber Co.* (550 U.S. 618 (2007)), a U.S. Supreme Court decision that the statute of limitations for presenting an equal-pay lawsuit begins on the date that the employer makes the initial discriminatory wage decision, not at the date of the most recent pay check.

However, in Australia, the Workplace Gender Equality (WGE) Act only requires that employers make annual reports to the Workplace Gender Equality Agency (WGEA) accessible to employees and shareholders and allow employees and employee organisations the opportunity to comment on reports; this obligation, as noted, does not extend to remuneration data provided by employers to the WGEA (Charlesworth and Macdonald 2015).

2.4. SUMMARY

The analysis above has identified the progress made with respect to the legal mechanisms addressing the issue of gender equality and in particular pay equity. But, as seen, there are still significant shortcomings limiting the effectiveness of the legal mechanisms both at the international and the national level.

The limitations of the legal mechanisms have implications for all aspects of labour markets, In terms of the inclusiveness of the labour market, problems exist with respect to both income inequality and inclusive coverage. With respect to the former, minimum wage policies, for instance, fail in most cases to include mechanisms for uprating the level of wages so as to keep up with prices. With respect to the latter, large numbers of women are still excluded from the protected scope of legislation.

Still, legal mechanisms have an important role to play in promoting greater inclusivity. Measures should be considered for expanding the scope of equality and other relevant legislation, including minimum wage laws, so as to cover disadvantaged groups currently excluded from the application of such legislation and limit the risk of precariousness in such cases. The development of better enforcement mechanisms in the supply chain would act as a complementary strategy designed to limit the extent of employers' lack of compliance with minimum wage standards. Consideration should be given to a 'decent wage'/'living wage' approach that enables the individuals to meet the basic needs to maintain a safe and decent standard of living within the community and participate in the social and cultural life. This would mean that legislation should not only aim at establishing a basic minimum floor of wages but should also be informed by an ambition of ensuring that the wage is sufficient to provide a 'decent' standard of living (although care must be taken to prevent any revitalisation of the notion of male family wages). In turn, the support for decent minimum wages (through, including provision for upgrading mechanisms) would protect against outsourcing or the use of NSFE that increase the risk of precariousness.

From a gender equal markets perspective, empirical evidence has highlighted the limits of a conventional approach to gender equality that is centred on a negative prohibition on discrimination rather than a positive duty to promote equality (Hepple et al. 2000). Against this context, treating closing the gender pay gap as a human right priority would be a significant step towards ensuring progress in gender equality. In this respect, it would be necessary to adopt and support positive equality duties at both the international and national level. These would build on and strengthen the equal pay principles recognised in many legal systems. In mobilising all general policies and measures specifically for achieving equality by actively and openly taking into account at the planning stage their effects on women and men, a 'transformative' (Hepple 2014) form of equality would be promoted. The participation of stakeholder groups and especially those directly affected would be crucial here.

Aside from this, the deficiencies of the legal mechanisms identified in research and in the analysis here require to be addressed (see also Fredman 2013b). Firstly, it is necessary to expand the notion of the employer to go beyond the confines of single organisations (see, for instance, the reliance of the CJEU on the 'single body' doctrine) and take into account the growing organisational fragmentation;

this would go some way in limiting employers' attempts to evade equal pay laws by outsourcing. Secondly, the scope of justification by employers regarding discriminatory policies and practices should be reconsidered in order to ensure that any differential between men and women employed on equal work has to be objectively justified (see California Pay Act 2015). Thirdly, it is crucial to develop more adequate mechanisms for dealing with the problem of undervaluation. In light of the experience of the Australia with the Fair Work Act, it would be helpful to develop general principles for equal pay interventions in female-dominated occupations. The mechanisms of 'proxy' and 'proportional value' comparisons, which have been proven particularly effective in the systems used so far (e.g. in Ontario) would also achieve significant improvements in pay, especially for those women at the lowest wage levels (Hepple et al. 2000). In this context, good practice at organisational level would support for the principle of 'equal pay for equal work or work of equal value at the same place'. But it would be important here to emphasise that dealing with undervaluation and proportionality would constitute two distinct principles and should not be seen as interchangeable.

Finally, limitations in existing legislation concerning accessing information on pay systems have compromised not only enforcement and compliance with equality law but have also failed to address the imbalance of power between the employer and employee and to take advantage of rising consumer activism regarding employment and social broadly issues (Estlund 2014). In order to develop more transparent labour markets, legal systems need to move to enact additional innovative laws on transparency. Consideration here should be provided to the promotion of initiatives regarding promoting women's rights to request detailed information on pay, employers' duties concerning regular reporting on pay policies and practices, and conducting pay audits with the participation of stakeholder groups that involve directly affected individuals.

3

SOCIAL DIALOGUE AND COLLECTIVE BARGAINING

Although legal rights to equal pay have been essential in starting the dialogue around equality and activating measures to close the gender pay gap, individual rights on their own are not normally sufficient to instigate major social changes and redistribution. They may indirectly stimulate changes in the behaviour of women with respect to education and careers but changes in the wage structures in which they are employed require action at the workplace. Furthermore, although there have been many doubts about the commitment of trade unions to gender equality, there is very limited evidence to suggest that the alternative, employers acting on their own, is likely to promote greater gender pay equality. Here we explore the positive role that needs to be played by social dialogue and collective bargaining. We do this in four main sections; first, we review evidence on the effects of trade unions and collective bargaining on gender pay equality; second, we review the scope at different levels for bargaining for inclusive labour markets and how these forms of bargaining can promote gender equality, albeit indirectly; third, we consider evidence for, and the effects of, specific efforts to bargain for gender equality; fourth, we consider the contribution of collective bargaining to transparency in pay systems. We conclude with a summary.

3.1. EVIDENCE OF THE IMPACT OF TRADE UNIONS AND COLLECTIVE BARGAINING IN CLOSING THE GENDER PAY GAP

There are divergent views on the impact of trade unions and collective bargaining on the gender pay gap. On the one hand, historically trade unions and collective bargaining have been associated with establishing and maintaining the notion of a family wage for male breadwinners (Humphries 1977). The counterpart to the family wage is the availability of non-breadwinners – mainly women and young people – to work for only component wages, insufficient to provide for their subsistence. Furthermore, the fight for the family wage led indirectly to women’s wage labour being often hidden and informal, excluded from formal employment and collective regulation. Thus gender inequality may, on the one hand, be seen as the price paid for pursuing class-based strategies for greater equality. On the other hand, the segmentation of the labour supply by gender that this generated also provided competition to the formal and regulated employment sector, with the risk that ‘component’ labour in the informal sector could undercut the higher productivity but also higher wage firms in the formal sector.

These mixed views of the role of collective organisation and regulation may still be found today, particularly in developing countries where most women still work in the informal sector and the formal sector remains small and dominated by men. Even in developed countries there are many academic and political commentators who view collective regulation as favouring labour market

insiders or the median voter, leaving the outsiders or the precariat in which many women are located relatively unprotected. This perspective is found not only among mainstream economists – the ‘distortionists’ (Hayter and Weinberg 2011) – who consider markets to work better and more fairly without institutional interventions – but also among some concerned that there is an increasing mismatch between the evolving employment trends, towards more NSFE and more female workers, and the ability or effectiveness of existing institutions such as trade unions and collective agreements to provide protection for these groups (Vosko 2010; Fredman 2004; Standing 2011).

Against these negative interpretations of the role of social dialogue and collective bargaining, there is a growing body of evidence that labour markets with strong systems of collective regulation are more likely to deliver gender equality than those where collective regulation is weak and employers in charge of wage setting. Hayter and Weinberg (2011) consider these ‘institutionalists’, who recognise that institutions can usefully advance multiple social and economic objectives in contrast to the ‘distortionists’. It is notable, for example, that the successful initial implementation of the equal pay act in the UK has been attributed to the existence at the time of sector level collective bargaining agreements that generalised to large numbers of women the gains from equalising women’s minimum pay rates upwards to those fixed for men (Zabalza and Tzannatos 1985). Key early empirical contributions to the debate on institutional effects included Whitehouse (1992) who found that gender pay equity was positively related to collective regulation and the size of the public sector; and Blau and Kahn (1992) who found wage structures to be a more important factor in explaining gender pay equality differences than the relative position of women and men within a wage structure. Their results found that labour markets with coordinated and centralised bargaining structures have by and large delivered more egalitarian wage structures which favour more gender equality. These insights were built on in more specific analyses of how gender pay gaps are influenced by the form of institutionalised wage setting at a sectoral and country level (Rubery et al. 1997).

For example, Gornick (1999) compared the role of seniority pay ladders in the US and Canada to Germany and the Netherlands and found the length of the ladder the bigger problem in the first two countries, while women’s position on the ladder was a more important problem in the latter two. More recently, Mandel, in a number of articles with and without colleagues, has explored the interactions between gender and class equality issues in shaping both gender pay gaps and women’s employment opportunities across advanced countries. Mandel and Semyonov (2006) showed that the impact of family policies and employment in social services on the gender pay gap depend on the degree of wage inequality which in turn was related to collective bargaining and trade unions. Mandel and Shalev (2009) explore gender and class equality issues across 17 advanced societies and conclude that policies that reduce class inequalities have favourable impacts on the aggregate gender pay gap. Furthermore, when combined with strong welfare support for working women and high public services employment, they also enable more less educated women to enter employment. More controversially, both Mandel and Shalev (2009) and Mandel (2012a) argue that the rights and benefits associated with strong welfare states create a barrier to women’s entry into higher level jobs, a finding disputed by Korpi and colleagues (2013).

The argument that collectively-regulated labour markets provide some benefits for gender equality is also supported by increasing evidence that deregulated labour markets, far from establishing similar pay for similar labour, tend to generate wage inequalities that are more related to differential rents in the sector or organisation in which the worker is employed than to their individual productivity potential (Gannon et al. 2007; Simón 2010; Rycx, and Tojerow 2004). Furthermore, the research finds that there is considerable class and gender bias in the sharing of economic rents, with higher skilled male employees much more likely to benefit than female employees. Managerial discretion is thus an important source of pay differences in deregulated labour markets and cannot be relied upon

to deliver fair rewards by either gender or class. Clearly within some sectors and some organisation there may be limited scope for managers to set pay above the minimum standards established by law or social norms, but in many cases the organisations most constrained in their pay setting abilities are those working for powerful clients such as multinationals or governments. The need to address power relations along the supply chain has been highlighted by research on both local outsourcing, for example of care work (Bessa et al. 2013), and on global value chains (Barrientos and Evers 2014; Miller 2004). Collective action may need to cross organisational and national borders to raise the wages for female workforces of subcontracted organisations.

Some critiques of the role of trade unions in setting gender-biased pay levels may overestimate the power of unions and underestimate the difficulties of setting and protecting pay levels in a changing environment. Trade unions may not be making simple choices to promote higher pay in male-dominated jobs but may find it difficult to organise and protect pay in many female-dominated sectors and jobs due to the product market and contracting conditions. Even where trade unions are successful in raising the pay of female-dominated jobs, employers may take evasive action to reduce the impact, for example by outsourcing these jobs. The association of women's employment with reduced bargaining power is also found in occupations and sectors that have become more open to female employment. Reskin and Roos (1990) documented how those sectors, organisations and occupations in the US that experienced the highest increase in female employment shares were also often precisely those experiencing relative decline in job quality, measured by pay and other factors. In some cases this may be partially attributable to weak efforts on the parts of unions to protect new female recruits but it was more generally associated with changing product market, technological and labour supply conditions. That is, trade unions and collective negotiators do not have unilateral power to fix wage relativities but instead have to operate within the changing product market and competitive structures. This research – which has also been partly replicated in other studies and other countries (Crompton and Sanderson 1990; Mandel 2012b; Muzio and Tomlinson 2012) – also suggests that the route to gender equality is not simply through changing gender segregation of employment and large scale entry of women to a specific employment area is often associated with major change in work organisation and competitive conditions in that sector.

Despite these apparent divergences in understanding of the role played by institutionalised wage setting in shaping gender pay inequalities, in practice both the negative and the positive findings can inform a policy programme for promoting gender equality within a framework of inclusive labour markets. Some key points that can be derived from a consideration of this diverse evidence include the following.

Whatever the shortcomings of collective regulation, the alternative of wage setting unilaterally by managers is unlikely to generate gender pay equity (except at best by processes of levelling down pay between men and women). Labour markets tend not to set binding pay rates and managers enjoy considerable pay discretion, except when subject to powerful clients – for example multinationals or government contractors.

Collective regulation can be both a source of reducing gender pay inequalities and establishing and reinforcing gender pay inequalities. This follows from the dual roles of trade unions as defenders of vested interests and campaigners for the sword of justice. Where collective bargaining is limited in coverage its direct ability to promote gender equality across the board is highly constrained but trade unions can and do nevertheless campaign for general policies to promote equality such as minimum wages or more universal social protection.

The types of payment practices promoted through trade unions and collective bargaining will influence not only the overall pattern of gender pay equity but also which groups of women mainly benefit

and/or lose from specific pay practices and/or forms of collective regulation and social dialogue. Strategies to reduce gender pay equality need to engage with the institutions of wage setting which differ across countries, sectors and organisations.

Although the commitment of unions and pay negotiators to gender pay equality is an important factor in shaping outcomes, the scope for gender pay equality also depends on changing product market, technological and labour supply conditions. Women's entry into male-dominated occupations or sectors may be associated with deteriorating conditions for negotiating pay within these sectors or occupations.

These four key points provide a more integrated framework within which to consider the limits and possibilities for reducing gender pay gaps through trade unions and collective action. The focus is both on the potential for collective action to create more inclusive labour markets and on the need to reassess and critique existing institutional pay practices to promote greater gender equality. We turn now to a more detailed consideration of the scope for action at different levels to promote inclusive labour markets before turning to bargaining for more gender specific initiatives.

3.2. BARGAINING FOR INCLUSIVE LABOUR MARKETS

3.2.1. INTERNATIONAL LEVEL COLLECTIVE BARGAINING

Social dialogue and collective bargaining across national borders is still in its infancy. However, as production and services are increasingly produced within global supply chains, the distribution of value within these chains takes on significance both for inter-country distributions of resources and for the specific conditions of the workers at the end of the global supply chains. These workers are often female workers in second or third tier suppliers on extremely low wages and poor conditions, even relative to the labour market in which the workers are located.

There have been two main ways of addressing these problems in global supply chains; one has been through the adoption of company codes of conduct (discussed in chapter 4), but a more recent development has been the establishment of international framework agreements between a Global Union Federation (GUF) and a multinational company. These have been initiated mainly in Europe, often through European Works Council initiatives. They follow the codes of conduct in being primarily concerned with commitments to honour key ILO conventions in areas such as minimum wages and to promote the four ILO core labour standards that is not to use forced labour or child labour and to pursue policies of non-discrimination and rights to collective organisation. In comparison to codes of conduct there is more emphasis on trade union organising and collective bargaining in International Framework Agreements (IFAs) and most also include commitments to non-discrimination. Promoting non-discrimination is still an underdeveloped aspect of the IFAs. The main benefit of IFAs from a gender equality perspective is therefore in their promotion of minimum standards together with the possibility of trade union organisation. However, IFAs are in fact less common in female-dominated sectors such as textiles and clothing; Miller (2004) reported progress to be slow in this sector due to strong anti-union positions by leading MNCs and because of the plethora of codes of conduct in place. Nevertheless, efforts to raise minimum wages in international supply chains may also raise awareness of employment conditions in general particularly if, as in the case of IFAs there is a prospect of these efforts increasing trade union organisation within the local subsidiaries and suppliers.

The main other form of international social dialogue is found in the European Union, operating both at a central confederation level, between ETUC and BusinessEurope and other employer

association confederations, and in 40 sectoral committees covering three-quarters of European workers. However, neither the central nor the sectoral social dialogue deals directly with issues of pay. The main achievements of central level social dialogue with respect to gender pay equality have been to agree directives to provide for equal pay for NSFE, particularly part-time but also fixed-term contract workers and agency workers (with the last directive providing significant discretion to Member States, including on length of service period before entitlement which in the UK case is 12 weeks). The recent tendency for the EU to regard the gender pay gap as an issue for social partners has resulted in gender pay issues falling between the gaps with social partners regarding it more as a matter for state policy (Smith 2012). Furthermore, social dialogue has largely been bypassed in relation to austerity policies, particularly the changes to public sector pay and conditions, to minimum labour standards and the requirement to end or reduce the extension of collective agreements to non-signatory companies and their impact on the gender pay gap have not been addressed.

There is, however, a need to develop strong social dialogue and collective bargaining strategy at the European level to contest the current trend in Europe towards company level decentralisation of bargaining and to promote an alternative approach to European ‘solidaristic’ wage policy (Deakin and Koukiadaki 2013; Schulten and Müller 2014), based on strong collective bargaining institutions and equitable wage developments. As Marginson (2015) has argued, it is not the time to undermine the coordination capacity of multi-employer bargaining arrangements in parts of southern Europe, but to achieve this reversal of trends would require more coordinated action at the European level and the development of cross-border level collective bargaining.

3.2.2. NATIONAL AND SECTORAL LEVEL BARGAINING

Social dialogue and collective bargaining are most likely to contribute to the development of inclusive and gender equal employment systems where bargaining is coordinated and conducted at a national or sectoral level. This was confirmed by a recent ETUC study of bargaining for equality: “A consistent finding from the survey is that centralised and sectoral bargaining, which has an impact across the whole economy, is the most effective way that unions can implement actions to reduce pay inequalities between women and men” (ETUC 2014:27). However, there are relatively few countries which have widespread and coordinated bargaining and, even amongst those that do, there may still be major deficiencies with respect to the promotion of inclusive and gender equal labour markets. Five dimensions of national and sectoral bargaining are of particular importance for gender pay equity. The first is the coverage of the collective regulation, both in percentage terms and in relation to which types of employment tend to be excluded. The second is the level and dispersion of minimum pay rates across the sectors. The third is the extent to which collective regulation can be evaded through outsourcing. The fourth is the embedding by collective bargaining of pay practices including grading systems, pay progression systems, additional payments etc. The fifth is the associated agreements on working time practices.

Coverage of collective regulation

The coverage of collective regulation is variable and has been shrinking within OECD countries as table 7 demonstrates. Only a few countries retain coverage rates of 90% or more (Austria, Belgium, Sweden, Slovenia, France). Coverage rates are higher and more likely to reach 100% in the public sector (Finland, Sweden, Denmark, Norway, Netherlands, France, Spain, Portugal, Slovenia plus Germany at 97% and Ireland 90% coverage). These data exclude from consideration those workers-often civil servants- who do not legally have bargaining rights. Their pay is often set by the government following collective agreements for those groups that do have bargaining rights (see table 8 for

Table 6. Coverage rate in the market and non-market sectors in OECD countries 1990–2010

	1990		2000		2010	
	Market	Public	Market	Public	Market	Public
Finland	80b	100b	82	100	85	100
Sweden	72b	100b	90	100	87h	100h
Denmark	75	100	75e	100e	77h	100h
Norway	62c	100c	61g	100g	59i	100i
Austria	98		98		98	
Netherlands	74	100	82	100	82	100
Germany	78	100	66	97	58	97
France	93	100	90	100f	90i	100i
Spain	67	100	80	100	72j	100j
Portugal	94b	100b	87	100b	85h	100h
Hungary	45d		40f	47f	33j	29j
Slovakia			34f	59f		
Slovenia					90	100
Ireland			33	100	32	90
UK	40a	78a	23	74	17	65
Australia	78	92				
Canada	30b	80b	20g	76g	18	71
USA	13	43	10	42	8	41
Japan	23				16	
New Zealand	55	94				

a=1988 b=1989 c=1992 d=1993 e=1997 f=2001 g=2002 h=2007 i=2008 j=2009

Source: Visser 2013: table 1.

summary of wage setting in the public sectors in Europe). Countries with low rates of overall coverage tend to have stronger coverage in public than the market sectors (for example, Ireland, the UK, the USA, Canada, but also Germany and Norway, though at higher levels).

Apart from being more likely to be in the private sector, groups excluded even within developed countries are more likely to be a) non-union members particularly in countries where there is limited or no automatic extension of collective agreements b) employees in small and medium-size enterprises and in some sectors- including often service sectors and agriculture as well as domestic workers c) employees on non-standard contracts especially those who are self-employed (although some unions of the self-employed exist) but also part-time workers, agency workers and those on fixed term contracts (Ebisui 2012). Many of these excluded workers and groups are both growing and involve primarily women. Therefore, a high coverage rate is very important for inclusive and gender equal labour markets. For example, Japan has relatively low overall coverage but this is even

Table 7. Regulation of the employment relationship in the public sector in European countries

Predominant regulatory pattern	Countries
Collective bargaining (CB)	Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, Hungary, Ireland, Italy, Malta, Netherlands, Portugal, Slovakia, Slovenia, Sweden
Unilateral state regulation (USR)	Austria, France, Luxembourg
Mixed:	Estonia, Greece, Latvia, Lithuania
i) CB more important than USR	
ii) CB and USR equally important	Poland, Romania, Spain
iii) USR more important than CB	Germany, UK

Source: European Commission 2013b table 1.4.

more restricted for part-time workers who tend not to be offered the lifetime employment guarantees that are available to full-time employees in large firms (Keizer 2008) and these types of employment are steadily increasing in Japan. According to Eurofound (2014) non-regular workers accounted for 35.2% of the workforce in 2012 compared to 16.4% in 1985 with around half of these being non-student part-time workers (49%), a further fifth students working part-time and the rest contingent workers. Domestic workers are almost exclusively female and although two countries, Uruguay and Italy, have recently renewed collective agreements for these workers, this still remains very much the exception (ILO, undated).

A particular area of concern is policies, enacted at international or national levels that are reducing the inclusive coverage of collective regulation. These policies are aimed at limiting or abolishing mechanisms of extending collective regulation to non-signatory employers or providing opportunities for employers to opt out of collective regulation. Table 9 shows that sector level bargaining tends to cover many more non-union members than company level bargains in OECD countries and that this coverage increases considerably with extension mechanisms. The latter should therefore be considered mechanisms for inclusivity.

A number of EU Member States affected by the economic crisis (including, most notably, Greece, Ireland, Portugal and Romania) have been required to limit extension mechanisms under economic adjustment programmes that accompanied the loan agreements provided to avert sovereign defaults. In others (e.g. Italy, Slovenia, Spain and Belgium), these requirements were included in some cases in ‘secret letters’ and Corporate Social Responsibilities under the European Semester process⁶⁷. The impact of the measures on collective bargaining has been significant and the common denominator has been a contraction of bargaining at higher levels (i.e. inter-sectoral and sectoral) and a decentralisation trend (Koukiadaki et al. 2016). Among others, Portugal has witnessed a major fall in collective bargaining coverage due to new rules restricting the use of extension mechanisms (Schulten et al. 2015:379). The numbers of extension agreements since 2011 have ranged from 9 to 17 compared to over 100 prior to 2011.

⁶⁷ The European Semester is the EU's annual cycle of economic policy guidance and surveillance.

Table 8. Coverage of union and non-union members by level of bargaining and extension regime in Europe 2000–2009, % of workforce

	Company	Sector	No extension	Conditional extension	Automatic extension
Union	20.3	35.8	73.1	35.6	28.4
Non union	7.1	41.2	15.6	31.4	52.2.
Total	27.4	77.0	88.7	67.0	80.6

Source: Visser 2013. Chart 3

Box 3.1. Regulatory innovation: the introduction of a national minimum wage in Germany within a legislative package entitled ‘Act on the Strengthening of Free Collective Bargaining’.

The mode of introduction of the German national minimum wage is a prime example of fusion or interdependency between legal and collective regulation. The German traditional wage setting model was based on autonomous wage setting but it can be regarded as a ‘weak autonomous system’ which was significantly eroded by a range of developments including the unifications with eastern Germany, the expansion of female employment and the gaps in coverage that allowed posted workers to be paid at lower levels.

As Bosch (2015) outlines, after much debate a legal national minimum wage has been introduced but, in line with Germany’s tradition of free collective bargaining, this has been implemented inside a legislative package entitled ‘Act on the Strengthening of Free Collective Bargaining’. Under the new act, industry-level minimum wages can now be agreed in all industries and declarations of general enforceability are no longer dependent on the industry in question having a rate of coverage by collective agreement of at least 50%. Rather, collective agreements can now be declared generally binding if there is a ‘public interest’ in the “maintenance of collectively agreed standards in the event of adverse economic developments”. The new minimum wage of 8.50 euros per hour applies to all employees except trainees, the long-term unemployed for six months after return to employment, and employees under the age of 18. Although increases are to be proposed by a Low Pay Commission, the benchmark for any increase in the minimum wage will be the increases in collectively-agreed rates of pay, to make it clear that it is collective bargaining that sets the pace for increases in the minimum wage. Importantly, in the event of infringements, subcontractors cannot be held liable, but the main contractor will be deemed legally responsible.

In many respects, therefore, the national minimum wage in Germany is part of a wide ranging effort to reregulate wage standards by embedding the national minimum wage within revitalised collective bargaining systems and within strong regulation with respect to network arrangements. However, the impact of the revitalisation on female-dominated sectors is not yet clear.

Research has found that employers in low paid female-dominated sectors such as textiles and clothing are reluctant to agree to new extended agreements or any improvement in pay on grounds of concern over increased competition (Távora and González 2016). However, the large employers in these sectors may be using these arguments to keep down wages as they often subcontract work to the non-signatory companies. Whatever the underlying reason, the impact will be mainly felt by women workers. In Spain the main change is the ending of the automatic extension of a collective

agreement when no new agreement is negotiated. This means that firms can fall outside collective regulation more by inertia than by action. Furthermore, company level agreements are given priority over sectoral agreements and this may mean that firms can ignore specific gender-related clauses in sector level agreements, related to work life balance and the like (González Gago and Segales Kirzner 2014). Germany provides an example, however, where active measures are being taken to reverse the previous trend of reducing the use of extension mechanisms. As part of the revamp of the regulatory system associated with the introduction of a national minimum wage (see box 3.1), extensions have been made easier and employers may no longer be able to veto extension if it can be argued that it would be in the public interest. These changes are mainly designed to provide protection against competition from posted workers and may in the end be used more in male-dominated sectors but they nevertheless reverse a previous policy of limiting collectively agreed wage rules to employees of actively involved employers

Minimum wage standards

Sectoral collective agreements usually set minimum wage standards above national legal minimum wages where these are present but there are some countries where this has not always been the case. For example, France has raised its national minimum wage by an agreed formula and this has often taken it above collectively-agreed minimum wages by sector, particularly where collective organisation is relatively weak. Nevertheless, except for contexts where the legal minimum wage is regularly upgraded, one can expect sectoral bargaining to raise minimum standards. As women tend to be concentrated towards the bottom of pay hierarchies, this effect in principle should be beneficial for gender pay equity, provided there is a high level of collective bargaining coverage and exclusions do not primarily affect women. However, women are not equally distributed across sectors and the issue is whether sectoral minimum wages are set at higher levels in male-dominated than female-dominated sectors. As these are minimum wages and therefore apply to staff undertaking the least skilled jobs, these differences can be considered to reflect more the bargaining power of the workforce and the economic rents available in the sector than any real differences in relation to skills. Recent research on sector differentials does support the notion, developed by Grimshaw (2013) that there is a complementary relationship between high collective bargaining coverage, minimum wage systems and reducing gender pay gaps (Schäfer and Gottschall 2015).

A recent study investigated the effects if all European countries without a national minimum wage but relatively strong collective bargaining organisation were to adopt a common minimum wage standard (in relative terms) and came to the conclusion that:

The combination of sectoral minimum rates and high coverage of collective bargaining can, at least for earnings inequalities, be regarded as a functional equivalent to a statutory minimum wage at national level. Controlling for Kaitz indices, compositional and year effects, regression results suggest indeed that both a national statutory minimum wage and, in countries with sectoral minima, higher collective bargaining coverage are significantly associated with lower levels of (overall and inter-industry) wage inequalities and a smaller fraction of workers paid below prevailing minima (Garnero et.al. 2015:127).

However, Schäfer and Gottschall (2015), who looked at the impact of collective bargaining from a more specific gender lens, found that due to the tradition of stronger collective agreements in male-dominated sectors in countries such as Germany, sectoral bargaining was not associated with closing the gender pay gap. Thus, for sectoral bargaining to promote closing of the gender pay gap, it needs to set high minimum pay rates, relative to average earnings that are both relatively uniform across sectors and have widespread inclusive coverage.

Table 9. Minimum wages in national collective agreements in Nordic countries as a percent of national or industry average wages

	Sweden	Norway	Denmark	Iceland	Finland
Minimum wage in collective agreements as % of national average wage levels					
Construction	82	64	56	69	65
Metalworking	60	57	53	71	49
Hotel/catering	64	59	62	63	54
Cleaning	60	68	62	48	49
Minimum wage in collective agreements as % of industry average wage levels					
Construction	83	70	61	80	70
Metalworking	72	60	57	71	55
Hotel/catering	91	85	81	-	-
Cleaning	76	87	82	-	-

Source: Eldring, L. and Alsos, K. 2012 figures 6.5 and 6.6.

There is empirical evidence to suggest that countries with inclusive collective bargaining coverage and centralised coordinated bargaining do tend to have more egalitarian pay structures and that these are helpful for women (Whitehouse 2002; Elvira and Saporta 2001; Blau and Kahn 1992; Rowthorn 1992). However as pointed out by Rowthorn, these connections are not guaranteed. For example Austria has one of the highest rates of collective bargaining coverage but a long standing practice of wide pay differentials in minimum pay rates, skewed against female-dominated sectors. However, in recent years there have been efforts to reduce this effect through agreements on a common minimum collectively-bargained wage (originally €1000 per month, followed up by a claim for €1,500 but yet to be implemented (ETUC 2014:appendix 3)).

The Nordic countries follow the practice of setting relatively high collectively bargained minimum rates as is indicated in table 10. This includes two male-dominated (construction and metal working) and two female-dominated sectors (hotels and catering and cleaning). Although the minimum rates set in the latter two sectors are somewhat lower than the male-dominated sectors they represent a much higher rate relatively to average earnings in the sector. Furthermore, when we compare the rates set in some other countries in relation to female-dominated sectors such as retail (see table 11), we can see that the level of minimum rates tends to be higher in the Nordic countries, close to the standard threshold for low pay of 60 % of the median earnings but well below this level in coordinated market economies without national minimum wages such as Germany and Austria but high again in Italy.

One sectoral difference of particular significance for women is that between the public and the private sectors as women tend to dominate public sector workforces. We look at this issue in more detail in relation to occupational differentials but here we should note that although pay systems and levels in the public sector are subject to wide inter-country variations, they tend to set somewhat higher minimum rates for low skilled workers and women than the private sector. This is not universally the case but the most common pattern (Rubery 2013). This tendency to set higher minimum rates has been used by some policymakers to legitimise recent pay freezes and cuts for public sector workers, but an alternative interpretation is that the public sector may be more likely to set wages that do not

Table 10. Collective agreed minimum wages in low-paid sector in countries without a statutory minimum wages as % of the gross average wage (whole economy)

	Textiles and clothing	Retail	Hotels and restaurants	Hairdressing
Austria 2003	48/52 ^a	51/53 ^a	48	46
Finland 2002	>50	>50	>50	Na
Germany 2004	50 ^b	45 ^b	42 ^b	35 ^b
Italy 2004	57	60	59	52

^a blue/white collar workers ^b % of gross average wage in industry (including energy and construction), wholesale, retail, banking and insurance
Source: Funk and Lesch 2005: table 7.

reflect the embedded discrimination against women found in the private sector and on which many industries may rely for their competitive position.

In many developing economies a key issue is whether collective agreements may simply displace labour to the informal sector, particularly when these agreements apply to low paying sectors dominated by women. A study of the effects of three sector agreements covering low wage sectors in South Africa, however, suggests that the story may not be that bleak (Bhorat et al. 2013). Although a high level of non-compliance was identified, over time there was more evidence of wages moving towards the collectively-agreed minimum rates (that is the degree of underpayment narrowed) and median earnings increased along with employment. Nevertheless, establishing floors to wages for women through sectoral bargaining is a challenging objective in the current climate favouring more deregulated labour markets.

Outsourcing

One of the major constraints on achieving improvements in the wages for women's work through collective bargaining is the possibility that if there is progress in reducing the undervaluation of women's work within the core enterprise that the company might respond by outsourcing the work to other firms or sectors where either there is no collective regulation or where the collective agreements set lower wage rates.

This is a key issue in international framework agreements as the use of second or third tier suppliers to hide the continuing payment of low wages is widespread. Even within more regulated advanced economies, differences in sectoral pay rates provides major incentives to outsource. A recent study of public sector outsourcing (municipalities) compared five countries and found that in two countries – Germany and the UK – there were major wage cost incentives to outsource linked to variations in pay between the public and private sectors whereas there was a more common floor to wages in Sweden, France and Hungary (Grimshaw et al. 2015). Likewise a study of the global call centre industry found that call centre work was increasingly outsourced to realise opportunities to reduce pay and other conditions (Doellgast and Pannini 2015 – see box 3.2). Even where basic pay rates are not affected due to regulation or to social norms, the work may still be outsourced in order to reduce fringe benefits (maternity leaves for example) and to increase work intensity. However, the maintenance of common pay levels at least limits the benefits from outsourcing and, in countries with smaller differences in pay levels, more evidence may be found of reversals to outsourcing if other inefficiencies reduce the advantage of contracting out.

Box 3.2. Outsourcing and wage levels: the case of the global call centre study

The global call centre study which looked at call centres in 40 countries found that typical wages for in-house agents were 18% higher on average than those of agents in subcontractors (Holman et al. 2007). This premium (for a subset of countries) was found to be 8.5% even after controlling for the effects of human capital and other (Batt et al. 2010). The largest gap was in the US, UK, Germany and Denmark, where typical pay at subcontractors was 20-50% lower than that enjoyed by the in-house workforce (Doellgast et al. 2013). Subcontracted call centres jobs served diverse clients and where there was low bargaining coverage overall, like the US and UK, call centre subcontractors often have very low or no union presence. In contrast, unions in continental European countries have succeeded in establishing collective bargaining institutions in this sector, but there are large differences across countries in the structure and coverage of sectoral agreements. For example, Austria, Denmark, France, Italy, the Netherlands, Spain and Sweden all have sectoral agreements either specifically for call centre subcontractors or for more broadly-defined service industries but often these companies have some choice concerning which agreement to apply, resulting in 'shopping around' for the most favourable terms and conditions. Where there is no automatic extension of collective agreements, such as in Denmark and Sweden, subcontractors are able to avoid applying sectoral collective agreements, giving them often unilateral control over pay and conditions. Germany represents a more extreme case where there are no sectoral agreements for the call centre or telecommunications industries, and only one major collective agreement at a call centre subcontractor (Doellgast and Pannini 2015).

Pay practices and pay differentials

Where sectoral agreements set the pay grading systems, not just minimum rates and pay increases, there is a stronger potential role for collective bargaining in contributing to closing the gender pay gap. This can take two interrelated forms. First, collective bargaining helps to maintain pay progression opportunities and prevent compression towards the national minimum wage (Grimshaw 2013). This has been a particular problem in the UK and in France but the current proposal in Germany is to embed the new German national minimum wage in the system of collective agreements. New arrangements to facilitate collective agreements as a whole being declared legally binding may prevent the erosion of differentials, although due to the strength of collective agreements in male-dominated segments in Germany it may not be women who benefit most (box 3.1). The second impact may be to promote the principle of equal pay for work of equal value. This could involve intra-sectoral re-evaluations of the relative contributions of specific jobs or groups of employees but also efforts to ensure at an inter-sectoral level that female-dominated occupations are appropriately rewarded. This latter effect is particularly important in relation to one female-dominated sector, the public sector. Well over half of higher educated women in employment in the EU are found in the public sector so that ensuring that female-dominated public sector professions are appropriately paid is critical for closing the gender pay gap at higher levels of the wage structure.

Intra-sectoral evaluations are easier where agreements set pay for the whole workforce rather than where there are different sectoral agreements for different occupational groups. Such fragmentation makes it difficult to negotiate equal pay for work of equal value at a sectoral and workplace level. The role of sectoral bargaining in pay grading varies considerably across countries. Many countries have traditions of separate agreements for white collar and blue collar workers and other professional divisions (for example, the UK, Belgium, Germany, Finland, Greece), although some have moved

Box 3.3. The Equal Pay Programme in Finland

This is a joint action plan established by the government, central labour market organisations and employers' confederations aimed at reducing the gender pay gap from 18-20% to 15% which was planned to be fully implemented by 2015. It is based on the principle "equal pay for work of equal value." The Plan is multi-directional and aims to promote gender equality by introducing new analytical pay systems, equality planning and pay surveys, job evaluation and the job performance of employees by supporting women's career development, reducing differences in family leaves, assessing collective agreements and pay systems from gender perspectives and developing the relevant legislation and monitoring mechanisms, etc. (OECD 2014).

However, research on the negotiations behind the change in the equality law found that moves to allow comparison across occupational grades and collective agreements were effectively blocked by the employers and with limited opposition from trade unions. Although there is a commitment to equal pay for work of equal value, the assumption is that the pay grades have been constructed in a gender neutral way so that problems arise only within pay grades. However, as there is no direct comparison across collective bargaining agreements and local government staff, for example, are employed under five major collective agreements, this is unlikely (Koskinen-Sandberg 2015a, b).

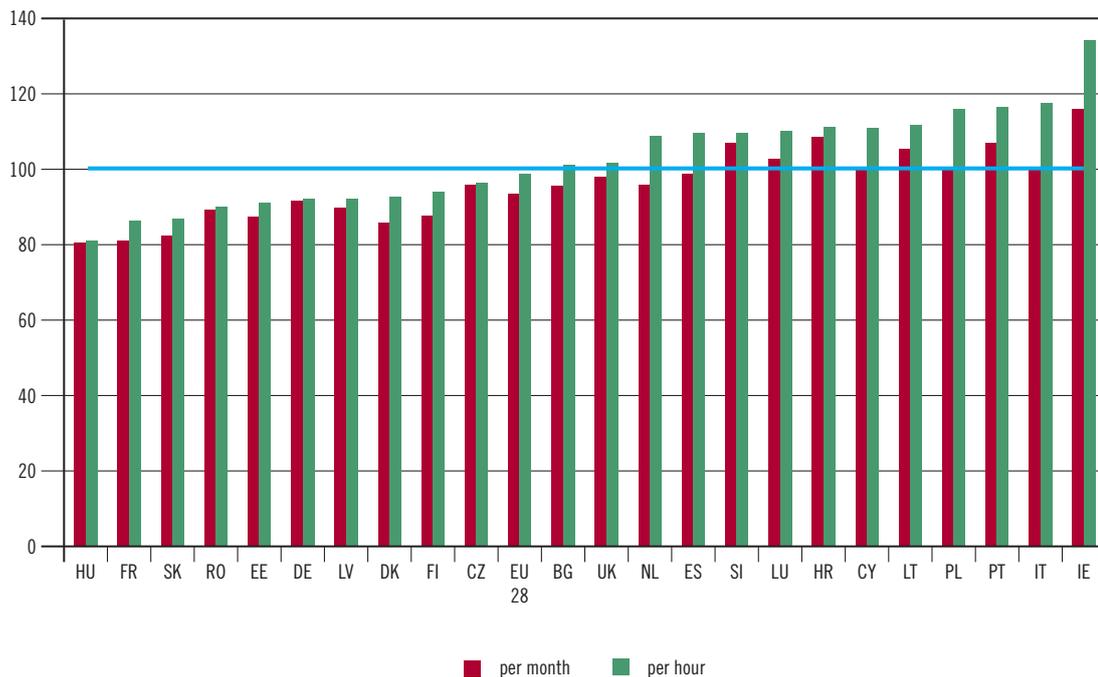
over recent years to more integrated systems. Where these divisions remain, initiatives to introduce more gender sensitive job evaluation may have limited effects (box 3.3).

Grading at sectoral level may be quite loose, based on general principles with scope for interpretation at the workplace level or may be more tightly specified. However, even if in principle highly structured- for example France's detailed wage grid systems-, the application may be varied through the use of wage supplements and bonuses (Barrat et al. 2007). The most scope for changing occupational grading structures at sectoral level is normally found in the public sector where common grading structures often prevail, sometimes across the whole public sector or around specific subdivisions, for example health or education. Some key examples of regrading where these have been motivated by gender equality issues are discussed in section 3.3 below.

The issue of ensuring appropriate pay levels for female-dominated professions and occupations in the public sector is complicated by the wide differences across countries in the traditions of wage setting for the public sector and by the increasing tendency since the economic crisis for public sector pay to be set according to public finance considerations, rather than in relation to fair pay for a particular occupation or profession. The experience of public sector pay under austerity in Europe includes widespread imposed pay freezes and pay cuts. The public sector by no means always provides a pay premium (Giordano et al. 2011; Müller and Schulten 2015 and figure 3.1.) but policies to cut pay have been applied in contexts where public sector pay is relatively high (for example some southern European countries) but also where the pay is relatively low compared to the private sector, that is in many Eastern European countries where low wages for public sector workers including professions reflect the legacy of the socialist era where public services were considered unproductive, low paid and staffed mainly by women (Rubery 2013). The pay for those in higher level professional jobs in the large public sector of the Nordic countries has also been found to be low (Grimshaw and Rubery 1997; Burchell et al. 2014).

Other aspects of pay practices embedded in collective agreements such as long seniority or merit scales may widen the gender pay gap, particularly in countries where women's participation is

Figure 4. Public sector wages as percentage of private sector wages



Source: ETUI 2015 figure 3.2 based on Müller and Schulten (2015).

interrupted or where part-timers have to work full-time equivalent years to qualify for increments. However, according to an earlier ILO study on collective bargaining and gender equality:

Critiquing seniority, however, appears to open the door to greater managerial discretion in allocating jobs, benefits and promotions. It is important therefore to critique the discriminatory effects of seniority, while developing creative alternatives that respect the positive non-arbitrary attributes of seniority systems (Blackett and Sheppard 2002).

The design of payment systems may have particularly negative consequences for women who have interrupted careers: for example women in Japan are believed to face one of the largest gender pay gaps in part because they are generally excluded from the job for life employment systems in large companies, but even those who join in the initial stage of their careers do not benefit as the early years in the job for life systems are paid at low rates, similar for both low and higher qualified entrants, so that the earnings benefits for university graduates come much later, by which time many women have quit the large organisations and are employed on a part-time or casual basis.

Collectively-agreed pay practices can therefore shape gender pay inequalities. The Equality and Human Rights Commission in the UK has come up with a range of practices that may be considered high risk for gender equality. These include differential access to attendance allowances, bonus payments, overtime arrangements, unsocial hours payments and market supplements. These may often be the outcome of differential collective bargaining for male versus female groups

The working time practices negotiated through collective agreements have indirect impacts on gender equality by shaping opportunities for those with care responsibilities to work full-time and by shaping the extent to which part-time workers are marginalised or integrated and given equal treatment with full-

Table 11. Impact of working time change (imposed, chosen or negotiated) on ease of being a parent in France

	Imposed	Chosen by yourself	Negotiated	Other
YES, has made it easier	50.6	62.5	66.2	67.5
NO, has not made it easier	49.4	37.5	33.8	32.5
Total	100.0	100.0	100.0	100.0
100%	49.6	11.7	32.8	5.8

Source: Fagnani and Letablier 2004: table 4.

timers. The significance of national working time regimes has been underestimated for their impacts on gender equality (Rubery et al. 1998). Expectations of long working hours, even if remunerated through collectively negotiated overtime, limit opportunities for sharing of care work or for women to retain full-time employment. The focus on individualised work life balance policies (Fleetwood 2007) and part-time work has diverted attention from the exclusionary working-time practices with respect to standard employment. One reason why the public sector has been important for women's employment is that it tends to have relatively shorter and more regular full-time working hours than private sector employment, facilitating reconciliation of work and family life (Rubery 2013). The imposed increases in working time in some countries in the public sector or branches of the public sector as part of austerity measures are therefore likely to have negative impacts for gender equality.

Shorter working weeks, such as the 35 hour week in France, in principle should help gender equality but in the French case the implementation allowed for more diverse working time schedules or for longer holidays; while the latter may suit some women and mothers, they do not help with the daily reconciliation of work and care and the more flexible schedules, found primarily among those in lower skilled jobs, may have intensified work life balance problems (Fagnani and Letablier 2004). Overall, therefore, research found that although 60% of parents said the shorter hours had been helpful, the share was higher among those in jobs with regular hours. Furthermore the research found that the shorter working week was more likely to have helped parents when it was negotiated rather than imposed (see table 12).

Apart from reducing standard hours, another general working-time policy is to introduce working time accounts. Although these in principle provide opportunities for work-life reconciliation they have been found not only more frequently in male-dominated sectors, for example in Germany, but also that they favour male employment patterns (Plantenga and Remery 2009), allowing for support during the crisis and/or allowing extended leave periods or early retirements, rather than the day-to-day adjustments that suit active carers.

Attitudes of trade unions to part-time employment also have an impact on the extent and form of part-time work. The Netherlands has by far the highest share of women working part-time but the impact on pay and conditions has been moderated by the position by trade unions who, instead of regarding part-time work as a threat to worker organisation from the 1990s onwards, were active in establishing equal rights for part-timers with full-timers, ahead of the EU directive on this issue (Yerkes and Visser 2005). The consequence is the acceptance of part-time work through the occupational hierarchy, although the costs in terms of women's income still remain high. Trade unions may also seek to protect against part-time work being used to provide employers with high levels of flexibility without the costs of overtime premiums: for example in Belgium, Luxembourg, the Netherlands, Germany and France part-timers were found to receive a premium for extra hours worked beyond

Table 12. Collective agreements to reduce pay inequalities between women and men

	% all confederations and federations responding to ETUC bargaining survey
Reconciliation of work/family life	49%
Training and career development	39%
Pay increase low paid workers	30%
Low pay of women in female-dominated sectors	26%
Transparency in pay systems/job classifications	26%
Pay surveys/pay audit	23%
Job evaluation/low value of women's work	21%
Gender sensitivity in performance related pay	4%
Other	11%

Source: ETUC 2014: table 4.

their contractual hours (or once it exceeded 10% of contractual hours in France), due to regulations or collective agreements to provide this protection. In most other European countries overtime protection only applied after the full-time working threshold was reached (Plantenga and Remery 2009). These premiums may be seen as discouraging part-time work as employers do not benefit from costs saving if using part-timers to meet demand variations but they also provide incentives for fixed and predictable schedules which are of benefit to those with care responsibilities.

3.2.3. COMPANY LEVEL BARGAINING

When it comes to the role of collective bargaining in promoting equal pay, the national or sectoral level is found to be more effective than the company level as the latter is associated with wider wage inequalities between firms and more uneven coverage (Gannon et al.2007; Simón 2010; Rycx, and Tojerow2004). However, as the work by Schäfer and Gottschall (2015) has revealed, where sector level bargaining is strongly biased in favour of male-dominated sectors, the outcome in terms of gender pay differentials may not be so clear cut.

There are currently strong pressures to move away from sectoral agreements towards company-level bargaining, with the latter given priority in Spain und the new austerity policies. Company-level bargains may now be allowed (for example in Spain or Germany) to set worse conditions than the sectoral collective agreements on business conditions grounds. This means that the move to company-level bargaining may undermine minimum wage systems and also fail to implement any equality bargaining deals at the sectoral level.

However, even in countries with strong sectoral agreements, there is still the need to implement agreements at the company or establishment level and where the formal agreements mainly focus on general pay increases and/or minimum wages without detailed grading and pay practices, there is more to determine at the company level of importance for gender equality. It is also at the company level that the detailed effects of pay and employment practices on gender equality can be revealed and action taken that addresses the main source of the problem (for example, whether a gender pay

gap indicates a problem with the pay system, recruitment, segregation or internal promotion and redeployment). It is therefore at this level that there has been most focus on gender pay audits and other aspects of equality bargaining, as we discuss further in the next section. However, even the push for equal pay audits often needs to be made at a national or a sector level for companies to be undertaking these as matter of course; reliance on individual firm level bargaining is likely to lead to variable qualities of audits and a very uneven incidence.

3.3 GENDER EQUALITY BARGAINING

So far the focus has been on the impact of collective bargaining around general terms and conditions – minimum wages, pay grading and payment practices and working time – on gender pay equity. The main message is that gender pay equity is more likely to be achieved where the bargaining is inclusive, the minimum wage rates are higher, the full-time working hours are shorter and where managers have limited discretion and have to follow pay grading structures and practices based on skills and necessary experience.

Where these conditions are not in place, there is a need for specific measures and bargaining strategies to promote gender pay equity. This form of collective bargaining is relatively underdeveloped, even within countries with strong trade unions and institutionalised collective bargaining. While it is beyond the scope for this review to identify how to increase gender sensitivity and gender access within trade unions and collective bargaining institutions the focus here is on identifying what is possible through bargaining for equality actions, illustrated by specific examples.

Most equality bargaining takes place at a national or subnational level. Indeed, within the recently developed IFAs, gender equality bargaining is more notable for its absence, although the first IFA with Danone included a pledge to promote gender equality. An investigation of the content of the IFAs, together with interviews with major trade union actors, found that the commitments to non-discrimination were in fact empty shells. Even though the large majority of agreements contain some kind of non-discrimination clause or further provisions on paper, this has apparently had little practical relevance up to date. Schiederig (2009:6) found that representatives of all global union federations in a group interview all commented that there had been no complaints through IFA procedures on the grounds of discrimination and that discrimination had never been raised by any local union to the GUFs, in comparison to multiple complaints about union rights. She concluded that although most GUFs recognized gender and diversity as important issues, they seemed unsure of how to use IFAs as an instrument for enhancing equality (Schiederig, 2009:6). Even where IFAs or codes of practice do succeed in raising women's pay rates, Pearson (2014) has highlighted that there are limits to this form of bargaining as women are only assisted when actually working within the supply chain and there may be limited spill-over into general pay and conditions in the wider labour market.

Within the EU, the ETUC and social dialogue at the European level have both contributed to putting bargaining for equality on the policy agenda. The central social dialogue committee has been promoting a tool kit on best practices with respect to gender pay equity and the ETUC has produced a recent report on the extent of bargaining for equality. Also, by raising this issue in a survey with trade unions across Europe, the ETUC has undoubtedly raised awareness. Likewise the European Public Service Union (EPSU has been active in putting the gender pay gap into its work programme.). Bargaining for pay equity is also limited at a national or subnational level and only France mandates social partners to carry out regular equality bargaining, now with the threat of sanctions if they fail to comply. Even so the extent and impact of this bargaining is limited (see table 13), in part because management restricts bargaining to only basic pay issues (Chicha 2006:25).

Box 3.4. Social dialogue and bargaining for equality in Latin America

To overcome resistance to gender issues in industrial relations, regional innovative changes have occurred in the field of social dialogue. In 1995, the ILO Training Centre in Turin gathered tripartite delegations from Latin America to discuss employment policies and equal opportunities. This initiative led to the creation of the Tripartite Commission for Equality of Opportunities for Women at Work in Chile in 1995. In Brazil, a Working Group for Elimination of Discrimination in Employment and Occupation was established in 1996. Similar Tripartite Commissions for Equal Opportunities at Work were then created in Uruguay in 1997, and in 1998 in Argentina and Paraguay. All these commissions – called “Tripartitas” by their members – have the same structure: the government represented by the Ministry of Labour and the Women’s Council, representatives of trade unions and employers’ associations. The ILO has supported the Network of Tripartite Commissions of the South Cone as a sub-regional strategy for exchange of experience and collaboration. As a result, in 2010, new commissions were created in Bolivia and Costa Rica, and a preliminary agreement was concluded to create one in the Dominican Republic. Most tripartite commissions are also involved in elaboration and implementation of the Decent Work Country Programmes and the national plans for gender equality. Recently, a particular focus has been on decent work for domestic workers, and the promotion of work-family balance (Briskin and Muller 2011:4).

Initiatives in Latin America, at both a national level and supported at an international level by the ILO have been important in overcoming resistance to gender issues in industrial relations as explained by Briskin and Muller (2011) (see box 3.4).

Drawing on recent surveys of bargaining for equality and other sources, we can explore in more detail six types of bargaining for equality initiatives pursued at national, sectoral or company levels. These include specific measures to (i) increase pay of low paid women, for example in low paid female-dominated sectors; (ii) revalue women’s work including through job evaluation systems; (iii) promote work life balance and equality for those in NSFE; (iv) undertake equal pay audits and contribute to gender equality duties; (v) reduce gender bias in payment systems (e.g. performance-related pay), sometimes through promoting transparency of pay structures and practices ; and (vi) assist women’s careers through training and other initiatives.

3.3.1. SUPPORTING LOW PAID WOMEN

Collective agreements in Finland, Sweden and Iceland have all allowed for specific additional payments to either low paid women or female-dominated sectors (ETUC 2014:appendix 3). This goes beyond just bottom-weighted pay deals as they are designed not only to raise the low paid relative to the higher paid but also to close the gap between male and female dominated sectors with respect to minimum wages. This type of strategy is mainly found at national or sectoral levels.

3.3.2. REVALUING WOMEN’S WORK

One of the most far reaching and radical strategies by trade unions is to attempt to revalue women’s work through for example new pay grading systems. This is because it upsets the existing pay order and may appear to threaten men’s pay. Perhaps even more importantly, these exercises may lead to unintended consequences. For example, employers may use the adoption of a gender equal pay grading system as a reason for moving away from collectively-agreed pay structures, as has happened in some cases (see for example Acker 1989). Not all efforts by trade unions to negotiate new gender-

sensitive grading systems are successful; a notable failure was the attempt by Germany public sector unions to agree a new structure. In the end the only agreement was to introduce a new lower grade—mainly affecting women—on the grounds of protecting against low cost outsourcing (Rubery 2013).

The extent of equality bargaining over new grading structures has remained limited and often confined to the public sector. Nevertheless, some important examples can be identified. Perhaps the change in grading structure through bargaining with a single employer with the largest impact measured by number of affected employees was the Agenda for Change agreement with the National Health Service (NHS) in the UK; this involved dissolving some of the different bargaining systems for different occupational groups as well as agreeing fair differentials up a single integrated pay spine. One innovative feature was to extend this structure to subcontracting organisations, as the opportunity to outsource has been a means of evading the implications of the higher pay awarded to women in single pay spines (although this was abolished after the change in government in 2010) (Grimshaw and Rubery 2012). In another UK case, home care workers were re-evaluated upwards in the implementation of the local government single pay spine but the employers responded by increasing the outsourcing of care work to organisations only paying around the national minimum wage (Bessa et al. 2013). Other countries where agreements on regrading have been signed include Belgium, Finland, and Iceland. However, it is notable that Finland’s trade unions and employers have resisted the integration of pay bargaining across occupational groups, unlike what happened in the UK NHS case.

Chicha (2006) cites examples of more limited approaches to changing pay grading and gender proofing existing grading structures in France and the Netherlands. In the latter case there is some scrutiny of pay grading but no fundamental reconsideration of the principles of pay grading, that is despite a 10-point pay equity checklist developed in 2000 to help in tripartite voluntary initiatives to identify potential discrimination in pay systems, including for example discrimination between those in full and part-time work. However, according to Chicha (2006:18), despite being “fairly exhaustive in the analysis of both the content and structure of pay systems, this list nonetheless fails to address more specific aspects that lead to pay equity; most notably it fails to estimate discriminatory pay differentials”. There are no requirements for follow-up reports and, as the discriminatory pay gap has not closed, the initiative appears to have been limited in impact.

3.3.3. WORK LIFE BALANCE AND EQUALITY

Provisions for maternity and parental leave, for childcare, breastfeeding breaks, flexible working and other work-life balance policies are an important part of what is considered equality bargaining and in many contexts equality bargaining only includes these with no direct measures to change pay systems and practices. These measures are of great importance for women but particularly so where there are limited statutory or mandated rights to support for care or for care-related leave. Where statutory mandated rights are strong, research has found there is less emphasis on top-ups to these provisions by employers either on a voluntary or a collectively-negotiated basis (Den Dulk 2001). Although these agreements offer important improvements, they necessarily result in more exclusive rather than more inclusive statutory entitlements (particularly if not linked to employment status). Even when statutory rights are strong, women’s care responsibilities may still impact on their employment and pay and these need to be addressed through collective regulation and the vigilance of trade unions. However, we discuss these issues primarily in chapter 5 on social policy.

3.3.4. PAY AUDITS AND GENDER EQUALITY DUTIES

Pay audits at company level may be mandated by law, initiated through collective bargaining at national, sectoral or company level or undertaken as voluntary initiatives by companies. Trade unions

or worker representatives may or may not be involved in all three processes; legally-mandated systems may involve trade unions, sometimes on a mandated basis and even when the audits are initiated by employers, they may share information with trade unions. Probably the most effective systems are when they are mandated by law but also involve trade unions in their implementation. Chicha (2006), in her analysis of different forms of equality bargaining, singled out the mandatory equal pay audit and action plans required in Sweden and two provinces of Canada, Ontario and Quebec. All of these involved trade unions, at least in companies with more than 100 employees in the case of Quebec. The importance of trade union involvement has been highlighted in research on Quebec for where unions were not involved a high level of non-compliance with the requirement was identified. In Sweden the high rate of unionisation reduces the risk of non-compliance. Another important aspects of these mandated systems, however, was also the requirement for action and reporting back; the obligation was not simply to identify and provide information on gender pay inequality but also to create action plans and to report back on these actions taken.

Another recent system for pay audits under the auspices of collective bargaining includes the Austrian agreement in 2010. This requires both income transparency at company level and action plans to address deficits, although there are no sanctions with respect to failure to take action. This requirement for transparency has been reinforced by new legal rules, initially for only very large companies but by 2014 extended to companies with up to 150 employees.

Where gender pay audits are more voluntaristic, even when based on tripartite initiatives, it appears that their impact is much weaker than when mandated by law. This applies, for example, to the Netherlands, where in 2000, according to Chicha (2006), the social partners, the Government and the Equal Opportunities Commission introduced a pay equity action plan. There has been no monitoring of these processes and the 10-point pay equity checklist also failed to really address the issue of equal value and differentials between grades. In 2007 the Spanish equality law required all large private companies and public organisations to develop equality plans but this initiative has been put on hold, overshadowed by the strong austerity policies in Spain.

In more recent developments both German and the UK have announced plans for mandatory pay audits for larger companies but while the plans are unlikely to directly involve trade unions in the UK, in Germany:

the planned law on pay transparency (*Gesetz für mehr Lohntransparenz*) will oblige large corporations with more than 500 employees to report on their activities to guarantee equal pay for women and men. Companies will further be asked to detect existing discrimination structures and mechanisms and – together with collective bargaining partners – to develop measures to close the gender pay gap. Furthermore, each employee will be entitled to hear about his/her job grading (Scheele and Jochmann-Döll 2015).

Requirements for workplace equality action plans in Australia (for companies with more than 100 employees only at present) allow employers to opt out of looking at remuneration issues and even when considered do not require action plans to be linked to collective bargaining structures, unlike the situation in Quebec (see box 2.2).

Pay audits may also be undertaken as part of fulfilling an equality duty on public authorities to promote gender equality, as is the case in the UK with respect to the gender equality duty introduced in 2007 and later replaced by a general equality duty in 2010 covering all forms of discrimination under European law. Although there is no specific requirement to undertake a gender pay audit, the Equality and Human Rights Commission (EHRC) in the UK recommends this is done as otherwise public authorities could be regarded as not complying with the equality duty. If an organisation does not comply, the EHRC or a trade union can seek a judicial review. The introduction of the general equality duty in 2010 in the

UK coincided both with a change of government and with the implementation of stringent austerity measures. This has meant that limited attention has been paid to date to the equality duty, but the general principle of establishing a duty on employing organizations to promote gender equality is not only a potentially promising initiative but also one in which social partners could engage.

3.3.5. GENDER BIAS IN PAYMENT SYSTEMS

Taking actions to reduce gender bias in payments systems can be pursued as part of the action plans from gender pay audits or may be a more general principle incorporated into collective agreements. There are different opinions as to whether there are inherent gender equality risks in some types of payment systems. Some unions are opposed to the individualisation of pay associated with performance-related pay systems but some unions in Sweden have supported individualisation. They believe it can enhance pay without undermining equality, when negotiated in the Swedish context of pay transparency and gender pay action plans. One of the main limitations of the mandatory equality bargaining in France is that employers have only agreed to negotiate over basic and not total pay, with performance payments often awarded at the discretion of management. This is commented on by Chicha (2006:25) who quotes Lanquetin (2006:632):

The matter of remuneration is, in effect, a manifestation of power and employers generally wish to retain control over remuneration through the individualisation of wages. They do not therefore wish to negotiate remuneration as a whole and opt for comparative evaluations that exclude part of the remuneration (various bonuses). It is for this reason that a number of agreements concluded since the Act of 9 May 2001 referred to the concept of basic pay or fixed pay and exclude the variable portion.

Transparency and setting agreed criteria for individualised pay increases or bonuses is often considered by trade unions to be an essential prerequisite for fair pay practices. There is however some pessimism among trade unions as to their ability to use collective agreements to influence pay outcomes when pay is performance based. For example Austrian experts report that “a widespread assumption is that important reasons for the gender pay gap, e.g. flexible (appraisal based) payment, regional differences as well as income differences between hierarchies, are impossible to influence with collective agreement bargaining processes” (Bergmann and Sorger 2015).

One of the most important areas of equality bargaining is to ensure that those on part-time or other non-standard contracts are not excluded from a range of payments, fringe benefits or from the standard grading structures. Among EU countries, the EU part-time workers directive should ensure that part-timers do have equal access to the benefits established for full-timers at their workplace. However, as many part-time jobs are concentrated in particular firms and sectors, the rights for the full-timers in these workplaces may also be restricted. There are more problems when it is legal to differentiate between full- and part-timers in the provision of benefits. This is a particular problem in the United States where many companies either exclude or provide more limited access to health care benefits to part-timers; for example one of the major factors in a dispute between the union and the airline South West airline in the US was the plan to shift from full-time to part-time jobs as this would only provide health benefits to the employees, not to their families⁶⁸. Japan also regularly provides different pay and conditions to part-timers but in some instances (see box 3.5) companies may agree to some harmonisation under pressure from the union, particularly where part-timers have become in practice the core workforce.

⁶⁸ South west airlines <http://www.theguardian.com/money/2014/apr/03/inside-the-union-negotiations-southwest-airlines>.

Box 3.5. Improving pay and security of part-time workers in Japan through collective bargaining

In Japan, Aeon, one of the major Japanese merchandising companies, reached an agreement with its union to unify the qualification system for regular employees and part-timers in 2004. There were 79,000 part-timers at Aeon, accounting for 80 per cent of its entire workforce. The wage system was also changed to be linked to qualifications, with the pay of highly competent part-timers approaching that of their regular employees, in order to narrow the wage gap between them. Under the new system, part-timers wishing to advance their positions are evaluated using the same appointment tests and promotion screenings used for regular employees, and are entitled to the same training opportunities previously limited to standard workers. As a result, a large number of part-timers were appointed to managerial positions at their respective stores, and about 150 of these part-timers were regularized (Ebuisi 2012:14).

3.3.6. ASSISTING WOMEN'S CAREERS

Beyond direct actions on pay or on work life balance, there are a whole raft of other potential measures that can and have been negotiated as part of bargaining for equality. These include specific provisions to support women's careers, such as training, or measures to change the institutional environment, including gender quotas on promotion and recruitment committees and the like. Again these practices are more common in the public than the private sector (Rubery 2013).

3.4. TRANSPARENCY

The UK's EHRC defines a transparent pay system as "one where employees understand not only their rate of pay but also the components of their individual pay packets. A transparent pay system avoids uncertainty, perceptions of unfairness and reduces the possibility of individual claims".⁶⁹ The more that all aspects of pay are subject to collective bargaining the more likely it is that the pay system will be transparent. Transparency can apply at the labour market level, sector or company level. Labour market level transparency is mainly secured through good pay data (see chapter 7) and for trade unions to be able to make effective cross sectoral pay comparisons they need up-to-date high quality labour market earnings data. Published sectoral pay grading structures can also add to labour market as well as within sector transparency. These are only likely to be established through collective agreements as employers do not usually voluntarily seek to limit their discretion by establishing rules and procedures, unless pressured to do this by trade unions (or by legal requirements or the threat of trade unions if employment conditions are less good than in unionised companies).

However, where there is significant company-level pay bargaining, whether used to achieve downward or upward variations on the sectoral agreement or used where there is no sectoral bargaining, information on the factors shaping actual pay levels is likely to be more limited. Information on company-level pay grading can add to transparency for general monitoring of pay and equal pay issues but, even if not in the public domain, it needs to be made available within the company to employees and /or their representatives, to facilitate wage bargaining and help identify the incidence and causes of gender pay gaps.

⁶⁹ <http://www.equalityhumanrights.com/private-and-public-sector-guidance/employing-people/managing-workers/equal-pay/checklists-equal-pay-practice/6-pay-progression>.

3.5. SUMMARY

Collective regulation has two faces with respect to gender equality: On the one hand collectively-regulated labour markets tend to promote more inclusivity and reduce overall wage inequalities. On the other hand, the legacy of the male breadwinner model of pay is often still embedded within collective agreements and wage differentials. Collective bargaining is therefore important for building on and going further in promoting more gender equitable and transparent systems than the alternative, that of leaving wage regulation to employers, moderated only by basic legal minimum standards. The trend towards decentralisation and limitations on the use of extensions mechanisms will only serve to create more inequalities in coverage and in pay rates. Moreover there is an urgent need for fairer wage bargaining to reverse trends towards greater wage inequality and a lower wage share which would also have indirect benefits for gender wage equality.

Nevertheless it is not possible to rely solely on the promotion in general of inclusive labour markets. In many countries there is still a need for reform and renewal to promote gender pay equity. There is some evidence of this renewal but it is still limited in scope and it is not clear that the industrial relations actors fully grasp the changes needed in order to close the gender pay gap. For these reasons, it is important to widen the scope of social dialogue to include new social movements that may have more commitment to and success in organising the more marginalised workers. This will be discussed in the next chapter.

Another weakness of collective action is its lack of a presence at an international level, especially in female-dominated sectors such as textiles. This is an increasing problem, given the importance of international supply chains. This also applies to supply chains within national borders as outsourcing may be a means of evading collective agreements that raise labour standards. In this respect, promoting collective bargaining as a means to incorporate social clauses in public procurement would complement existing mechanisms against organisational fragmentation. Specific bargaining for gender equality is developing but still remains weak and is largely confined to issues related to care needs. There are few examples of collective agreements addressing the embedded undervaluation of women's work within collective agreements or the gender effects of performance-related pay systems. Overall, it does not appear that gender issues have been widely mainstreamed into collective bargaining agendas. Even where it is legally mandatory, for example in France, unions have not been effective in requiring employers to reconsider pay grading or to bring pay supplements within the scope of equality bargaining.

However, it is increasingly common for large companies to be required to undertake gender pay audits. These have been found to be most likely to be effective when undertaken in conjunction with trade unions or works councils as this provides framework in which action may build on disclosure of the current pay distribution. The workplace level is an important arena for identifying and remedying gender bias in payment practices, whether with respect to grading, implementation of grades, differential starting salaries or differential increments or bonuses. But without active involvement from trade unions or works councils in probing for the causes behind differential gender pay outcomes and in taking remedial action, the current vogue for requiring large companies to provide information gender pay gaps may be ineffective. Nevertheless, any initiatives to reverse trends to less disclosure and to promote instead more transparent pay structures must be welcomed.

4

VOLUNTARY ACTIONS TO CLOSE THE GENDER PAY GAP

Voluntary actions that result in improvements in women's pay include those that may be initiated by employers but also those that are the direct or indirect outcome of pressure on employers and/or their clients, from the state or trade or employers' associations on the one hand or from community or consumer groups and other NGOs on the other. These latter groups may be working separately from or in conjunction with trade unions and some NGOs may even eventually become trade unions. Voluntary action can persuade employers about the so called "business case" for gender equality, focusing on the positive benefits to the employer. Alternatively, the pressure may be exerted through threats to the employer's reputation. In addition voluntary actions may increase the effectiveness and equity effects of government support initiatives or regulations by raising awareness and encouraging female participation.

4.1. VOLUNTARY ACTIONS FOR INCLUSIVE LABOUR MARKETS

Gender pay equity can also benefit indirectly from voluntary actions aimed at creating more inclusive or more equal societies. The key examples we include here are campaigns for greater fairness or equity in the distribution of value within global or national supply chains, campaigns for living wages and campaigns to limit exploitative conditions, either in general or for specific groups such as migrants.

4.1.1. INTERNATIONAL MEASURES; PRESSURE ACROSS BORDERS

There are by now numerous examples of voluntary codes of conduct which companies sign up to and thereby commit themselves to respecting labour standards throughout the supply chain. In principle these codes should raise minimum standards, benefiting women workers in particular. The degree of ambition within the codes of conduct varies markedly; for some it is sufficient to meet local legal standards, however poor these standards may be, but others involve commitments to paying a living wage, although this is not always well defined and are related to local living standards which may be very low. Some codes are initiated and designed by the companies themselves, under pressure from consumer groups, trade unions, NGOs and consequent reputational risks.

Some NGOs or groups of NGOs and other organisations have established codes of conduct (for example the Ethical Trading Initiative (ETI), the Fair Labour Association and the Clean Clothes Campaign). Companies may decide or be persuaded to sign up to one of these as they appear to provide more objective evidence of compliance and may therefore do more to protect reputation.

Box 4.1. Living wage campaigns' successes linked to local political support.

Living wage campaigns in London have been bolstered by successful targeting of the London Mayor to pay the living wage and to promote its payment for subcontractors. It was first adopted by the Labour Mayor Ken Livingstone but has also been endorsed by the Conservative Boris Johnson and all mayoral candidates at the last election in 2012 felt obliged to pledge to support and implement the London living wage (Londonist.com, 2012).

In the United States support for higher minimum wages and for living wage has been claimed to have helped Democrats win local elections and local campaigns have also used local political momentum to put living wage ordinances on ballots for local elections (Reich 2007). This local support is despite the stalemate in Washington over raising the Federal Minimum Wage. The passing of the €15 minimum wage in Seattle, the highest in the United States, is attributed to the efforts of the first socialist councillor on Seattle's City Council who put the minimum wage increase at the heart of her election campaign (Luce 2014).

Whichever route is taken, problems of compliance can occur, particularly when the code conflicts with other business priorities, such as on time delivery. (Locke et al. 2007). Where subsidiaries are recognised to offer distinctive value added to the supply chain, MNCs appear more willing to work with the supplier to change the business model to enable compliance but where the subsidiary is treated as an interchangeable, dispensable partner, the codes of conduct are found to have more limited impact. In short, voluntary action by employers is unlikely to be sufficient to make a real difference to standards across the board and commitment in codes of conduct need to be reinforced through pressure from trade unions and NGOs at both international and national levels. Ideally voluntary actions should also lead to national government involvement in the enforcement of labour standards.

While there has been general progress in establishing codes of conduct, it is unfortunate that the momentum behind these movements often comes from revelations of severe exploitation or, in the case of the collapse of the Rana Plaza building in Bangladesh, a catastrophe involving loss of over a thousand lives. Despite continuing problems in getting multinational companies to sign up to new safety and employment standards, there is, according to the UN's Report on Progress of the World's Women, still some optimism that "out of the ashes of Rana Plaza, positive changes can endure" as the Bangladeshi female garment workers find their collective voice (UN Women 2015:61).

4.1.2. NATIONAL AND LOCAL MEASURES

Campaigns by community action groups, together with established or newly forming trade unions, have become an important source of pressure on labour standards in countries with problems of exclusion for large groups from traditional forms of regulation and representation. Campaigns specifically focusing on pay may include targeting the clients who force down pay on contract workers, the tactic used in the now famous Justice for Janitors campaign in United States (Milkman 2006), pressurising local politicians to introduce living wages (see examples in box 4.1) or campaigns organising informal sector workers or women workers (see box 4.4). These moves have gained significant media attention and have raised awareness of specific group problems and of inadequate wages. However, in some contexts they are perhaps more indicative of the general failures of regulation and collective bargaining to set decent labour standards. Thus Luce (2014), in a recent survey of the impact of the living wages campaigns in the United States, concludes that they have raised wages and helped reduce poverty but still affect only a small proportion of low wage workers. A much more straightforward

way to improve the lot of the low paid in her view would be to raise the Federal minimum wage and the living wage campaigns are emblematic of the failure of other methods to protect against low pay in the United States.

In developing countries with weak traditions of trade unions, the efforts at organising and campaigning may be regarded more optimistically, constituting perhaps the beginning of new and more inclusive forms of organisation and protection. In the United States and the UK, however, the living wage campaigns are attracting attention because of the continuing decline in the power of traditional trade unions. These offer useful advances for specific groups but are hardly a substitute for the erosion of traditional collective regulation.

4.2. VOLUNTARY ACTION FOR GENDER PAY EQUITY

4.2.1. INTERNATIONAL VOLUNTARY ACTION

Gender awareness and gender actions associated with the burgeoning codes of conduct for global supply chains are limited even though some NGOs are specifically campaigning for women workers' rights including pay. Barrientos and Evers (2014) provide a detailed case study of the actions of one such NGO, Women Working Worldwide. This explores the different strategies adopted by the NGO, from pressure on the pricing structure to direct work with the women workers for lower tier suppliers to improve conditions. However, in working with the flower industry in East Africa, the campaign did have notable successes in improving training, dialogue, maternity rights and childcare but was less able to raise wages which were being eroded through inflation. This example exposes the limits to as well as the importance of NGO action. Furthermore, the role of the NGO necessarily alternates between collaborating with the companies across the supply chain to develop the business case and acting as a 'policewomen', monitoring conditions and pressing for changes. They summarise as follows:

Collaborative strategies help to awaken companies to the gender dimensions of their operations and the benefits reaped (commercial and social) from improving the lives of women workers. Adversarial approaches keep companies on their toes in relation to workers with little voice whose plight often remains 'hidden' within their value chains (Barrientos and Evers 2014:56).

4.2.2. NATIONAL AND LOCAL MEASURES

Voluntary actions for gender equality at the national or local level can be divided into two types. The first includes employer-initiated actions due to either awareness of business case arguments for gender equality and/or indirect pressures on reputation to address gender pay inequalities. The second type of action is pressure from community groups and organisations of women in promoting gender equality initiatives.

Employer-initiated voluntary actions may not be linked to specific pressures but to more indirect influences, such as fear of possible reputational damage or awareness of plans by either governments or trade unions to try to impose actions if voluntary actions are not taken. They may also signify that employers have become aware of some of the business benefits for implementing gender equality, have increased the share of management with a personal commitment to gender equality (particularly more women in management) or wish to position their organisation as strong on corporate social responsibility. Whatever the immediate reasons behind actions, it should also be noted that where it is a voluntary action it may be changed or allowed to wither away if there is a change of management or strategy at the company. Furthermore, actions motivated by the business case may benefit some

Table 13. Financing of maternity leave by region 2013

	Social insurance	Mixed	Employer
Middle East and North African	24	12	65
South Asia	29		71
Sub Saharan Africa	38	19	43
East Asia and the Pacific	39	17	44
Latin America and the Caribbean	62	29	9
Developed	83	17	-
Central and Eastern Europe and Central Asia	100	-	-
World	68	16	26

Source UN Women 2015: Figure 2.6.

groups of women but not all women (Dickens 1999) and the contingent nature of the arguments also make these initiatives vulnerable to changes in economic climate, such as recessions.

It should nevertheless be recognised that employer voluntary actions can be important in closing gender pay gaps, although primarily at a company level, through direct or indirect actions on pay. One of the most important indirect ways is in providing opportunities for pursuing continuous careers by more generous maternity or parental leave arrangements and flexible working and/or childcare options in countries where statutory provisions are weak (see table 14 for much greater importance of employer-funded maternity leave outside developed regions). Again, these benefit some women but are unlikely to be universal across companies. They may also only be selectively used within companies, aimed at retention of specific women or in specific occupations. Furthermore, policies may exist on paper but eligible employees may feel unable to make full use of them due to a culture where there is no promotion of entitlement to the rights.

Voluntary actions by employers may be more common where there are a range of reputational incentives to promote gender equality. A study of these practices in the EU found 133 initiatives including 22 Labels, 68 prizes or awards, 11 charters, 19 ranking exercises or indices of gender equality and 19 compendiums of good practice. Box 4.2 provides examples from each category. Many of these initiatives are concerned with work life balance or family friendly initiatives and few directly with pay issues. The examples chosen are those that have the most likely direct impact on pay practices.

The study concludes that:

non-legislative gender equality initiatives for companies appear to have the following advantages:

- Positive incentives are easier to be enforced politically than punishment systems.
- The implementation of gender equality represents a fundamental change within the organisational structures of an enterprise. The initiatives can contribute to motivate companies to undergo this process.
- The initiatives can increase the benefits of the enterprises' "investment" in promoting gender equality.
- The initiatives represent a possibility for enterprises to assess and improve their practices.
- The highlighting of good practices illustrates practicable solutions which have been tested and approved in the enterprises' daily business (Heckl et al. 2010:13).

Box 4.2. Voluntary action to promote gender equality in EU (Heckl et al. 2010)**Labels**

Switzerland has a 'certification of wage equality between women and men' that it has been piloting. Companies with over 50 employees and at least 10 women may use a tool to carry out a confidential test of their equal compensation policies. The University of Geneva uses the information to assess if there is wage discrimination once education, experience, seniority, function etc. are taken into account and makes specific suggestions to improve its salary structure. If the adjusted gender gap is less than 5% certification is awarded for three years but companies found to have gaps in excess of 5% must make improvements before reapplying for certification. Site audits are carried out involving management and employee interviews followed by monitoring audits one or two years later.

Prizes/awards

In Finland companies are eligible for a gender equality plan prize for 'outstanding efforts' in drawing up a gender equality plan. The prize is awarded on two main criteria: the concreteness of the plan and evidence of meeting the targets. The plan may cover a wide range of issues including now the assessment of wages and the Ombudsman for Equality is said to pay special attention to this element in evaluating the Gender Equality Plans.

In Portugal the Commission for Equality in Labour and Employment, a tripartite body (government, employers, workers) awards an Equality is Quality prize based on a range of criteria including equal opportunities in the field of recruiting, training, or pay for work of equal value. Companies must make a formal submission of evidence and site visits are made to interview the management and the workers' representatives. Winners and those receiving honourable mentions are entitled to use the logo.

Charters

Some charters are focused on promoting women into higher level jobs. Examples include the "CEO Charter" and "Athena SWAN Charter for Women in Science" in the UK and the charter for more women in management in Denmark.

Rankings/Indices

A common United States practice is to rank the best workplaces for women. This approach is spreading to Europe, for example in Sweden where the best workplaces are ranked and also in Spain where a ranking of the Top 5 model companies in equality has been created to promote and evaluate the implementation of the "Equality Law" in Spain.

Compendium of good practice

Most compendiums of good practice are applied to the whole field of equality but some have a specific focus, including one on equal pay in Denmark, facilitated by the Ministry of Employment. The website provides a compendium of good practices compiled from research on equal pay in the Danish labour market and includes fifteen cases of good practices. Companies may participate in the compendium if they: "1) display at least one of the aspects related to the overall theme of equal pay, 2) have inspirational value for others, and 3) follow some sort of systematic approach".

Box 4.3. Voluntary actions to improve women's access to higher level jobs: Training for catering management jobs in France

In France the catering company Sodexo developed a programme of skills training to become site managers. It identified a problem that women were often not found in key jobs in kitchens from where managers were normally recruited due to work life balance problems with restaurant work. However, these problems do not apply to the management of company restaurants which are normally only open to 3 p.m. The skills training was designed to challenge stereotypes – that men are cooks and chefs and that a cook background is required to become site manager. New clear curricula for the skills of applicants were formulated including good client and customer facing skills and a new training programme for these non- or less-skilled employees (not only but mainly women) to become site manager was developed (Heckl et al. 2010).

Detailed exploration may, however, identify the limited ambition of some of these initiatives. For example, with respect to the tool used to accredit an equality label in Switzerland, Chicha (2006:22) points out that although this method aims to correct the average gender pay gap "it is possible that lower and discriminatory remuneration may be maintained for some female occupations within the "enterprise". It is therefore not really addressing the issue of equal pay for work of equal value but the distribution of women across high and low paying jobs. In general, for these initiatives to have any real impact, it is important that the prizes or awards require the provision of detailed information and opportunities for independent scrutiny, including verifying information through worker representatives.

With respect to voluntary pay audits, most evidence suggests that employers are unlikely to conduct pay audits unless there is a legal obligation to do so or possibly the belief that a legal obligation would be introduced. In the UK the requirement for mandatory pay audits was delayed to identify if the possibility of mandatory pay audits would be sufficient to induce a larger voluntary response. However, although around 270 companies signed up to the voluntary 'Think, Act, Report' initiative, apparently only five had chosen to publish their gender pay gap voluntarily (Out-Law.com 2015). Despite this failure of the voluntary initiative, it was still somewhat surprising that the UK's conservative government has decided to make such audits mandatory for private companies with more than 250 employees. Public sector organisations are under a legal duty to promote equality including gender equality and as part of this are more likely to undertake pay audits, though it is unclear if this will become mandatory for public sector organisations when the new rules are introduced. A general equality duty on all employing organisations might require employers to be more proactive in their response to equality policies.

Voluntary actions are perhaps most likely in areas of employment and training when there is a perceived business need to generate a larger pool of trained staff for higher level jobs or to retain good staff. One example is given in Box 4.3. These kinds of initiatives provide indirect impacts on the gender pay gap by influencing careers and promotion possibilities.

Women have increasingly shown themselves not to be dependent on pre-existing or traditional institutional structures for organising around issues of gender equity. As Box 4.4 explains with respect to organising women in the informal sector in developing countries, the initial focus may be on organising to meet women's immediate needs but in the longer term they may develop into collective organisations that can act as effective trade unions for women in the informal sector.

Box 4.4. Organising women in the informal sector (UN Women 2015:119 and 66)**The Self-Employed Women's Association in India**

The largest and best known organization of informal workers is the Self-Employed Women's Association (SEWA), which was established in India in 1972. Today, SEWA counts almost 2 million members spanning diverse forms of informal work. The organization provides a range of services to members—including savings and credit, health and childcare, insurance, legal aid and capacity building—to enable women to become self-reliant. SEWA also supports members in negotiations with employers to improve working conditions. For example, SEWA Delhi, in partnership with the UK-based Ethical Trading Initiative (ETI), negotiated with lead firms to buy directly from home-based workers rather than through intermediaries in the supply chain. This enabled sub-contracted workers to become self-employed, with their own producer group, and to negotiate better rates for their goods.

The Domestic Workers' Federation in Brazil

In Brazil, the Domestic Workers' Federation (FENATRAD) has been at the forefront of efforts to improve working conditions for the country's 7 million domestic workers, resulting in successive legal reforms to advance their rights. Alongside these campaigns, FENATRAD has used radio, evening courses and networking in communities, families and churches to link with hard-to-reach and isolated domestic workers.

Domestic Workers United in New York

Around 200,000 people, the vast majority of whom are women from outside of the United States, are employed as domestic workers in New York City. Yet until 2010, none of these workers were protected or even recognized in New York State law. In 2000, a group of domestic workers from the Philippines living and working in the city started mobilizing to try and change this. They founded Domestic Workers United (DWU) with the aim of trying to build power collectively as a workforce and establish fair labour standards for the industry. Through a series of monthly meetings, DWU started to take shape, with hundreds and then thousands of domestic workers from across the city becoming members. Daily outreach programmes in parks, playgrounds, churches and the street, helped to organize workers in the neighbourhoods where they lived and worked. A network of alliances with unions, employers, church leaders and members of the New York State legislature built momentum for DWU's aim of creating a Bill of Rights for domestic workers, which for the first time would provide them with the same basic rights that other workers had been entitled to for decades. In 2010, DWU succeeded in helping pass the New York State Bill of Rights for Domestic Workers, the United States' first comprehensive piece of legislation protecting domestic workers. Among other provisions, the bill set out the right to overtime pay, a day of rest every seven days, paid holidays and protection under state human rights law.

Viewed from this perspective, there are blurred edges between trade union organisation and other community organisations, especially as many of the women's groups include the self-employed. An example of the blurring of lines between trade unions and NGOs is the Indian Self-Employment Women's Association (SEWA) which has grown to a trade union of nearly 700,000 poor women in the informal sector. Although it is now considered a trade union it differs from traditional trade unions in so far as it needs to “*negotiate with a multitude of actors* who are often not ‘employers’ but contractors or sellers or even buyers. Often, these negotiations are with middlemen, merchants, police, municipal authorities, government officers and even industry representatives.” (Kapoor 2007:562). This is also the case with respect to domestic worker organisation, the outcome of which has been to

Box 4.5. Coalitions for equal pay

The Ontario Equal Pay Coalition was formed in 1976 as a coalition of organizations to seek the implementation of equal pay for work of equal value both through legislation and collective bargaining. The Coalition has over 39 constituent and partner groups which represent Ontario women and men who support equal pay for work of equal value.

CEVEP, the Coalition for Equal Value and Equal Pay in New Zealand, is a coalition of women's organizations and unions. It has been active in the campaign for pay equity in New Zealand since 1986. CEVEP works to raise public awareness of the need for action and to build a national network of people committed to seeing equal pay for work of equal value implemented in New Zealand.

The Equal Pay Coalition was founded by the Massachusetts Chapter of the National Organization for Women, the Women's Bar Association) and the Massachusetts Commission on the Status of Women with the mission of passing the Equal Pay Bill.

In 2005 the socialist political women's movement *Zij-kant*, together with the socialist trade union, organized the first *Gender Pay Gap in Belgium*. They took a trade mark on the name, and have organized this day annually since then. Campaigns are very visible and often controversial. The Christian-democratic trade union organizes equal pay actions around the same period. These highly visible actions received a lot of media attention, and were one of the reasons the gender pay gap stayed on the political agenda for so many years. (Van Hove 2015).

promote voluntary and legal initiatives to formalise domestic work but this movement of domestic work from the informal to the more formal has been strongly dependent on the active organising efforts of the domestic workers themselves (see box 4.4). Another example of the roles that NGOs can play in promoting gender equality is actions taken by NGOs in India to raise awareness and participation of women in the Mahatma Gandhi National Rural Employment Guarantee Act in India. This scheme provides for equality of participation and wages for unemployed rural women but in some states participation by women remained low until action was taken by NGOs to encourage women to join (Ministry of Rural Development 2012).

There are a plethora of NGOs devoted to aspects of gender equality issues in both developed and developing countries. These organisations may act independently of trade union or in collaboration with them. Box 4.5 provides some information on coalitions campaigning for pay equity; in some cases their direct target is employer behaviour but in others it is the government or indeed the electorate to change the law to require changes in employer behaviour.

4.3. VOLUNTARY ACTION AND TRANSPARENCY

One of the main purposes of women's organising campaigns in informal sectors including domestic work has been to raise awareness of both employment conditions and, where relevant, of rights such as minimum wages or access to social security. In contrast employer-initiated actions such as gender pay audits may not provide a high degree of information to workers on gender pay issues, particularly where these are undertaken outside of collective bargaining or formal worker representation, as the main purpose may be to signal to governments, opinion formers or consumers that they are fulfilling their corporate responsibility roles. Transparency is a major problem where companies determine pay without scrutiny by trade unions: for example a report by the UK's EHRC (2009) found very large

gender pay gaps due mainly to differential treatment with respect to bonuses in financial services, where there is also often a culture of secrecy and a consequent lack of transparency over pay.

4.4. SUMMARY

Voluntary actions can and do play a role in promoting gender pay equity and inclusive labour markets but, by their nature, their impact is likely to be limited to specific organisations or specific groups. These actions are most effective and welcome where they are filling gaps in the institutional frameworks left by traditional social partners. However, where they are undertaken by employers without scrutiny by trade unions or other worker groups they are likely to be partial, either in the information provided or in the groups of women who may benefit.

5

SOCIAL POLICY AND SUPPORT FOR CLOSING THE GENDER PAY GAP

Social policy can be expected to have a positive or negative impact on the gender pay gap in five main ways. First, social policy influences whether women who become mothers are able to pursue continuous careers in their current job; second, it may facilitate opportunities or otherwise to combine work and family responsibilities through either flexible work arrangements and/or childcare; third, it may reinforce or moderate the gender division of labour with respect to care roles; fourth, it may influence the supply of labour by gender for NSFE, for example by policies on derived rights to social protection which may extend rights to family members without their own social contributions; fifth it may or may not value time spent in unpaid care work. The first three types of effects will be considered as gender specific issues while the latter two will be part of our discussion of the role of the overall design of social protection systems. Issues of awareness and transparency of systems apply to both types of social policy as discussed in the third sub-section.

5.1. GENDER-SPECIFIC SOCIAL POLICY

Gender-specific social policy, including parental leave, childcare, rights to flexible work arrangements and compensation in social protection for unpaid care work, has most direct impact on the motherhood pay gap. The nature of the social policy support in a particular country has implications for the overall costs to women of becoming mothers and for the distribution of those costs by social class, educational level and labour market position. The effects of gender-specific social policy will also be moderated by gender ideology and gender arrangements, including the cultural and family system.

The now vast literature on gender-specific social policy in some cases makes a direct estimate of impacts on the gender pay gap but in other cases the impact is left indirect, through estimates of impacts on employment continuity, hours of work, occupational status and promotion opportunities.

5.1.1 OVERVIEW OF GENDER-SPECIFIC SOCIAL POLICY MECHANISMS

At international level, there has been a shift away from a gender-oriented angle towards family care responsibilities. The 1965 ILO Recommendation no. 123 on the employment of women with family responsibilities was premised on the basis that greater responsibility towards family care was carried out by women, so that “special measures were therefore needed to assist them in meeting these

responsibilities as well as those arising out of work” (Hoskins 1996). In the 1970s, it was, however, acknowledged that there should be support for a more equal repartition of family responsibility between men and women (Schömann 2016).⁷⁰ However, no ILO standards have been adopted on paternity leave, parental leave or adoption leave. At the regional level, the development of family-friendly policies has been most advanced in Europe. The EU approach has three strands (Barnard 2012:401): The first relates to pregnancy, birth and maternity and includes Directive 76/207 and the Sex Equality Directive 2006/54, as interpreted by the CJEU, together with Directive 92/85 on Pregnant Workers, as the main mechanisms.

The second strand concerns attempts at reconciling work and family life: this involves Directive 2010/18/EU on Parental Leave that provides rights to working parents to take time off for domestic reasons but also Directive 91/71 on Part-time Work, Directive 99/70 on Fixed-term Work and Directive 2008/104 on agency work, as well as the social partners’ agreement on telework, which give some protection to atypical workers, the majority of whom are women seeking to balance work and caring responsibilities (Barnard 2012:401-402). Directive 2003/88 on Working Time should also be considered in this context as it limits working time to enable workers to have sufficient time to spend with their families.

Finally, the least developed strand concerns provision for childcare and care for other dependants: the 2006 European Pact for Gender Equality provides an illustration of this, as it focuses on the importance of childcare and care facilities in order to promote ‘work-life balance’ for all.⁷¹ However the EU’s promotion of investment in childcare is also, and understandably, often concerned with the benefits of early education, and not with work life balance, as in the EU’s 2013 Social Investment package (European Commission 2013c). The outcome is that these policies emphasise women’s position as mothers rather than as independent adults or workers, with mixed impacts for gender equality (Jenson 2014).

At the national level, an increasing number of legal systems recognise the usefulness of family-friendly policies, reflecting evolving views of the needs of men as well as women to reconcile work and family life. With a view to promoting gender equality, several countries have included family responsibilities as a prohibited ground of discrimination in their national legislation (ILO 2009). Some countries have gone further by introducing provisions in national laws to assist workers with family responsibilities, ranging from specific improvements relating to entitlements to maternity, paternity and parental leave, working-time arrangements, the duty of the employer to facilitate employees to combine work and family responsibilities more easily, or improved protection of part-time and agency workers, many of whom are women. In this context, policies that incentivise employers to offer flexible working hours based on employees’ needs for work-life reconciliation may be a promising strategy to help alleviate work-life conflicts for men and women and to achieve better gender equality in the labour market. Some measures are targeted specifically at men, including most notably paternity leave but also more general provisions for family leave which can be used by new fathers. However, the level of take-up has not been significant, particularly where pay is low. A recent study by the World Bank (2015) found that only half of the countries studied offered paternity leave, and less than a third had provisions for parental leave, putting the onus for childcare on women.

⁷⁰ See, among others, ILO Convention no. 156 on Equal Opportunities and Equal treatment for Men and Women Workers: Workers with family responsibilities, as well as the ILO Recommendation no. 165, ILO Convention 3 on Maternity Protection (1919), Convention 103 on Maternity Protection (1952) and Convention 183 of 2000. At international level, see Article 10 of the ICESCR that expressly provides that “working mothers should be accorded paid leave or leave with adequate social security benefits”.

⁷¹ Presidency Conclusions, Brussels European Council, 23-24 March 2006, Annex II. At the level of the Council of Europe, Article 27 of the (revised) European Charter recognises the right for workers with family responsibilities to equal opportunities and equal treatment.

5.1.2. IMPACT OF LEAVE PROVISION

Rights to leave from paid work which guarantee job security over the period of the leave are positive for women's careers and their earnings, with stronger effects for paid over unpaid leave (De Henau et al 2007). Higher educated women face higher penalties if they do not return to work, particularly in the US, so paid leave is particularly beneficial for this group (Boushey and Schmitt 2006). Too short and too long leaves have been found not to be as good for continuity of employment as medium length leave, with one influential estimate putting optimal leave length at 20 weeks (Jaumotte 2003). Recent studies have, however, found more limited negative effects of long leaves (Pettit and Hook 2005) with only too short leave causing a problem (Keck and Saraceno 2013). Aisenbrey et al. (2009) find that paid leave norms affect outcomes, such that in the US where paid holidays are short, mothers face heavy penalties for even short leaves (Gangl and Ziefle 2009), while in Sweden negative effects only apply for leave longer than 15 months. Leave has more positive effects when accompanied by complementary policies, particularly childcare availability, and also tax and benefit systems (OECD 2007a; Jaumotte 2003). The importance of leave is that it enables continuity of employment and avoids the wage penalties that returners experience if they have to find new jobs which have been found to exceed any productivity effect (Hegewisch and Gornick 2011). Blofield and Martinez Franzoni (2015) have pointed to the importance of the design of the leave to match the situation of women in a particular country; thus leaves that extend to the self-employed will have much more impact in countries where informal employment is high. This argument also follows from their proposed methodology for assessing gender equality policies; that is all should be assessed for their impact on gender equity, social equity and on maternalism. Not only does this allow for joint consideration of both gender and wider social equity effects but also for identifying where policies may be presented as beneficial for women's equality but which may be reinforcing women's roles and responsibilities as mothers.

Specific fathers' leave paid at a relatively high level has mainly been introduced in the Scandinavian countries and particularly Iceland, Norway and Sweden- though also now Germany. High pay is important to stimulate take up which is increasing particularly in Sweden where fathers' parental leave is becoming normalised. This could in principle reduce discrimination against women and mothers, thereby helping to close the gender pay gap.

5.1.3. IMPACT OF CHILDCARE

There are more variations across countries in the importance attached to the provision of formal and subsidised childcare to assist women's integration into wage work. In developing economies more informal and family-based systems of childcare may be available at lower costs or for those engaged in informal activities there may be opportunities to conduct work at or near home, though these forms of work are often low paid (Agüero et al. 2011).

In developed countries formal childcare is an important facilitator of women's paid employment but provision of formal childcare may develop after women's integration rather than being a precondition (Leira 1992 cited in Hegewisch and Gornick 2011; Tavora and Rubery 2013). Attitudes towards formal childcare vary but tend to be more positive where it is commonly available and used (Hegewisch and Gornick 2011). Shortage of childcare may reduce female participation particularly in full-time work (Pettit and Hook 2009) but where work is part-time or where formal childcare may displace more informal childcare arrangements (Steiber and Haas 2012:358, citing Havnes and Mogstad 2009; Blau and Currie 2006) there may be a more limited impact on participation. Furthermore, childcare provided for educational reasons may not fit labour market needs (Jaumotte 2003; Jenson 2014) and may have less effect on women's integration. Following a similar argument, labour market friendly school hours and holidays may be equally important for mothers' participation (Keck and Saraceno 2013).

5.1.4. IMPACT OF FLEXIBLE WORKING

Under social policy we are only concerned with general social policies supporting flexible working. These can include rights to breastfeeding breaks which may be used to shorten the working day of returning mothers even in countries where part-time is not a commonly available option (Tavora 2009). Another social policy option is for paid parental leave to be taken on a part-time basis and combined with some reduced hours working; this option exists in Sweden and the Netherlands at least. The advantage of this option is that there may be less discontinuity from wage work but also less reduction in women's wages as the reduced hours are funded in part at least by paid parental leave. The effectiveness of parental leave in supporting continuous careers also depends upon opportunities to negotiate reduced hours in some countries, including, for example, the UK where rights to flexible working have increased the return rate of mothers to their original employer post maternity leave (Connolly and Gregory 2008; Neuburger et al. 2010). It must also be recognised that there is not always a demand for flexible working; this is where flexibility is associated with irregular and unsocial hours that are not compatible with family life or when wages for full-time work are so low that reduced hours working is not feasible with respect to family finances. Regularity may be even more important than flexibility for reconciliation in the sense of providing predictable hours around which family responsibilities can be planned.

5.1.5. OVERALL RELATIONSHIP BETWEEN WELFARE STATE GENDER-SPECIFIC POLICIES AND THE GENDER PAY GAP

There is relatively widespread agreement that social policies that support women to combine work with motherhood are positive for gender equality in general and the gender pay gap in particular (Albrecht et al. 2003; Arulampalam et al. 2007 ; Booth 2006; Gupta et al. 2008; Estévez-Abe 2005 ; Korpi et al. 2013).

This is not only because of the impacts on women's wage employment but also because policies that provide a social wage also reduce women's overall work burdens (Pearson 2014). However, within and alongside this area of consensus there are two developments in recent literature that query these views as a general truth. The first debate relates to the role of gender cultures as a potentially independent influence on outcomes; various studies have used gender culture, identified by gender attitude data, to look at its impact on gender equality (Jaumotte 2003; Uunk et al. 2005 and Budig et al. 2012). These give mixed results; for example Uunk et al. (2005) find a separate effect for gender culture on women's labour supply without any change to the institutional effects while Budig et al. (2012) argue that, if gender attitude data are not used, the impact of welfare state support on gender equality may be overestimated.

A second and more heated debate has emerged over the impact of the welfare state by social class. Pettit and Hook (2009) have identified trade-offs between different types of support for working mothers which lead to different overall outcomes but also variations by social class. Mandel and co-authors (Mandel 2012a; Mandel and Semyonov 2006; Mandel and Shalev 2009) have argued that welfare states help more women, particularly the lower educated to enter employment but at the same time set up barriers to higher educated women breaking through the glass ceiling as their employment is associated with high costs by private sector employers due to the need to comply with strong welfare policies. Bergmann (2008) made a parallel argument in the context of the US where she considered that introducing rights to paid leave and flexible working could do more harm to women than good by reinforcing difference and a gender division of labour. The only progressive policy for gender equality from her position was to support childcare provision.

Korpi and colleagues (2013) have disputed Mandel and colleagues findings and argue that the evidence does not support the notion of stronger glass ceilings in the Scandinavian welfare states.

Their own findings suggest that the dual earner/carer models promote women's employment at all three educational levels more than market-oriented or traditional family models, although they agree the effect is less steep for the higher educated.

Another issue is that most analyses of gender-specific social policies relate to advanced countries and there is inadequate attention paid to the issues and problems faced by women in developing countries. Abu Sharkh and Gough (2009) have extended the advanced country welfare regime typologies by adding two types of family regimes in developing countries, distinguishing between informal security regimes (where community and family systems provide security) and insecurity regimes (where there are not even any stable informal systems in place to provide security). This division is potentially important for understanding differences among developing countries with respect to gender. Where informal family and community-based security systems are in place, women's relationship to market work may need to be understood as part of that family and community system. Where the family systems are more unstable, women's relationship to market work may be more individualized. Furthermore, in developing countries the most effective social policies to support working women may relate to the general infrastructure for social reproduction, including the availability of water and other essentials, together with a comprehensive school system and other support that is taken for granted in most developed countries (Beneria 2007). This point leads to our second area of consideration, which is inclusive social policies and their implications for gender pay equality.

5.2. INCLUSIVE SOCIAL POLICIES AND IMPLICATIONS FOR GENDER PAY GAPS

Within the social policy field and in particular in relation to developing economies, there has been a strong momentum behind move to make social protection more inclusive and more universal. Furthermore, a main element in that general momentum towards inclusiveness has been women's unequal access to social protection and the problems this generates for its own sake and for the welfare of children. The ILO has responded by revising its social protection convention to make it universal in orientation and no longer only for those in employment.

There is a direct link between social protection and the gender pay gap if we consider access to the social wage to be part of the gender pay gap; indeed EU law regards access to employer pensions as part of remuneration for the purposes of its equal pay laws. There is a further potential link or trade-off between social protection and wages if we consider that the notion of a male breadwinner wage may or may not include provision for the basic costs of children. Where these costs are provided more through social protection, there is less pressure on men to secure breadwinner wages. However, social provision also has to be funded so that employers may need to contribute to social reproduction costs through social contributions or general taxation where they do not provide breadwinner wages.

Social protection may also have indirect effects on the gender pay gap through its impact on incentives to participate and to participate in particular forms of work. For example, health care access which is dependent on employment status has been identified as a factor in the high share of mothers working full-time in the US, despite the lack of childcare subsidies (Tomlinson 2007) due to the exclusion of the non-employed and part-time workers from full health care benefits. On the other hand women's participation in short hours part-time work in Germany (known as mini jobs) has been attributed on the one hand to married women's access to social protection including health via their husband's insurance (Hüfner and Klein 2012) and on the other hand to the income tax splitting system which provides tax support for non-working wives while creating major disincentives for entry into standard work (with income from mini jobs exempt from tax and social contributions for the employee) (Weinkopf 2014).

Social protection arrangements are even more diverse than employment arrangements so that not all the possible combinations of social protection arrangements can be considered. However, we can consider four areas of principle and practice that have direct relevance for gender equality: i) how unpaid care work is treated with respect to access to social protection ii) the relationship between NSFE and social protection iii) the implications of the unit that is used for social protection, for example the household or the individual and iv) the provision of support for the costs of children (both consumption and childcare costs).

5.2.1. UNPAID CARE WORK

A key cause of women's lower access to social protection (including in some countries even gender-specific policies such as paid maternity leave) is that their societal contribution in the form of unpaid care work is not valued within the social protection system (Supiot 2001). Even when valued this is often partial, for example counting for pension credits but not for maternity leave, as occurs for example in the UK. This may apply when women are providing full-time unpaid care work or if they combine care work with part-time wage work but do not meet hours or earnings thresholds for social protection. Where social protection benefits are related to earnings instead of flat rate, the impact is even greater as unpaid care work may also reduce wages. Beyond basic credits for full-time care work, it may also be desirable to provide more credits for part-time work for those undertaking care work of young children or sick adults; for example reduced hours working on this basis could still be given full-time credits at least for pensions. In many countries, protection for those doing unpaid care work is often provided through household-based social insurance but this not only makes women dependent on their family but also causes problems where households are fragile and subject to breakup.

In addition to social protection, social policy should encompass wider social investments in social infrastructure; this may include infrastructure to support household tasks (especially water and sanitation), the care and education of children (including local schools), collective child and elder care arrangements and access to transportation. All of these investments may facilitate women's access to wage employment and provide the basis for closing gender pay gaps (Beneria 2007; Elson and Pearson 2015).

5.2.2. NSFE AND SOCIAL PROTECTION

Another key issue with gender implications is how NSFE are treated with respect to social protection. Differential payments for NSFE with respect to social contributions may itself be a cause of the growth of NSFE. In many developing countries the difference between formal and informal employment is based on whether or not the employment attracts social contributions for social protection. As women are more concentrated in non-standard and informal employment, these thresholds and divisions by employment contract matter for women's access to social protection. This has been a major factor in the development of new forms of social protection not linked to employment status, including conditional cash transfer programmes etc. This approach contributes to closing the gender pay gap, particularly if we treat the gender pay gap as a lifetime income gap between men and women but also even if we only include pensions as a form of pay. Part of the reason for women's overrepresentation in NSFE is their exclusion from standard or formal employment. However, it also reflects the engagement of women in non-wage work activities that may be more easily combined with NSFE. In this context it is important to ensure the NSFE or more flexible work is included within the formal social protection systems, particularly from the perspective of employer contributions (with workers either given credits or charged contributions). Some forms of work are not easily combined

with own care work but are nevertheless excluded from formal social protection systems mainly because they are primarily done by women. This applies to, for example, domestic work and care work in households. The ILO convention on domestic work and specific initiatives in Latin American countries such as Uruguay (see box 6.5) and South Africa (UN Women 2015) have enabled some domestic workers to move from the informal to the formal sector as far as both social protection and minimum wages are concerned.

5.2.3. HOUSEHOLD OR INDIVIDUAL RIGHTS

The organisation of both the social protection and taxation around either the individual or the household has profound effects on women's participation patterns and thus indirectly on gender pay gaps. These differences are both material and symbolic, as household taxation or welfare benefits tend to reinforce the notion of women as dependants and with primary responsibilities as mothers or wives (Sainsbury 1996).

The importance of these arrangements with respect to taxation within the OECD has been stressed by Jaumotte (2003). She found that in most OECD countries, married women are taxed at higher rates than men and single women and that this reduces full-time participation, with higher part-time participation where tax incentives were positive. The German system of mini jobs reinforces these two effects, high tax on second income earners and incentives for part-time work, by allowing for effectively tax free participation in mini jobs. The UK operates a mixed system of independent taxation coupled with household-based means-tested welfare benefits, the outcome of which has been to disincentivise second income earners in low income households but also single parents (Bell et al. 2007). Such effects are avoided in some other European countries, either because of less generous state support for non-working lone parents or because of more support for lone parents in employment (Pedersen et al. 2000). Where childcare costs are also in part based on a household means test, further impacts on participation and ultimately on gender pay gaps can be expected (OECD 2007b).

Household-based derived rights pension systems may also encourage women to participate in informal or NSFEE (and this may also apply where there are care credits in pension systems for mothers). Where pensions are individualized, pension credits for childcare are becoming more important in advanced countries. At the same time, overall contribution years for full pensions are being extended to encourage longer working lives for both men and women but without necessarily taking into account women's involvement in care work (Anxo et al. 2010; Karamessini and Rubery 2013).

Derived rights are increasingly problematic where family structures are fragile and insecure. In this context mothers will be less likely to rely on their partners' economic position for future security (Bucholz and Grunow 2006) particularly where, as in the US, state support in the event of family breakdown is minimal and extended family support unlikely.

5.2.4. SOCIAL SUPPORT FOR CHILDREN

The historical tendency for male wages to exceed female wages has been explained by trade union struggles to establish a male breadwinner wage sufficient to cover the additional costs of providing for and caring for children. However, although male family wages were bargained for as much to provide for dependants as to suppress the rights of women to equal pay (Humphries 1977), the effect was also to legitimise paying women a low wage, often below their own subsistence needs as they could be expected to be subsidised by husbands or fathers.

The notion of a family wage is not compatible with the principle of equal pay which requires pay to be related to the work done and not the family responsibilities or needs of the individual employee. However, a change from the notion of the family wage to the notion of equal pay does not solve the problem of how children are to be supported, particularly for low income households. Social protection policies are needed because without state support, there may be no institutional arrangements to properly ‘pay for the kids’, a situation Folbre (1994) suggests applies in the United States. Wide wage inequalities and minimum wages set well below subsistence levels, combined with limited welfare support system results in major risks of child poverty.

Another issue is whether support should be channelled via the father or the mother: the recent development of cash conditional payments in developing countries have been channelled to mothers who are thought to be more likely to use the resources to improve child welfare (UN Women 2015:138). Atkinson (2015) has recently suggested that there should be a basic income attached to each child, funded through taxation and social contributions.

Supporting social reproduction costs through the social wage rather than through market wages should facilitate gender pay equality in market wages. There is the danger, however, that equality could be brought about by levelling men’s pay down to women’s rather than vice versa. For those at the bottom of the labour market this could result in more labour being provided by a household for the same wage income. The social wage has also come under threat under austerity policies (Karamessini and Rubery 2013) suggesting that there is no guarantee that social reproduction costs will be supported by the state long term. Social support for children is generally to be welcomed as more universal and more supportive of the living cost needs of all women than support provided through market wages. Nevertheless it remains vital, as discussed in chapters 2 and 3, to ensure minimum wages are high enough to provide at least for one adult’s subsistence, so as to move beyond the historical tendency for women’s wages to be regarded as no more than a supplement to family income.

5.3. TRANSPARENCY

Transparency in relation to social policy involves at least three issues: complexity and ambiguity of rules, opportunities to claim entitlements or query denial of benefits, and awareness of rights (Finn and Goodship 2014). These are general issues that nevertheless can have gender impacts. For example, with respect to complexity and ambiguity of rules, one study of the variations in claimant rates for unemployment benefit in the US attributed this in part to ambiguity over acceptable reasons for leaving a post including in response to care needs or emergencies (Wenger 2014). Ambiguities in employment status can also lead to denial of access to social benefits such as paid maternity leave, if for example someone believes herself to be an employee but is treated by the employer or the state as self-employed (for example as may occur with regards to those on zero hour contracts in the UK (CIPD 2013; Adams and Deakin 2014). Social rights that are either difficult to claim or where there is no right of appeal against bureaucratic decisions have limited effectiveness. A major problem with many social policies is a low rate of take up which is primarily related to lack of awareness of rights (Finn and Goodship 2014; Vosko and Thomas 2014); this may have a gender dimension in some countries. Milkman and Appelbaum (2014) found a low level of awareness and lack of take up of rights to paid family leave in California among poor and migrant women; this was partly because the main agent providing information on rights was the employer who had no incentives to provide this information.

5.4. SUMMARY

Without support for social reproduction the gender pay gap is unlikely to close (Pearson 2014), except through high inequality among women themselves. That is, the higher educated women might rely on support from low paid women – often drawn from the global south- to provide care support (Anderson and Shutes 2014). The level and form of social policy support for women has major impacts on both employment patterns and social norms (whether provided to women as co-workers and breadwinners or as wives and mothers). Research has increasingly focused on how different social policies also intersect with class divisions among women to create intra-gender differences in participation and employment patterns. The inclusiveness of social policy- both social protection and services- has important impacts on women’s overall lifetime income and on the segmentation of the labour market. The latter may be related not only to the unpaid wage work that women undertake but also to whether they are treated as independent adults or whether they derive their social rights through their family relations. Furthermore, a high social wage can reduce pressure towards family wages, which has underpinned gender gaps in earnings and can also empower women to form their own families independently from men (Orloff 1993). However, the risk of cuts in social provision also needs to be recognised in this austerity period, suggesting there are risks in trading wages for higher levels of the social wage, even if under progressive governments and under periods of prosperity this provides a route to greater gender equality in both wages and living conditions.

6

POLICY MIX: COMPLEMENTARITIES, INTERACTIONS AND TRADE-OFFS

The contention that gender pay equality is more likely to be achieved in more inclusive labour markets and societies implies that there are strong interactions across policy domains and mechanisms; action on one front may not be successful if it is not supported by complementary policies and reinforcing mechanisms. This applies to both the two main policy domains considered here, employment and social policy, and to the three policy mechanisms, legal, collective or voluntary. Interactions based on complementary policy approaches may reinforce outcomes for gender equality in either negative or positive directions. When policies pull in competing directions advantages for gender equality in one direction may be offset by disadvantages in another direction. Such trade-offs may have particular consequences for sub groups of women, for example for different social classes. These require particularly close attention if narrowing the aggregate gap between men and women is not to be at the expense of the more disadvantaged.

There is a considerable literature on institutional complementarities across policy domains. The debates on varieties of national models- whether framed as varieties of capitalism, welfare states or gender regimes (Hall and Soskice 2001; Esping-Andersen 1990; Lewis 1992; Bosch et al. 2009) – have revealed the importance of institutional complementarities which generate path specific responses to pressures for change. Furthermore, the opportunities for countries to learn from or imitate other national models may be constrained if crucial institutional complementarities are lacking. However, recent trends in national models include the development of more hybrid models that span the ideal types identified in the classic typologies of varieties of capitalism, welfare states or gender regimes (Bosch et al. 2009; Anxo et al. 2010; and Lewis et al. 2008). Indeed a core source of convergence and change within national models has been the increasing employment participation of women across all national models. The consequence, however, is that in some policy areas, including gender equality policy, there is more incoherence and instability in the policy approach, and also unequal effects on gender equality depending on factors such as education or class position.

In all types of economies but particularly in developing economies there is an assumption that actions to improve women's wages will have costs in terms of employment; at a minimum further growth in the size of the informal employment is expected to be the consequence of efforts to regulate the formal economy. This argument persists even where there is limited empirical evidence in support; for example recent research on the impact of minimum wage systems in developed economies has found limited employment effects, such that any negative effects are at most small (Freeman 2009), provided minimum wages are not raised too high or too fast. Likewise, in developing countries, research

suggests that higher minimum wages in the formal sector far from depressing wages in the informal sector may in fact raise them, through what is known as ‘lighthouse’ effects (Boeri et al. 2011; ILO 2013b; Rani et al. 2013). This review cannot address all the literature that poses employment effects as counter arguments to efforts to improve gender pay equity or inclusive labour markets. Moreover, we take the view that closing the gender pay gap does require, due to embedded undervaluation of women’s jobs, some changes in prices and the organisation of markets. These might have short term employment effects but there is no long term reason why gender equal societies cannot achieve the same employment levels as less equal societies. To argue the opposite would imply that there is a productivity deficiency among women or that competitiveness depends on paying labour below its relative productivity level.

Instead this review focuses on the specific mix of institutional policies and practices in particular country contexts and their consequences for the twin objectives of gender pay equity and inclusive labour markets.

6.1. INSTITUTIONAL COMPLEMENTARITIES: POSITIVE AND NEGATIVE REINFORCEMENT ACROSS POLICY DOMAINS

The now extensive literature on national models has revealed the importance for gender equality of institutional complementarity between social welfare and gender policies on the one hand and employment organisation on the other (Stier et al. 2001; Esping-Andersen 1990). This has led to Sweden, together with other Nordic welfare states, being identified as the most gender equal regimes, though not necessarily those with the smallest aggregate gender pay gaps. The explanation of the gender pay gap in Sweden is complex as we discuss below, but may, *inter alia*, reflect the much higher employment rates among women (Korpi et al. 2013).

The identified complementarities include, on the social policy side, the treatment of citizens as individuals rather than as household members, the support for working parents (through paid leave, flexible working and subsidised childcare) and the incentives for participation by fathers in care work. These are complemented on the employment side by relatively egalitarian wage structures set through a comprehensive system of collective bargaining and underpinned by relatively high minimum wages set by collective agreements. Furthermore continuing pressure to reduce gender inequality is exercised through compulsory gender pay audits and equality action plans in which the trade unions are involved. These features taken together promote continuous labour market participation by both adults in couple households, reduce women’s dependency on the family and male partners, facilitate the combination of care with wage work and protect against some of the potential loss of wage income for carers, provide some incentives to change the gender domestic division of labour and reduce expenditure on social reproduction costs out of wage income. This combined approach underpins the egalitarian wage structure as men do not need to seek family wages to support their partner over the period of childbirth. Even in this best case scenario there are, as we discuss in the next section, some problems of trade-offs for particular groups (for example between higher and lower educated women and between public and private sector workers) as well as other trade-offs, including acceptance of a high tax economy.

The Swedish model, nevertheless, provides an example of the high social wage that Pearson (2014) has argued is essential to protect women against the double shift of both unpaid care work and wage work and to reduce the spend out of the wage income on alternatives to women’s unpaid work. This is in contrast to the United States where it is the lack of a developed welfare system and a more fragmented and fragile family system that seems to be reinforcing women’s commitments to full-

time continuous work, even at times of high childcare demands and despite limited state or family support for childcare. These conditions may positively affect pay for higher skilled women but not for the lower skilled. The need to access health care insurance through employing organisations is one important reason (Tomlinson 2007) for this behaviour together with strong reported employer penalties on those who interrupt careers (Gangl and Ziefle 2009). Welfare systems may, therefore, not only offer support to enable mothers to continue in employment but, where employment is a prerequisite for social protection, may also put pressure on mothers to remain in the labour market. In developing countries there may also be a necessity to remain in wage work to survive, whatever the care demands.

Complementarities across policy domains may also reinforce women's exclusion from the labour market with mixed impacts on gender pay gaps. In Italy for example a low gender pay gap appears to be at least partially associated with limited integration of low skilled women into employment (Olivetti and Petrongolo 2008), reinforced by patchy availability of public services. This is often attributed by the EU to limited availability of part-time work though Italian women have never been keen to take up part-time work (Karamessini 2007), a reminder that complementarities in one country do not necessarily transfer to others.

Japan provides a core example of complementarities that reinforce gender inequality especially in pay. The long seniority ladders in the large companies offering jobs for life mean that, even if women join these organisations along with men after university, they may not benefit from the potentially higher pay until they are effectively forced by both expectations of long full-time working and lack of social or normative support for continuous careers to quit the organisation and move to the lower status and lower paid part-time positions outside the core sectors (Hori and Nohara 2006).

Germany also provides an example of downward complementarities between social policies and employment arrangements; the household-based income tax splitting system in Germany reduces incentives for women to work but these disincentives are moderated by specific regulations covering mini jobs where earnings up to €450 per month are not included in income taxation (Weinkopf 2014). This reinforces and traps women into marginal employment and which, up until 2015 when the new national minimum wage was introduced, might also imply a low hourly minimum wage as only the maximum monthly earnings limit was fixed. However, Germany is moving towards a hybrid gender model as it has also introduced a new parental leave system modelled closely on the Swedish adult worker model where high paid parental leave coupled with specific father's leave is expected to enable women to retain their career jobs and encourage a more egalitarian gender division of care work. This policy combined with the mini jobs and income splitting policies means that Germany cannot claim to have a coherent gender regime model (Lewis et al. 2008; Bosch and Jansen 2010). These mixed approaches are becoming more common as partial responses are made to women's higher aspirations for education and employment but they are also not always new. For example France has long provided good childcare and opportunities for women to work but also fiscal incentives for women to remain at home.

The danger that gender equity policies might be derailed by policy interventions from other domains lay behind the call for gender mainstreaming of all policy domains at the 1995 Beijing world conference on women. The recent austerity policies associated with financial adjustment provide a core example of the need for gender mainstreaming if the gender pay gap is to be closed. Austerity has been pursued independently of its impact on gender, which is without reference to the consequences of public sector pay cuts and reduced social support services. The outcome has been to reinforce differences among gender regimes: for example although in all European countries women are overrepresented in the public sector, this is especially true in Eastern European countries with their legacies from the previous socialist regimes where public services were both feminised and low

valued. Cuts to public sector pay have been as intense and sometimes more intense where public sector workers were already low paid relative to their education and skills, a policy that has mainly affected women (Rubery 2013). Likewise in countries where public services were already underdeveloped, for example Italy and Spain, the austerity policies have been equally savage in cutting services or plans to develop services. These impacts on gender equality have largely gone unrecognised – at least at the point of implementation- as public sector relative pay and public services are treated as gender neutral institutional arrangements. This is exemplified in the UK where a new initiative towards gender pay audits in private sector organisations and a commitment by the government to close the gender pay gap is coinciding with a further four years of pay restraint ordered for the public sector, with increases capped at 1% a year, on top of wage freezes and caps since 2010. It is frequently noted that gender pay gaps within the public sector are smaller than in the private sector and the implication is that gender equality is better in the former. However, this approach fails to address the level of pay in the public sector which in some countries is low and results in undervaluation of women’s jobs, particularly female-dominated professions such as nursing and teaching.

6.2. POLICY MECHANISMS: INTERACTIONS BETWEEN LEGAL, COLLECTIVE AND VOLUNTARY MEASURES

The impact of legal, collective and voluntary actions to promote inclusive and gender equal labour markets have so far been looked at primarily in isolation. Here we consider these mechanisms together to identify where intersections can either strengthen or weaken the capacity of specific measures to support progress towards equal pay.

First we consider how the effectiveness of equality measures depends on the mix of support across the legal, collective and voluntary domains. Second we consider how inclusivity measures are affected by the mix across these three domains and the implications for gender equity.

6.2.1. POLICY MECHANISMS AND GENDER EQUALITY MEASURES

Chapter 2 identified a few promising examples of legal approaches and measures that could begin to change the scope for progressing gender pay equity claims. These included the proportionality idea for implementing equal value in Ontario. Companies are required to assess gender pay differences using the proportionality principle, so that the fairness of pay in women’s occupations can be determined even if male comparators are not present and then use action plans to remedy deficiencies devoting at least one per cent of the wage bill to this exercise per year. However, in European countries this approach might prove problematic due to the requirement for male comparators and the potential for backdated pay claims. The latter may make companies unwilling to identify equal pay problems as remedying the problems over time might not be compatible with EU law and indeed companies may be subject to backdated claims for equal pay. The complexities of this problem for local authorities in the UK are explored in box 6.1.

While this case illustrates the dual roles of trade union action and legal mechanisms in promoting equal pay in the UK, the irony of this experience is that many of the jobs that were upgraded under the new job evaluation schemes were subsequently outsourced to private firms paying not much more than the national minimum wage (Bessa et al. 2013). This reveals the problem of sector and organisation-specific action in the UK where there are limited employment rights in the wider labour market, thereby allowing employers to evade these efforts at gender pay equality.

Another promising legal approach was the possibility of using the notion of undervaluation in a case to the Australian Fair Wages Commission without the need for a male comparator. While these

Box 6.1. Implementing equal value in local authorities in England

A new single status pay spine covering both blue and white collar workers to implement equal pay for work of equal value was negotiated in 1997 at national level but it was left to individual local authorities to implement in detail. This proved to be both a lengthy and a controversial process. To implement, each job had to be evaluated at local level using a locally agreed job evaluation scheme. The delays were related to the difficulty in reaching agreement on the evaluation tool and the time then taken to implement- sometimes several years. Also in some councils, negotiation over the implementation of single status was linked to wider reform agendas. However, one of the major stumbling blocks was that while under previous schemes bonus systems which benefitted mainly men had largely been ignored, this time they were to be taken into account which could involve major pay cuts. Union officials were concerned to negotiate pay protection arrangements for a 'reasonable period' for those negatively affected but local authorities wished to negotiate cost neutral agreements where winners were balanced by losers. As a consequence, some trade unions negotiated settlements that provided limited back pay to those who had been underpaid, in part because they were concerned to negotiate pay protection for the mainly male losers. Into this already complex situation came 'no win no fee' lawyers who were attracted by the possibility of large settlements due to a ruling in 1998 that six years back pay could be claimed as the previous maximum two years back pay was 'contrary to the principle requiring effective remedies to be provided for breach of EU law rights'. The outcome was a huge rise in litigation, involving around 70,000 cases taken by the two main trade unions and a further 30,000 by claimant law firms (based on Deakin et al. 2015).

are still promising in principle, box 6.2 uses the case of care workers in Australia to explore the limitations to the implementation of the fair wages principle for resolving equal pay issues. This is in part due to the FWC relying on expert evidence that takes a market approach to wage determination (Austen and Jefferson 2015). If it continues to be persuaded by arguments based on assumptions that current wage structures are reflective of productivity (see box 6.2), its impact on the gender pay gap can be expected to be limited. However, it is also important that the main funder of social care, the Australian government, was strongly supportive of increasing the pay of the care workers.

Another set of gender equity legal measures identified in chapter two was the development of compulsory gender pay audits at least for firms over a given size. In chapters two and three we already identified that the impact of these audits is much enhanced when combined with active participation and monitoring by social partners (Chicha 2006). In non-unionised firms in Quebec there was a high rate of non-compliance. Where there is more comprehensive coverage, such as in Sweden and Austria, these strategies may be more effective than where either trade union involvement or coverage is weak, such as in the UK, or where collective bargaining and union coverage is skewed towards male-dominated sectors as in the case of Germany. The latter is introducing provisions for the action plans to be integrated into collective agreements but this may have less impact in female-dominated sectors.

The effectiveness of policies may be enhanced by mobilising latent resources (Crouch 2005). An example here is Austria which has not been known for gender equality policies, either in the social or the employment area, but has now adopted a new initiative around higher cross-sectoral minimum wage rates, gender pay audits and income transparency. This policy approach is likely to be enhanced by its implementation within a system of very high trade union and collective bargaining coverage which should help with implementation (see box 6.3).

Another area of gender specific policy is in the implementation of gender sensitive job evaluation schemes. As box 6.1 has already explored, this was a major activity of trade unions in the public sector

Box 6.2. The case for equal remuneration of social and community sector workers in Australia

The successful case brought by five trade unions representing social and community sector (SACS) workers in 2010 to Australia's key industrial relations tribunal, Fair Work Australia, which resulted in FWC awarding pay increases of between 19 and 41%, is much debated. The core argument by the trade unions was that the work of the primarily female SACS employees was under-valued with regards to the nature of the work and the skills and responsibilities involved in performing the work. The case did not, therefore, rest on a male comparator. However, the claim of undervaluation was disputed by the expert witness who did not consider it possible to determine that a group is undervalued unless one can compare women to men doing like work. In practice only discrimination involving a pay differential due to the psychic costs of hiring was deemed possible within economic analysis. However, the case was won in part because of the presentation of an alternative institutionally-informed expert witness account but also because the public hearings exposed the narrowness of the assumptions in the economic case. This is not a guaranteed outcome and the example demonstrates the importance of the evidence presented in shaping such tribunal outcomes (Austen and Jefferson 2015).

However, although this was a very positive outcome for social care workers, Charlesworth and Macdonald (2015:433) comment that "it is debatable whether the FWC decision represents a shift to a more systemic understanding of gender pay inequity... The FWC refused to establish a general principle for making equal remuneration orders and rejected much of the unions' argument about the nature and extent of undervaluation, effectively limiting any potential for the decision to act as a precedent other than for feminised occupations involving care work... The circumstances of the SACS case also suggest the FWC's commitment to equal pay may be contingent on the support of key stakeholders. The case proceeded and pay increases were awarded in the context of strong support from the Australian government which – along with state governments – is the main funder of community services delivered by non-government agencies.'

in the UK, including local authorities. However, not only are there ambiguities in the actual gender neutrality of job evaluation schemes but where they yield significant gains to female employees, it is important that these cannot be evaded through outsourcing or other strategies. In countries such as Sweden with more all-encompassing collective agreements setting similar high minimum wages, outsourcing of social care has not resulted in significant changes in wage levels (Grimshaw et al. 2015).

It is notable that it is in the UK where trade unions are particularly weak and legislative initiatives for equal pay are also limited that trade unions have been most active in promoting equal pay in the public sector where they still have influence. Milner and Gregory (2014) suggest that the relative lack of interest among trade unions in France on equality issues is partly because of legal measures which lead to trade unions regarding the matter as already dealt with. Where trade unions are strong there may be other problems, particularly the implied challenge to traditional pay differentials. The experience of implementing comparable worth in the US has also highlighted the potential for management to use new pay systems for ulterior motives, for example to reduce and marginalise trade union involvement by claiming that job evaluation provides a technical solution to pay relativities reducing the need for collective bargaining on an ongoing basis (Acker 1989; Figart et al. 2002).

6.2.2. POLICY MECHANISMS AND INCLUSIVE LABOUR MARKET MEASURES

The interactions between legal, collective and voluntary measures have important implications for the form and extent of inclusive labour markets, and thereby indirectly for gender equality. A particularly key issue is whether or not legal minimum wages crowd out bargaining for jobs above minimum skill

Box 6.3. The reinforcement of income transparency measures through high collective bargaining coverage in Austria

In Austria the 2011 amendment to the Equal Treatment Act introduced provisions to tackle the gender pay gap and achieve transparency in workplace pay systems. Austria has one of the highest gender pay gaps in the EU at 23.7% in 2011. Since 2011, larger companies (starting with those with over 1000 employees in 2011, expanding to those with more than 500 from 2012, 150 from 2014) have been required to produce an income report every two years, which aims to make pay transparent and to make adjustments to close the gender pay gap. The Austrian Trade Union Federation (ÖGB) and the Chamber of Labour actively participated in the development of these measures to improve the transparency of pay. The income report for each company must be forwarded to the works council, or if no works council to all employees. The income reports are based on the occupational groups set out in collective agreements for each company. Given that collective agreements cover 95% of all employees, this applies to most companies. In the absence of a collective agreement, the income report must cover the pay levels set out in the company's salary structure. In the event that no salary structure exists, the employer is required to set out the occupational groups in the company.

However, there are no sanctions to force companies to address the pay inequalities identified in the income reports. Despite this, by the end of 2011 around two thirds of large companies had carried out income reports within the required timeframe. In addition, in Austria the Works Constitution Act requires the social partners to address equal opportunities in collective agreements, and includes provisions for works councils to establish equal opportunities committees and to conclude agreements at company level. The GPA-DJP and VIDA trade unions have expressed support for the idea of having a special round of collective bargaining to address the persistently large gender pay gap in Austria. The GPA-DJP has suggested that special negotiations could take place three times over a 10-year period, where employers and trade unions discuss detailed pay figures for their sector and come up with concrete measures to reduce pay inequality between men and women (ETUC 2014:29-30).

and experience levels in female-dominated occupations and sectors. This can be expected in countries such as the UK where there is weak collective bargaining coverage and where the introduction of a national minimum wage has resulted in considerable wage compression primarily affecting women and part-timers but also increasingly men's employment (Grimshaw 2013). Compression is also evident in France, despite high collective agreement coverage, as the high legal minimum wage which is upgraded according to a formula has often overtaken the minimum wages set by collective agreements, especially in service sectors; this squeezes differentials for experienced workers in low graded jobs or for those in jobs graded above the collectively agreed minimum in these sectors (Grimshaw et al. 2012). This may also have reduced the scope for the mandatory equality bargaining over pay in France. To avoid this type of problem, the new German national minimum wage has been set up in such a way that it is to be embedded within the collective bargaining system rather than a separate source of regulation (see chapter 3 box 3.1). However, this has the potential downside for gender equality that more men's jobs are regulated by collective bargaining than is the case for women's jobs and male-dominated sectors also tend to have higher pay levels. However, Germany is certainly taking a number of measures to reregulate towards greater inclusivity. In other countries, such as Portugal the movement is in the opposite direction, under pressure from the EU and the IMF, as the requirement to end the legal extension mechanisms is putting the coverage of collective bargaining in jeopardy, with particular risks for female dominated sectors (see chapter 3 and Schulten et al. 2015; Koukiadaki et al. 2016).

Box 6.4. Different policy mixes deliver different outcomes in gender pay equity across the wage distribution in Chile and Argentina

A comparison of equal pay outcomes for Argentina and Chile finds that:

The evidence highlights the significant influence of the Argentinian wage setting system over a more equal wage distribution and narrower gender pay gap compared to Chile. We might have expected that the reinforced corporatist industrial relations tradition during the 2000s in Argentina might have improved the compression of the wage distribution and gender pay differences far more so than in Chile given Chile's persistent application of neoliberal and individualistic labour market practices and traditions. However, Chile's minimum wage policy appears to have exerted a key institutional effect on the compression of wages at the lower end, lifting women's relative pay, albeit at the apparent expense of a falling median wage and a segmentation of minimum wage jobs in the formal sector. (Ugarte et al. 2015:519)

Different combinations of policy mechanism have different impacts on the nature of gender equality. Box 6.4 describes the impact in Chile and Argentina of different combinations of regulatory mechanisms on gender equality. While the more institutionalised wage setting and stronger coordinated collective bargaining in Argentina reduces overall inequality and provides coverage for women as well as men, the lower skilled women in Chile benefit from a high legal minimum wage. However, other women fare relatively worse than men under the fragmented and often weak collective bargaining system for groups above the national minimum wage.

Important interactions may also arise through the direction of trends in policies. Another example, again from Latin America, suggests that domestic workers have benefitted from not only actions to formalise contracts and extend minimum wages to domestic workers (see chapter five) but also the coincidence of this policy with a general tendency to improve the relative level of minimum wages (ILO 2013a, b and box 6.5). Either policy on their own would have made limited impact but it is the two combined that have significantly improved the conditions for vulnerable groups such as domestic workers in some Latin American countries.

It must also be recognised that trends in wage setting mechanisms within developed economies have tended to be reinforcing, in a negative direction, with reduced coverage of collective bargaining and more individualised pay systems making it more difficult for gender pay gaps to be closed. Indeed although the pay gap has closed in many advanced countries this has been at a slower rate than might be expected given women's improved education and greater continuity of employment (Harkness 1996; Antonczyk et al. 2010; for review see Rubery and Grimshaw 2015). There may be some compensation for these trends through, for example, higher minimum wages or specific gender equality bargains. However these only offset some of the effects for some groups and may themselves create some perverse outcomes, such as more wage compression for skilled women or more outsourcing to non-covered employment segments. No single policy or form of regulation on its own can be guaranteed to deliver gender equality and the overall trends towards or away from inclusive labour markets could even reverse not just moderate trends towards greater gender equality.

6.3. POLICY MIX AND INTERSECTIONAL EFFECTS BETWEEN GENDER AND SOCIAL CLASS OR EDUCATION

There is a large body of research and commentary on developing countries that stresses the intersectional effects of policies that may appear to promote better pay and working conditions but

Box 6.5. The importance of policy complementarities in promoting improvements for domestic workers**Extending minimum wages to domestic workers and raising the value of the minimum wage in Brazil.**

Despite the high incidence of informality, there is evidence that working conditions – and wages in particular – have improved substantially over the past decade or so [for domestic workers in Brazil]. Since 2003, the Brazilian Government has (after consultation with the social partners) adopted a policy of gradual and predictable increases in the minimum wage. By 2011, the real minimum wage had grown by 55 per cent compared to its level in 2003. Domestic workers, whose wages had stagnated in real terms over the previous years, were among the primary beneficiaries of this policy: their monthly average wages grew from 333 Brazilian reals (BRL) in 2003 to BRL 489 in 2011 (both expressed in constant 2010 prices). This corresponds to a real increase of almost half (47 per cent), whereas the average wages of all wage employees only grew by one-fifth (20 per cent) in real terms over the same period (ILO 2013b 74)

Combining collective regulation with formalization and social security coverage in Uruguay

Uruguay, the first country to ratify the Domestic Workers Convention No. 189, 2011, has combined collective bargaining over employment conditions in domestic work was established in 2006, when the law regulating the domestic work sector was adopted. Besides the wage rise, the outcome of previous rounds of negotiation in 2008 and 2010 included a premium for time service, compensation for night work, and the creation of the Domestic Worker Day on August 19 as a paid holiday. The group also agreed to form a Tripartite Commission on Occupational Health. In recent years, the Uruguayan government has launched several initiatives to improve working conditions in the domestic work sector, including a country-wide campaign launched by the Social Security Bank (BPS) in 2004 to improve the social security coverage of domestic workers. Even though the levels of social security coverage have significantly increased between 2003 and 2011, this is still around 40%. Enhancing the levels of formalization and social security coverage are among the main challenges for the promotion of decent work for domestic workers in Uruguay (ILO, undated).

have very skewed impacts due to the gender differences in work forms and the overall small size of the formal sector. The main thrust of this debate has been to push for more social protection for those outside formal employment. This mainly provides for a higher social wage and is designed to offset some of the costs of children. As discussed in chapter five, these policies may have beneficial effects for women but recent critiques have stressed problems with sustainability. Renewed efforts to formalise employment and regulate employers are still needed not only to improve fairness in the employment system but also to sustain funding of social protection which may be reliant on employer contributions (Martínez Franzoni and Sánchez-Ancochea 2013).

The debate on intersectional effects has also taken off in developed countries. This takes two forms: there is first a parallel debt on whether support for women in formal and particularly standard employment leaves out of account the increasing share of women in NSFE much of which may be beyond the scope of standard regulatory mechanisms in addition to those in full-time care work (Vosko 2010; Fredman 2004; Standing 2011). There is another strand, again discussed in chapter five, where Mandel and her various co-authors have called attention to intersectional effects of welfare and collective bargaining regimes on employment and pay outcomes for women. Her argument is that although strong welfare and collective bargaining regimes, coupled with large public sectors, allow more women to enter employment on relatively good pay and opportunities for the less well educated, the welfare system itself creates barriers to women entering higher level jobs as employers discriminate against women because of the additional welfare rights. This

Figure 5. Ratio cleaners and helpers female pay to average male pay, by country – EU-27, 2010

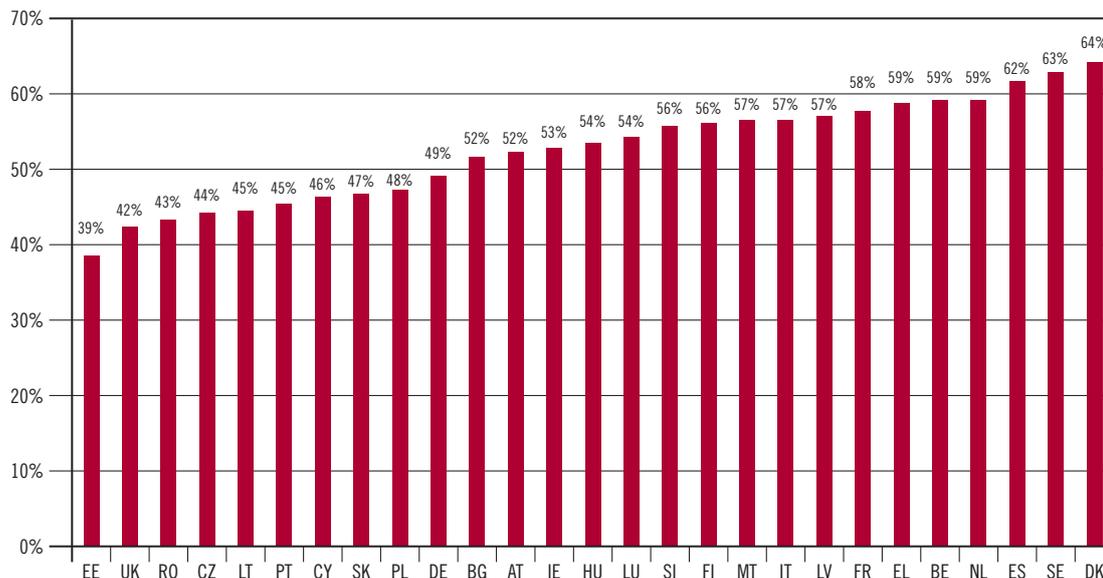
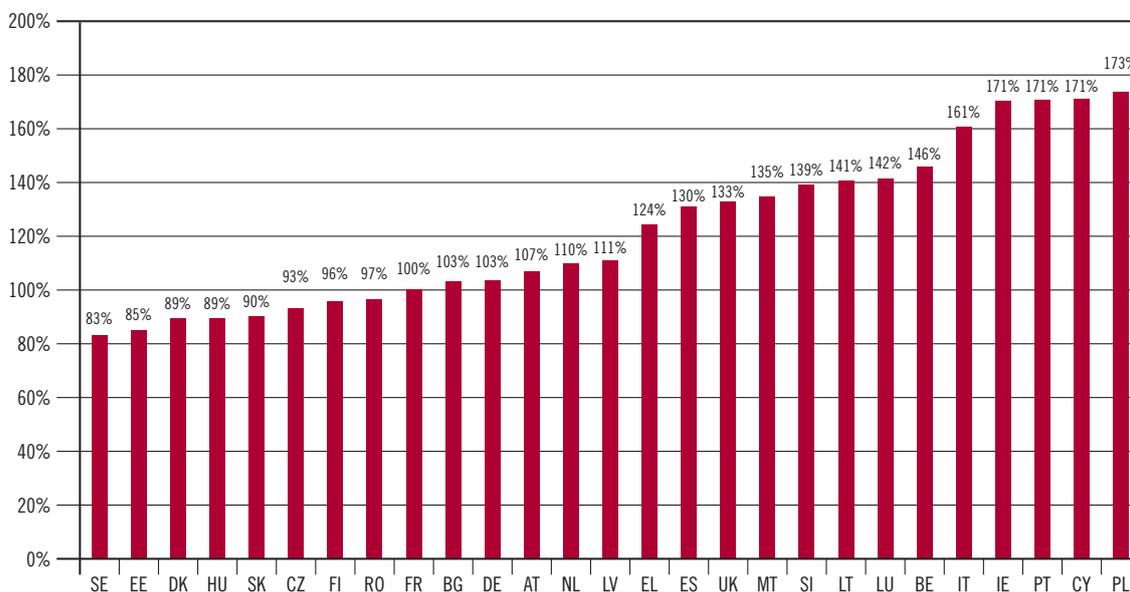


Figure 6. Ratio teaching professionals female pay to average male pay, by country – EU-27, 2010



Source: Burchell et al. 2014 Figures 5.1a, b

extends Esteve-Abe's (2001; 2006) work on varieties of capitalism which suggested that women fare better in neoliberal societies where skills are general and produced through the education system because, where employers invest in training, they discriminate against women who may quit over childbirth and thereby risk loss of the employer's investment. Mandel distinguishes more

by groups of women and by welfare states and argues the trade-off is worthwhile as the benefits for lower educated women are large.

Although Korpi and colleagues (2013) have disputed the existence of this trade-off at the macro level, there is some evidence of a different but related problem, namely within Nordic public sectors there may be some undervaluing women's skills in higher level jobs. Although those in the less skilled public sector jobs appear to benefit from the higher minimum wages, overall public sector pay tends to be lower than in the private sector and particularly relatively low for women in professional jobs (Grimshaw and Rubery 1997 for examples from Norway). We can see the tendency for Sweden to provide favourable wages in low skilled female jobs but not in female dominated professions by considering the differences as in wages between cleaners and teaching professionals. For the former Sweden almost tops the ranking of relative pay for cleaners but among EU countries, (measured as a percentage of average male full-time pay in the same country), but comes in bottom for teaching professionals (see Figure 6 and Burchell et al. 2015).

This discussion of intersectional effects by social class and employment status suggests that it is important not to focus only on the aggregate gender pay gap but to identify where the source of problems lies – in terms of both employment patterns and wage structures – in a particular context and prioritise actions. In relation to wage structures this may mean prioritising between raising minimum floors, extending progression in female-dominated sectors, revaluing women's skills in low but also medium and higher level work, limiting excessive pay in high level occupations and/or equalise access to bonuses.

6.4 SUMMARY

All these debates and research findings on complementarities and interactions serve to emphasize four main issues for developing the policy mix to support gender equality.

First, while this report focuses mainly on the issues of wage structures for closing gender pay gaps, action in the labour market sphere, as Pearson (2014) has emphasised, needs to be complemented by support – both in the form of services and social protection- for social reproduction and those taking care of social reproduction. One of the main contributions of a gender lens on employment issues has been to draw attention to the interactions between the production and the social reproduction spheres which the male breadwinner model of labour market participation served to disguise.

Second, it is clear that there is no system that has beneficial impacts for all women and further, that in order to determine priorities in policies, it is necessary to consider both social equity and gender equality issues together, to combine gender equity with the overall objective of more inclusive labour markets and to consider intersectional effects of policies within each gender, not only changes in aggregate or average indices.

Third, although different regime types are likely to favour one group of women relative to another, this does not mean that action cannot be taken to try to remedy the particular form of gender pay inequality that dominates in that particular institutional environment. Changes to the policy mix, therefore, need to be targeted to fit the country context. For example, in Sweden there may be more problems in the gender pay gap at the top end of the distribution and it is here that action may need to focus on raising the pay ceiling for women. However, in many countries the largest benefits for gender equality and social equity will come from actions to either raise the wages for those at the bottom of the ranking or to reduce exclusion from formal employment. Furthermore, if we consider not the median but the mean gender pay gap, an important strategy in many countries may be to rein in the excesses of pay at

the top end of the distribution. So far the latter type of action has, however, proved even more difficult than raising the minimum floor but both are important for a more inclusive society.

Fourth, achievement of gender pay equity is not a fixed but a constantly moving target (Rubery and Grimshaw 2015). Gender pay gaps arise out of a range of factors, from the composition and relative value attached to jobs, firms and sectors, from the payment systems and principles used to shape rewards between and within occupations. Consequently, even the current level of gender pay equity is at risk. This has become evident under austerity where public sector pay and conditions have been rapidly changed, with greater impacts on women due to their overrepresentation in the sector. So long as gender differences remain in employment patterns and in reward practices, then changes to economic and social structures or in managerial practices may still reverse improvements in aggregate gender pay gaps.

7

MONITORING AND ENFORCEMENT OF EQUAL PAY

This chapter considers the issues of enforcement of measures to promote gender pay equity and inclusive labour markets and the related problem of how to monitor and measure progress.

7.1. ENFORCEMENT

In considering enforcement we focus on the roles of different actors, namely the state, employers and their associations, trade unions and NGOs or pressure groups and individuals.

7.1.1. THE STATE

The state can itself be active in inspection and enforcement or simply set up the channels by which other actors can take action to ensure equal pay. It can also set incentives – either positive in the form of prizes and awards – or negative in the sense of ‘naming and shaming’. Above all it can shape

Table 14. Mechanisms of enforcement

	State	Employers/bipartite/ tripartite	Trade unions/NGOs	Individual
Enforcement mechanisms	Labour inspectorates. Conciliation and arbitration. Access to courts/tribunals. Tax inspectors. Positive incentives or ‘naming and shaming’. Sanctions.	Independent/ bi- or tripartite auditing of companies. Employer associations – members to respect collective agreements.	Action at workplace and sector level to enforce collective agreements. NGOs –publicity and advice campaigns. Naming and shaming.	Access to legal/ semi-legal remedies. Whistle-blower protections.

social norms as to the acceptability of gender pay discrimination, overall wage inequality and evasion of labour standards, in part by establishing sanctions for those not complying. The state also sets the framework for rules on disclosure of information on pay that may thereby highlight problems with the implementation of the equal pay principle.

The impact of other institutions engaged in wage setting is also shaped by the actions of the state. In some contexts the state leaves collective bargaining to the social partners even if it has indirect impacts, for example in shaping the conditions for trade union recognition and the scope for collective bargaining. In other contexts, however, the state is more active in enforcing, extending and prolonging (or curtailing) collective agreements. The state may also influence the scope for voluntary action, for example in regulating which organisations are recognised as trade unions and which are only pressure groups or unofficial trade unions. More positively, state enforcement of rights to equal pay in some countries has extended into promoting equality duties on public sector employers or making equal pay audits mandatory. The effectiveness of these measures without countervailing involvement for trade unions or other forms of worker representation is still, however, open to question.

Legal enforcement of equal pay legislation

Even in cases covered by anti-discrimination legislation, effectiveness of legislation largely depends upon the willingness and ability of individual litigants to bring actions (Fredman 2011). This is because in a number of systems the principal remedy supplied by equal pay legislation has traditionally taken the form of a claim for equal pay before often specialised courts dealing with labour disputes (for a review, see Foubert et al 2010). As the coverage of collective bargaining declines in a number of countries, litigation over pay equity issues is becoming more important. However, the rise in litigation is often concentrated in areas of the economy where collective bargaining retained a presence, e.g. in the public sector (see, for instance, the analysis by Deakin et al. 2015 on the UK case).

There are structural problems with respect to anti-discrimination legislation and their ineffectual enforcement processes. A number of specific problems have been identified with the individual litigation-driven model (for a review, see Fredman 2013b; Hepple et al. 2000). A first issue concerns the complexity of the procedure. The case of time limits for bringing equal pay claims provides an apt illustration. Until 2009, victims of pay discrimination in the US were only allowed 180 days from the date of the initial discriminatory decision by the employer under a Supreme Court ruling.⁷² It was only in 2009 that President Obama signed the Lily Ledbetter Fair Pay Restoration Act, which allows victims of pay discrimination to file a complaint with the government against their employer within 180 days of their last pay-check. A second issue relates to litigation costs. Evidence from the UK, where employment tribunal fees were recently introduced, suggests that there has been a considerable decline in the number of equal pay claims (around 80%, Ministry of Finance 2014 in Deakin et al. 2015:386). A third issue is that of proof. In many European systems, the claimant needs only to produce the facts from which it can be presumed that there has been discrimination (for a review see Foubert et al. 2010). Then, it is for the defendant to prove that there has been none – either because there was no different treatment of men and women or that it was justified. Yet, this does not alleviate the problems of proving a gender-based discrimination in relation to pay; this is because claimants rarely have knowledge of the pay structure within a company, and hence cannot establish the facts without a specific right to disclosure of information about the pay that other individuals in the firm receive (Rudolf 2010:110). While a right to disclosure is necessary to enable the individual to bring a successful claim, this is so far only available in a few legal systems (see chapter 2, section 2.3).

⁷² *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007).

Finally, a broader issue with individual litigation is that it “can be arduous and unrewarding, since there is no impetus to correct the collective problems in the pay structure” (Fredman 2013b:16).

The use of inventive regulatory strategies such as anticipatory and proactive equality duties and gender pay gap audits at the level of public and private sector organisations (McLaughlin and Deakin 2012) could be deployed here in a systematic way. The individual complaint-based pay equity mechanisms in Canada have proven more successful owing to the existence of pro-active pay equity programmes, which can provide some impetus and tools for identifying unequal pay (Chicha 2006) and the use of class action lawsuits. However, class action lawsuits remain uncommon in many legal systems. For example in Europe, implementation of pay equity schemes has been frustrated by legal systems in states that are based on individual rights to the exclusion of class action lawsuits (Hodges and Vogenauer 2009). However, it is worth pointing here to the risk of externalities because of litigation costs that may then result in a backlash against pay equity (Fudge 2015).

The recent developments in Canada provide an example here. Prompted by, among other factors, large pay equity liabilities (Treasury Board of Canada Secretariat 2012) the Conservative federal government in 2009 by modified the process under the Public Sector Equitable Compensation Act (PSECA) for attaining equitable compensation in the federal sector. Employers and unions are jointly responsible for compliance under the PSECA and equitable compensation is negotiated in conjunction with other collective bargaining issues, rather than in a process separate from bargaining. Importantly, the legislation removed the right of federal employees to claim protection for pay equity violations under the Canadian Human Rights Act. Additionally, individual employees must file complaints with the Public Service Labour Relations Board without union support, and a \$50,000 fine will be imposed on any union that assists members in filing a pay equity complaint (Kruth 2015). However even where fourth generation equal pay policies are promoted, enforcement is crucial. For example even though Quebec through the Pay Equity act has possibly the most detailed and structured example of a legislative framework concerning equal pay, employers are still not required to report back, which may negatively impact on the extent of legal compliance and sanctions are low, limiting the deterrent effect of the legislation (especially for large enterprises) (Chicha 2006:13-14).

In general we find limited evidence, certainly outside of the United States, to support Piore and Stafford’s (2006) claim that legal action over issues such as gender pay equity has become sufficiently frequent or normalised to exercise equivalent constraints on employers as collective bargaining. More broadly, while a positive duty to eliminate pay discrimination can build on and strengthen the gender duty recognised in many legal systems, external pressure will be still required “to maintain an adequate focus on outcomes and substantive equality, as well as to combat the danger of bureaucratic lassitude, tokenistic compliance and deliberate neglect of the duty requirements” (O’Cinneide 2005:104). Chicha (2006) identified two conditions that were key to enhancing the impact of law: the compulsory nature of law, and the existence and provision of technical support by specialised bodies. With respect to the compulsory nature of law, there has been an increase of ‘hard law’ provisions related to proactive equality duties. The creation of obligations according to Smith (2012 drawing on Ledwith and Colgan 1996) overcomes a core problem with individual complaint-based systems in as much as there is no mechanism to ensure that the worst employers are identified. It is also the case that a system based on obligations permits equality organisations to initiate their own investigations and requires employers to be proactive (Smith 2012). Provision of technical support, legal guidance and institutional support, whether from a specialised equality body, a trade union or another body, has proved crucial in the effectiveness of individualised complaint mechanisms (OECD 2008:168). But this is dependent on state resources and funding. The UK case illustrates this problem: in light of the economic crisis, the Equality and Human Rights Commission, whose role is to support victims of discrimination, has had its budget cut by 70% from £70 million in 2010 to just over £18 million

Box 7.1. Strategies to increase compliance with minimum wages

According to Benassi (2011) (cited in Rani et al. 2013:398) five types of measures may improve compliance: (i) building public support; (ii) capacity building to inform workers and employers; (iii) reinforced labour inspections; (iv) higher sanctions; and (v) empowering of workers through individual complaints procedures and collective action. Rani et al. (2013) cite a range of examples of improved compliance found in a range of studies including: a National Minimum Wage Campaign in Cost Rica “which combines sustained awareness raising, facilitation and encouragement of complaints, and increased wage inspections”; the combination of a simple national minimum wage system in Brazil with strong worker organization and investment by the Government in enforcement machinery; policies to raise awareness of statutory labour rights among low-paid workers in the United Republic of Tanzania; the role of workers’ organizations in enhancing minimum wage compliance in Los Angeles’ apparel sector; the formalization of employment through a new electronic systems which extended the capability of the government authorities responsible for compliance in Peru; and in India, the 2005 Mahatma Gandhi National Rural Employment Guarantee Act which improved compliance in rural areas and among female workers. They conclude that “One of the lessons learned from this experience is that transparency regarding wages and wage payments can improve observance of minimum wages” (Rani et al, 2013:402).

in 2014 and its powers curtailed. The general economic context, especially when the equality duties intersect with collective bargaining, may also be important here. As already discussed, the 2007 law in Spain has effectively not yet been implemented due to the disruption to social dialogue associated with the austerity measures.

Legal enforcement of minimum wage standards

With respect to inclusive labour market measures, the state has a key role to play in the enforcement of minimum wage standards. Compliance, however, is also a function of the level at which minimum wages are set so that rates of compliance are found to be higher where minimum wages are set at a low level (Rani et al. 2013). It might be argued that evidence of too high a rate of compliance indicates that the minimum wage is not acting to raise the employment standard within a labour market. Beyond the level at which the minimum wage is set, there are a range of policies and practices that can improve compliance (see box 7.1). Most countries have some form of labour inspectorate but their extent, their focus and their effectiveness varies. Research has suggested that codes of conduct agreed to by MNCs are unlikely to be very effective where the state does not play an active role in enforcement, for example through active inspections (Locke et al. 2007). Furthermore, inspectorates may be primarily concerned with issues of health and safety or even with whether social security contributions are owed by the employer and may not address minimum wage compliance issues (for example inspectors in Costa Rica are not mandated to deal with wage issues (Rani et al. (2013)). Even when the inspectorate does concern itself with pay issues- for example in the case of tax and revenue investigations in the UK into underpayment of the minimum wage – there may be limited incentives for employers to ensure compliance in advance of inspection. Despite high rates of underpayment there are very few prosecutions for underpayment and only recently has the government decided to ‘name and shame’ the worst offenders.

The state also shapes the institutional arrangements through which individuals or trade unions can try to enforce minimum pay standards. This involves access to courts or to alternatives to a legal court system such as tribunals, arbitration or ombudsmen. Legal action by individuals may

be confined to those able to meet high legal costs, unless the state provides assistance or does not charge fees. Opportunities for employers to evade are particularly strong where the worker is highly dependent on the employer; for example in the case of migrants whose visa is tied to the particular employer or where complaints of underpayment could lead to the withholding of work. Measures by the state to protect those who try to enforce their rights are therefore very important. In the case, for instance, of domestic workers, systems combining various approaches, including conciliation and mediation, on-going supervision and complaints-based approaches, are more likely to take the specific characteristics of the domestic work employment relationship into account and hence are more likely to offer satisfactory responses in dealing with situations of dispute and non-compliance (Budlender 2010).

7.1.2. EMPLOYERS

Employers can contribute individually or collectively to enforcement of inclusive labour rights. For example they may decide to use independent auditors instead of internal auditing for their international codes of conduct which may increase the likelihood of conformity with legal and voluntary agreements on pay and conditions. Collectively through employers' associations they may influence compliance with either legal or collectively-agreed regulations, with the attitude of the employers' association towards non complying members perhaps an important influence on whether or not individual employers consider it acceptable not to comply. For example, the German employers' associations were important in ensuring compliance with collective agreements in West Germany and expansion to the former East Germany where employers had less of a tradition of commitment to the employers' association was an important cause of voluntary compliance with collective agreements beginning to break down, a process which led eventually to the need for a legal national minimum wage (Bosch 2015).

Employers' associations may also encourage enforcement through the issue of prizes, awards and labels. The detail in the information required to qualify as an applicant may also have the indirect effect of improving enforcement. While there are some employer-initiated positive rewards with respect to gender equality, in general scrutiny is more likely to be applied to the general terms of collective agreements or minimum employment standards than to gender pay equity, in part because the latter requires a more multifaceted interrogation than, for example, whether minimum wage or working time standards are being respected.

7.1.3. TRADE UNION AND NGOS

Trade unions have a very important role in enforcing both legal and collectively-agreed standards at sector and workplace level. Their core focus is likely to be on collectively-agreed minimum standards and this applied, for example, in the now famous Laval and Rüffert cases in the EU where trade unions were engaged in enforcing minimum standards embedded in collective agreements on companies using posted workers, even though the agreements had not been included in the legal regulations that posted workers should follow due to traditions of independence for collective bargaining in the Nordic countries and Germany. Unfortunately the sectors where trade unions tend to be most active in enforcement are often male-dominated such as construction, but box 7.2 provides some examples where trade unions have been active in enforcement in some more feminised areas.

It is more difficult for trade unions to take sector-wide initiatives on equal pay issues, except where these are embedded in sector collective agreements, due to the limitations of equal pay law when it comes to action involving more than one employing organisation. At the single employer or

Box 7.2. Enforcement efforts by trade unions in feminised sectors.

Trade unions in Hungary have been active in arguing for retail workers such as cashiers to be eligible for the higher minimum wage rate designated for skilled workers. This can be interpreted as an effort to increase recognition of skills in feminised areas such as retail (Neumann 2011; Eurofound 2010).

Trade unions in Ireland fought to preserve a somewhat higher minimum rate for cleaners than the national minimum rate by registering the collective agreement with the Labour Court, thereby turning it into an enforceable Registered Employment Agreement but in 2013 the Supreme Court ruled these agreements unconstitutional (ETUC 2014:74).

As part of an EU funded project into decent work for domestic workers the actions of six trade unions- the Dutch FNV Bongenoten, the German Ver.di, the Irish SIPTU, the Italian CGIL-Filcams and the Spanish UGT and CCOO – Actividades Diversas- were found to provide examples of trade unions taking action to support domestic workers. One common factor among all six was their offer of individual legal support. Such practices were found particularly for the Spanish UGT and the Italian CGIL-Filcams who both set up specific support structures for domestic and/or migrant workers (Carls 2012:28).

workplace level trade unions may, however, be involved in taking actions against employers on equal pay issues; this has been particularly common in the UK and in the public sector where large numbers of employees are covered by one employer, for example the NHS. It was under pressure of equal pay cases lodged by trade unions that employers in the UK public sector accepted the need to negotiate more gender-sensitive job grading systems. However, unions in the UK have been less successful in maintaining those gains as they have not been able to significantly reduce outsourcing of public services to lower paying private sector firms.

One limitation to the enforcement of the equal pay for work of equal value principle is that while it is a general trade union principle, as a legal principle it only applies in many countries to direct comparison of pay between women and men. Trade unions are involved in other parallel campaigns, not directly linked to gender pay equity, to promote principles of equal pay for the same work (for example campaigns for equal pay for agency workers who work alongside direct employees) and even equal pay for work of equal value (for example campaigns to require companies using posted workers not just to follow minimum pay rates but all the conditions in collective agreements including differentials by skill (Rönmmar 2015)). Indeed, general collective bargaining efforts to control managerial discretion and establish transparent and fair principles for differential payment by skill or experience could be considered aimed at notions of equal pay for work of equal value. Promoting the principle of equal pay for work of equal value for all could mobilise more support for the equality cause and also facilitate enforcement as it would not depend on the existence of specific comparators. However, there is the danger that there may be less attention paid to the specific issue of the undervaluation of forms of work associated with women.

Trade unions will primarily promote enforcement for their members but they will also engage in naming and shaming of employing organisations for groups of workers outside their own membership and in some countries they may engage in what is termed secondary industrial action in order to enforce standards on non-complying firms, actions which are, however, not allowed in the UK or US. These actions are primarily used for enforcement of general labour standards but could in principle be used where there are clear breaches of gender pay equity.

NGOs are less constrained than trade unions in campaigning for rights for workers who are not directly connected to the organisation. However, they are more constrained in enforcement as they

may have less access to information and to bargaining arenas to enforce the rights. The main aims of NGOs tend to be to engage other enforcement actors, to encourage collective organisation of the affected workers or to shame employers into taking action.

7.1.4 INDIVIDUALS

Three conditions can be considered important for individuals to be able to enforce their employment rights. First they need to be aware of their rights, second they need access to mechanisms of enforcement and third they need protection against victimisation for enforcement activities. All of these conditions pose barriers to enforcement in practice. The most vulnerable workers are often not aware of their rights or expect to be denied their rights or do not bother to claim. Access to enforcement mechanisms depends, in the first place, on the provisions made by the state and in the second place on support from trade unions or NGOs (for example workers' centres in the US (Milkman 2006, 2013)). Even when these two conditions are in place there are many reasonable fears of victimisation, especially for migrants or workers on precarious contracts. Whistleblowing laws are important and workers need to be able to trust inspectors not to reveal who made complaints (Lipman 2011). Lawyers may provide assistance on a 'no win, no fee' basis but this is more likely when group claims can be made. Furthermore, in the case of the UK local authorities, the influence of 'no win no fee' lawyers was mixed, leading to gains for some women workers in the form of extensive back pay but also to reduced willingness among employers to discuss and bargain over equal pay issues (see Box 6.1).

7.2 MONITORING

Monitoring progress in closing the gender pay gap is highly dependent on the availability of good quality data. Even in developed countries there is a marked lack of information. A recent survey of trade union federations and confederations in the EU by ETUC found that only just over half had access to gender disaggregated pay data and that this was particularly limited at sector level compared to aggregate, national or disaggregated company level. The same survey stressed the availability of good quality data at all levels in Norway, Finland, Denmark and Iceland as a consequence of including data requirements in collective agreements. Box 7.3 reports on the benefits of recent developments in company level data in Austria from a trade union perspective.

A major problem outside of the EU and other developed countries is that gender disaggregated data on earnings is even less available and when collected, for example by the ILO, tends to be based solely on average monthly earnings. As there may be differences in working times by gender it is not therefore possible to establish if the gender gaps are due to different earnings for the same job or differences in hours worked, for example.

The usefulness of gender pay audits at the company level will also crucially depend on the data provided. For example, the EHRC in the UK provides a good practice guide⁷³ for undertaking gender pay audits and suggests that to identify the cause of gender pay gaps companies would need information on gender differences in starting pay, pay protection, pay progression, performance related pay, market factors, fringe benefits and working time payments. However, it is unlikely that many companies are exploring the issues in this degree of detail. What is unhelpful is for gaps to be reported without information on either the average level of pay or the distribution of employees

⁷³ <http://www.equalityhumanrights.com/private-and-public-sector-guidance/employing-people/managing-workers/equal-pay/equal-pay-audit-toolkit/carrying-out-equal-pay-audit>.

Box 7.3. Importance of pay data disclosure requirements for equality action by works councils in Austria

In the 2014 *Bargaining for Equality Survey* by the ETUC, the Austrian manufacturing union PRO-GE "reported on the value of the legislation in Austria, which has enabled the union to collect pay data, provided by works council members involved in income reports. Pay data from these surveys is gathered in branch-specific statistical overviews and used as basic data for collective bargaining in the different branches and subsectors. The income reports are now drafted in compliance with the new amendment to income transparency and have shown that company level pay inequalities are often caused by discriminatory job classification. The union argues that the income reports have become a valuable tool for works council members to demand and achieve equal job classification for female workers in individual companies." (ETUC 2014:23)

by grade and gender. For example, under austerity policies the public sector in Europe has been experiencing pay decreases which will be mainly affecting women but the gender pay gap within the public sector may at the same time have reduced or remained stable. The important issue for gender equality is then the changing relativities between the public and the private sector, not if the pain is equally shared between men and women within the sector.

The setting of gender equality targets or even quotas tends to have indirect impacts on the collection and availability of data which may be as important as establishing the target or quota. Another example is in countries with living wage campaigns there has been increased information on those paid below the living wage target. As targets for gender pay equality are necessarily multi-dimensional, covering a range of occupational groups, a simple target is difficult to devise and may also need to be country specific (for example raising the pay of domestic workers relative to the median wage or reducing the full-time/part-time wage gap).

Monitoring of gender pay gaps is easier the more there is a culture of transparency over wage structures and even individual pay levels. Transparency may involve published wage structures and information on the principles and practice of supplements and increments within that grading structure. Distribution of staff across the wage structure by gender can also enhance transparency. Finally, the end to penalties for staff who discuss their pay could activate more informal and group-based monitoring of pay decisions by management, and indirectly, thereby, require managers to think more carefully about the reasons for differentiated pay decisions.

7.3. SUMMARY

Policy mechanisms to promote equal pay without strong enforcement and means to monitor progress are unlikely to be successful. The state needs to provide both resources for inspection (with appropriate penalties) and facilitate access of trade unions and individuals to pursue cases of infringement.

Trade unions can and have been active in promoting gender pay equity issues but only in some countries and often where collective bargaining is relatively weak. This may be because issues such as equal pay could provide an opportunity for trade union renewal, as may also apply to campaigns to organise new groups such as domestic workers. Likewise, the main roles for NGOs in enforcement are in filling in gaps in awareness of rights, publicising abuse and mobilising new groups of workers to organise. The principles of equal pay for same work and for work of equal value could prove easier to enforce if they applied to all workers and jobs within an employing organisation, not just to male

and female comparators. However, the gains in widening support and simplifying the principle must be set beside the risk that less attention might be paid to the undervaluation of specifically women's work.

Individual enforcement is always likely to be a more risky option for workers compared to actions taken by the state or workers' representatives to change wage practices. Nevertheless, the state needs to provide support for complainants and the trade unions and NGOs need to offer advice services for individuals who are discriminated against.

Enforcement of rights to equal pay is more likely if there is high quality data on the size and the potential causes of the gender pay gaps, reinforced by a culture of transparency with respect to pay. Without that, trade unions are unable to bargain effectively and individuals are left in the dark with their suspicions over whether their rights are being enforced or not.

8

CONCLUSIONS AND POLICY IMPLICATIONS

This report has been concerned with the need to develop and promote an institutional environment conducive to gender pay equity. The focus is on institutional arrangements and policies rather than on the behaviour and trajectories of individual women as a much needed counterbalance to the emphasis in the literature on individual preferences, behaviour and productivity characteristics. In developing countries the impact of the institutional environment is clear; the core problem for women is their confinement to the informal sector. Problems of the institutional environment also apply in developed countries (see Rubery and Grimshaw 2015) and it is this changing environment that has made closing the gender pay gap a case of constantly moving goal posts. As the gender education and experience gaps narrow or even reverse, the impact of these two factors originally assumed to account for most of the gender pay gap have been reduced as other factors have intervened to change wage structures. These factors include for example the decline in collective and institutionalised wage setting, the growth of outsourcing and NSFE and widening wage inequalities among the higher educated as well as between the higher educated and the less well educated.

The starting point for the report was therefore the need to consider how to develop a supportive environment for gender pay equity. Three factors were considered important: First the environment should not be characterised by general widening of wage inequalities which might both slow progress in closing the aggregate gender pay gap and increase wage inequalities among women. Second, there should be some general support for the principle of gender equality which may be achieved by aligning gender pay equality issues with other progressive equality agendas to widen support and extend synergies. Third, the environment needs to be transparent; otherwise, progress is not only difficult to measure and monitor but the causes of inequality remain hidden and obscure.

The central argument, supported by the review of available evidence, is that the socially-progressive goals of gender equity and inclusive labour markets should be pursued as joint goals. This means mainstreaming gender equity concerns into inclusive labour market policies and also mainstreaming inclusivity goals into gender equity policies. The consequence of this approach is also to build in ‘intersectional sensibility’ to policy considerations, which is to take into account the implications by gender and social class and where appropriate other dimensions of inequality. The increasing attention paid to inequalities ‘within gender’ highlights the possibility of women’s average position improving while inequality among women may be increasing.

This joint gender and social equity approach to labour market regulation is only likely to be successful if there are complementarities across the policy domains, in particular with respect to social policy and social protection. As Pearson argued (2014), an active social state may be a precondition for gender equality, providing support to the main carer in their work activities and reducing the wage

and social protection penalties of being a carer, while also establishing conditions that facilitate and normalise the sharing of care activities between men and women.

Nevertheless, the core focus of this report is on wage setting institutions and the various mechanisms and policies that can influence both inclusive and gender equitable labour markets. The three main types of mechanisms – legal, collective and voluntary – are identified as potentially and ideally complementary rather than competitive. Interest in gender pay equity has followed rather than preceded legal rights to equal pay in most countries, and has been a catalyst for and symbolic influence on non-statutory moves to promote equal pay.

There are a few countries in Europe with a strong tradition of autonomous collective regulation (primarily the Scandinavian countries, Austria and until recently Germany) where the benefits of a juridical approach to wage standards are disputed. However, this applies only to this minority of countries with long established collective bargaining institutions. Where collective regulation is not comprehensive, the need for policy action to be underpinned by legal rights is clear. Even when practices have their origin in the actions stemming from collective regulation or employer voluntary action, these practices have more general effect if they are embedded in legal regulation, thereby giving more universal access. This may include specific complementary legal rights or legal extensions or generalisations of collective agreements (Schulten et al. 2015). For example, apparently successful voluntary actions, such as campaigns for living wages, have more limited effect than general increases in a national minimum wage (Luce 2014), and they are more effective, even at a local level, if embedded in regulations regarding local wage standards and procurement processes. Legal regulation that establishes a principle of fair treatment for example for different groups or between standard and NSFE provides a framework or a catalyst for widening the agenda for collective bargaining.

However, legal regulation on its own is hardly ever sufficient and legal principles can be more effectively enforced when implemented through and monitored by collective bargaining. This has certainly been found to be the case with respect to minimum wage policies; these have a more beneficial equity effect when combined with and embedded in collective regulation (Grimshaw 2013; Schäfer and Gottschall 2015). Furthermore countries with high levels of collective bargaining coverage are more likely to have more inclusive labour markets, measured by a range of dimensions and not simply by, for example, a national legal minimum wage. However high collective bargaining coverage and strong sector level bargaining is not sufficient to guarantee wage setting institution that are conducive to gender equity. Recent research (Schäfer and Gottschall 2015) finds the influence of the male breadwinner family wage on wage structures in Germany a factor which reduces the positive influence from collective bargaining on gender pay outcomes. Likewise, new initiatives apparently designed to close gender pay gaps in Finland are limited by a failure to agree among social partners to undertake wage comparison across collective agreements and pay grades. Furthermore, the state may intervene in the case of public sector workers to impose wage freezes or cuts to meet public sector deficit requirements without reference to the negative gender pay ratio effects. Even when collective bargaining is established in the public sector, trade unions may not be able to override these macroeconomic considerations. It is also the case that traditional forms of collective organisation may not be best placed to promote the interests of disadvantaged or excluded groups, whether these be marginalised women workers, migrants or domestic workers. Notions of social dialogue may need expanding to include new groups that are engaged in these sectors.

Despite the complementarities between the different mechanisms, the limitations of both existing legal regulations and the decreasing influence of collective regulation, suggest that there is also a need for new initiatives and new thinking which could provide the basis for a renewed push for gender pay equity. One example of an important recent new initiative that has operated at different levels and involved different mechanisms concerns domestic workers, a very significant group of

marginalised female workers. There have been positive interactions between the new ILO Convention on domestic workers, national legislation and policies to provide domestic workers with stronger employment rights and social protection and the development and mobilization of domestic workers, in some cases resulting in collective bargaining agreements for this sector.

In a similar vein, existing initiatives in some countries towards a duty to promote equality could be generalised through action by the ILO and other relevant bodies to promote a more holistic and transformative approach to gender equality. Other possible initiatives include stronger employment rights across supply chains with clients expected to take on more responsibility for labour standards, stronger initiatives to press for minimum wages set at levels compatible with the notion of decent work, or the promotion of a general principle of equal pay for work of equal value within organisations, provided that this does not detract from but builds on prior initiatives to address the undervaluation of women's work. Each of these possible initiatives to provide a momentum for change is discussed in the following conclusions summarising the outcomes and associated policy implications from the topics reviewed in the different chapters to this report.

8.1. KEY POLICY CONCLUSIONS AND POLICY IMPLICATIONS BY THEME

8.1.1 LEGAL MECHANISMS: KEY CONCLUSIONS

Reflecting the complex nature of the problem of gender equality, the sources of gender equality law have developed to be significantly diverse and multi-layered. However, there are still significant shortcomings with respect to the scope, operation and effectiveness of international and national legal mechanisms designed to address directly and indirectly the issue of the gender pay gap. These shortcomings affect all three areas of labour markets identified in chapter 1: inclusiveness, gender equality and transparency. In respect of inclusiveness, a number of legal systems still exclude a large number of individuals from protective legislation that has been shown to protect women's incomes and close gender pay gaps. Minimum wage policies also fail in most cases to include mechanisms for uprating the level of wages so as to keep up with prices. Legislation should not only aim at establishing a basic minimum floor of wages and extending the coverage but should also be informed by an ambition of ensuring that the wage is sufficient to provide a 'decent' standard of living (although care must be taken to prevent any revitalisation of the notion of male family wages).

In respect of gender equality *per se*, we have highlighted the limits of a conventional approach to gender equality that is centred on a negative prohibition of discrimination rather than a positive duty to promote equality. Against this context, treating closing the gender pay gap as a human rights priority would be a significant step towards ensuring progress in gender equality. In this respect, it would be necessary to adopt and support positive equality duties at international (by the ILO and regional organisations, e.g. the EU) and lower national levels. These would build on and strengthen the equal pay principles recognised in many legal systems. In mobilising all general policies and measures specifically for achieving equality by actively and openly taking into account at the planning stage their effects on women and men, a 'transformative' (Hepple 2014) form of equality would be promoted.

In respect of transparent labour markets, limitations on dissemination of information regarding pay at organisational level are affecting not only enforcement and compliance but also fail to address the imbalance of power between the employer and the employees (Estlund 2014). In order to develop more transparent labour markets, legal systems need to move to enact additional innovative laws on transparency, including promoting women's rights to request detailed information on pay, employers' duties concerning regular reporting on pay policies and practices, and conducting pay audits with the participation of stakeholder groups that involve directly affected individuals.

8.1.2. SOCIAL DIALOGUE/COLLECTIVE BARGAINING: KEY CONCLUSIONS

Collective regulation may promote gender pay equity by reducing overall wage inequality and contributing to the transparency of wage structures. However, it may also perpetuate gender pay differences and the undervaluation of women's work, embedded in traditional differentials between sectors and occupations.

Overall, collective bargaining is complementary to legal regulation for inclusive labour markets, reinforcing the equity effects of legal minimum wages and reducing compression of women's wages towards the minimum wage. Current policies in the EU to limit the extension of collective agreements are likely to be particularly harmful to gender equity. The current trend in Europe towards company level decentralisation of bargaining should be reversed: measures for promoting an alternative approach to European 'solidaristic' wage policy (Deakin and Koukiadaki 2013; Schulten and Müller 2014), which is based on strong collective bargaining institutions and equitable wage developments, should be promoted by EU institutions, EU Member States and social partners. As Marginson (2015) has argued, rather than undermining the coordination capacity of multi-employer bargaining arrangements in parts of southern Europe, European and national authorities need to recognise the macroeconomic benefits associated with effectively coordinated bargaining, including in the area of gender equality, and adopt measures that promote the development of such capacity at cross-border level. Further, collective bargaining is weak across supply chains, both international and national, which is an increasing problem if outsourcing is used to evade collective and legal regulations. There is evidence of some reform and renewal of collective regulation to take up issues of gender pay equity but social dialogue may need to be expanded to include new social movements that may have greater success in organising the more marginalised workers.

Specific bargaining for gender equality is largely confined to issues related to care commitments with only limited efforts to tackle pay issues, such as the embedded undervaluation of women's work within collective agreements or the gender effects of performance related pay systems. Gender issues have not been widely mainstreamed into collective bargaining agendas. The recent spread of initiatives to require mainly large companies to undertake gender pay audits are unlikely to be effective unless these are scrutinised by trade unions or works councils to ensure that the causes behind differential gender pay outcomes are identified and remedial action taken.

8.1.3. VOLUNTARY ACTIONS: KEY CONCLUSIONS

Voluntary actions can and do play a positive role in promoting gender pay equity and inclusive labour markets. They are most useful in filling in gaps in the regulatory framework, in promoting the normalisation of non-discrimination by gender and in raising awareness and promoting organisation of unorganised workers. They are no substitute in the longer term for legal or collective bargaining measures as even positive developments may wither if not under scrutiny by trade unions or other worker groups and /or not mandated by law. When undertaken by companies, they are also likely to result in partial measures that are uneven in their impact among organisations and groups of women.

8.1.4. SOCIAL POLICY: KEY CONCLUSIONS

Social policy is not an optional add-on to labour market policies to close the gender pay gap. It is a vital lever to promote more participation in care by men. Furthermore, without state support for social reproduction the danger is that the higher educated, high social class women will rely on the low wages and subordination of more disadvantaged women for care support. The level and

form of social policy support for women not only influences participation and employment and pay outcomes but also intersects with class divisions among women. The inclusiveness of social policy has important impacts on women's overall lifetime income and on the segmentation of the labour market but a high social wage, providing access to services and/or a basic income, may also be at risk of cutbacks under austerity policies or changes in governments so that it is not a substitute for labour market action to close the gender pay gap.

8.1.5. POLICY MIX: KEY CONCLUSIONS

Four main issues for developing the policy mix to support gender equality were identified. First, action in the labour market sphere needs to be complemented by support – both in the form of services and social protection – for social reproduction and those taking care of social reproduction. Second, no system has beneficial impacts for all women and to determine priorities in policies it is necessary to combine gender equity with the overall objective of more inclusive labour markets and to consider intersectional effects of policies within each gender, not only changes in aggregate or average indices. Third, action should be targeted on remedying the particular form of gender pay inequality that dominates in a particular institutional environment. Changes to the policy mix, therefore, need to be targeted to fit the country context and determine at which end of the wage distribution action is most needed. That said, in the majority of countries the largest benefits for gender equality and social equity will come from actions either to raise the wages for those at the bottom of the ranking or to reduce exclusions from formal employment. Fourth, achievement of gender pay equity is not a fixed but a constantly moving target and consequently even the current level of gender pay equity is at risk. So long as gender differences remain in employment patterns and in reward practices, then changes to economic and social structures or in managerial practices may still reverse improvements in aggregate gender pay gaps.

8.1.6. ENFORCEMENT: KEY CONCLUSIONS

Policy mechanisms to promote equal pay without strong enforcement and means to monitor progress are unlikely to be successful. These are often lacking and the State needs to provide both resources for inspection (with appropriate penalties) and facilitate access of trade unions and individuals to pursue cases of infringement. Trade unions may be more active in enforcement of gender pay equity where they are relatively weak as campaigning on issues such as equal pay may provide an opportunity for trade union renewal. NGOs are also important in filling in gaps in awareness of rights, publicising abuse and mobilising new groups of workers to organise. Awareness, understanding and enforcement of the principles of equal pay for same work and for work of equal value could be increased if applied to all workers and jobs within an employing organisation, not just to male and female comparators. However there is a risk that less attention might be paid to the undervaluation of specifically women's work. Individual enforcement is always a more risky option for workers than enforcement via the State or workers' representatives and this should require the State to provide protection for individual complainants against discrimination. High quality data on gender pay gaps, reinforced by a culture of transparency with respect to pay are a precondition for effective enforcement and monitoring.

8.1.7. KEY POLICY IMPLICATIONS

On the basis of these conclusions and the arguments developed in each chapter, the key policy requirements to promote both inclusive and gender equal labour markets are presented in table 15,

divided into legal, collective and voluntary measures. The table also summarises policy measures to promote transparency and monitoring, effective social policy support, complementary and targeted policy mix and enforcement, all important mediators or support structures in moves towards more inclusive and gender equitable labour markets.

8.2. THE WAY FORWARD

The key message from this report is that gender pay equity needs to be pursued through a policy package that promotes inclusive and transparent labour market alongside specific measures to address gender pay equity. Initiatives to improve the pay of women within specific companies may have limited effects, even for the groups concerned, if companies are able to outsource work to lower paying firms or if gender equity is achieved within the workplace through downgrading of pay for men as collective regulation is weakened or abolished. Recent successes in promoting rights for domestic workers involving the ILO, national and local actors provide a core example of this recommended approach.

Strengthening and extending employment standards, through higher minimum wages, more equal rights for workers in NSFE and more extensive and inclusive collective bargaining need to be combined with effective and new gender specific measures to address the undervaluation of women’s work, not limited to measures which focus on within company comparisons with men, and to build on the essential individual legal rights to equal treatment by extending duties on employers actively to promote gender equality. To bring these two elements together and widen support and understanding of gender pay equity policies, consideration should be given to generalising a right to fair pay and equal pay for work of equal value within an employing organisation to increase awareness and understanding, though this should not be allowed to detract from efforts to remedy the undervaluation of women’s work.

Table 15. Closing the gender pay gap: key policy implications

Inclusive labour markets	Mediators	Gender pay equality
<p>Legal</p> <ul style="list-style-type: none"> include incorporating notions of ‘fair’ and ‘decent’ wages in minimum wage setting at international and national (including state) levels include employment rights within social procurement, and extending employer responsibilities to clients extend employment rights to NSFE workers provide legal support for multi-level collective bargaining and extension of collective agreements 	<p>Transparency and monitoring</p> <ul style="list-style-type: none"> promote a culture of transparency with respect to pay and protect employees who share their own salary information from employer retaliation collect and disseminate national and sectoral gender disaggregated statistics enable detailed, disaggregated information from pay audits to be scrutinised by trade unions monitor progress through the collection, analysis and dissemination of high quality data on gender pay gaps 	<p>Legal</p> <ul style="list-style-type: none"> develop transformative (positive) equality duties enforce equal pay for work of equal value and extend the principle to all workers remove the need for a male comparator in undervaluation cases and reduce the scope for justification of unequal pay reassess job evaluation schemes and extend methods of comparison (proxy comparison, principle of proportionality) reinforce gender impact assessments including austerity policies on public sector workers

Inclusive labour markets	Mediators	Gender pay equality
<p>Collective</p> <ul style="list-style-type: none"> ■ promote ‘solidaristic’ wage policy based on strong collective bargaining institutions, extension mechanisms, decent minimum wage levels and equitable wage developments ■ regulate working time to be compatible with family life for men and women ■ extend collective bargaining across the supply chain ■ organise marginalised workers and extend social dialogue to include new social movements 	<p>Social policy/ policy mix</p> <ul style="list-style-type: none"> ■ provide statutory social support for working parents to reduce risks of discrimination ■ take action at international level (e.g. ILO) on paternity, parental and adoption leave ■ develop citizen’s pensions (or give pension credits for childcare) ■ extend access to social protection/ health to NSFE ■ target the particular form of gender pay inequality in the specific country ■ treat gender pay equity as a constantly moving target 	<p>Collective</p> <ul style="list-style-type: none"> ■ mainstream gender issues/ undervaluation into collective bargaining agendas ■ engage trade unions/ works councils in gender pay audits to ensure remedial action ■ take action to remedy the undervaluation of women’s work followed by extension of principle of equal pay for work of equal value for all workers ■ actively involve trade unions/ workers in implementing gender equality duties in public sector organisations or more widely
<p>Voluntary</p> <ul style="list-style-type: none"> ■ support voluntary campaigns such as living wages but move to embed in legal rights or collective action to sustain effects ■ form broader coalitions between women’s pressure groups, NGOs and trade unions to mobilise marginalised groups 	<p>Enforcement and monitoring</p> <ul style="list-style-type: none"> ■ allow class actions to increase legal impact, reinforce inspection and penalties ■ facilitate individual/trade union pursuit of infringement cases ■ take action to increase awareness and understanding, including through a general right to equal pay for work of equal value ■ protect individual complainants against discrimination and provide technical support. 	<p>Voluntary</p> <ul style="list-style-type: none"> ■ only promote company prizes for good gender pay policies that are evidence-based and ratified by the workforce.

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