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ORIGINAL ARTICLE

Pay equity through collective bargaining: when voluntary state feminism meets selective business practice

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Abstract
The article traces the story of equal pay policy formation from the early 1980s to the present, from agenda-setting to policy adoption through to implementation, evaluation and outcomes. Until 2010, equal pay policy was implemented through collective bargaining at company and sector levels within a legal framework that failed to establish penalties for non-compliance. Persistent mobilization of feminist actors inside and outside of government contributed to breaking with this symbolic policy. A financial penalty for non-compliant companies was established. The article shows that the strengthening of the existing framework was not sufficient to counter the reluctance of companies to make a solid commitment to closing the gender pay gap, and the outcome appears to be a clear case of "gender accommodation" in GEPP terms. However, recent feminist mobilization around more effective implementation on equal pay suggests that the struggle for more authoritative equal pay policies in the firm is still on the policy agenda.

Keywords Gender equality · Equal pay · Gender policy · Equal employment · Feminism · Collective bargaining

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Introduction

Equal employment issues have been at the heart of women's rights policy in France (Revillard 2016). Since the symbolic Loi Roudy on égalité professionnelle was adopted in 1983, equal employment policies targeted all aspects of work life—recruitment, training, qualification, promotion, and pay—yet with mixed results.[1] Although the principle of equal pay was put into law in 1972, the pursuit of equal pay for equal work was merged with the more general approach of the 1983 law and hence subject to the same limits of that policy (Laufer 2003). In the 1980s and 1990s, governments of the right and the left pursued "negotiated public action" (Groux 2005) which allowed for the implementation of professional equality through collective bargaining at company and sector levels within a legal framework that failed to establish penalties for non-compliance.

As in other European countries, the trend toward narrowing the pay gap between men and women since the late 1960s came to a halt in the early 1990s.[2] Since then, the gender pay gap has remained relatively stable, even though women caught-up to men in education and increased their share of the labor force (Meurs and Ponthieux 2006). In this context of persisting disparities and with EU pressure for more authoritative equal employment policy (Mazur and Zwingel 2003), the issue of pay inequalities received renewed attention on the French political scene in the beginning of the twenty-first century with adoption of an Equal Pay Law in 2006. However, the law was limited by the same symbolic imperative and it was not until the adoption of new policies in 2010 and 2012 that the weaknesses of equal pay policy were addressed. The rest of this article traces in more detail the story of equal pay policy formation from the early 1980s to the present with the GEPP framework, from agenda-setting to policy adoption through to implementation, evaluation and outcomes (Engeli and Mazur 2018). As the analysis shows, 2010 marked a potential break with the symbolic policy imperative; persistent mobilization of feminist actors inside and outside of government contributed to not only getting more concrete policies adopted, but also to meaningful evaluation of those policies with an eye toward more effective policies.

[1] Studies of the Roudy law and other equal employment policies have identified the highly «symbolic» imperative of these reforms. That is, that governments of the right and the left have adopted a series of laws and policies implemented through collective bargaining and labor relations at the firm level with no teeth; as a result, few actors actually mobilize around them and sex-based inequalities continue (e.g., Mazur 1995; Laufer 2018).

[2] The (unadjusted) gender gap in hourly wages estimated by Eurostat in the early 2000s placed France slightly below the European average, due in particular to the overrepresentation of women workers in industries and occupations that offer low rewards for comparable levels of qualification and their more frequent employment on temporary contracts (Boll et al 2017). Analyses of average overall income (annual or monthly) also highlighted the incidence of part-time work, which, although less pronounced in France than in other European countries (e.g., Germany and Austria), remained a major factor in wage inequality between women and men (Ponthieux and Meurs 2004).

The genesis of state-managed bargaining on equal pay: from a symbolic commitment (1983–2006) to …

The Roudy law was based on the conviction that encouraging collective bargaining around égalité professionnelle at both the sectoral and company level would lead to equality in the workplace. It remained largely "symbolic," since its adoption into the 1990s; few equality action plans were produced due to a context of economic crisis, the weak mobilization of trade unions, the indifference of employers and the absence of monitoring procedures. Indeed, at the time of the adoption of the loi Roudy, the Ministry of Labor and its inspectors were successful in their vocal opposition to the creation of any independent body to monitor employers or to advise women in sex discrimination cases on the basis that it would weaken the Labor Code (Mazur 1995; Laufer 2003). In the face of these disappointing results, the 2001 Génisson law was adopted to reinforce policy by making collective bargaining mandatory for firms with 50 or more employees, which was also the same threshold for the firm-level representative labor councils. In these first two major equal employment laws (1983 and 2001), a systemic and structural approach to égalité professionnelle was put forward, where gender pay gaps were considered to be a product of women's poor access to training and promotion, women's family obligations as mothers and the absence of women in decision-making positions in collective bargaining.

In 2005–2006, the European Union placed more pressure on member states to take concrete measures to address the gender wage gap; first the 2005 *Framework of Action on Gender Equality*, signed by EU social partners and then a 2006 directive made "tackling the gender pay gap" one of four main priorities.[3] The EU policies called members states to develop a variety of instruments that would address the underlying causes of gender pay differences; provide information and guidance about existing legislation on equal pay; and ensure that pay systems and job evaluation schemes were transparent and gender-neutral (Smith 2012). This EU coordinated employment strategy actually set the target of closing the pay gap by 2010 in the context of the neoliberal argument that gender equality is good for market performance (Jacquot 2014).

This request for more "coercive" and authoritative legislative measures, including significant sanctions, was echoed in France by the state feminist network, which included women's policy agencies in the executive branch, women elected officials and the parliamentary delegation on women rights (Revillard 2016). It had been Women MPs in the delegations for women's rights in the Senate and the National Assembly who had warned in several evaluation reports that the 2001 law was poorly implemented with few companies actually doing any annual equality monitoring—Rapport de Situation Comparée (RSC)[4]—or initiating equality negotiations

[3] Directive 2006/54/EC of the European Parliament and of the Council of July 5, 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

[4] This report is a detailed gender audit with specific gendered breakdowns of workforce composition by occupation, type of contract, working time arrangements, family-related and other types of leave, access to training, working conditions, pay scales and bonuses and average time between promotions.

in the firm. Moreover, the Labor Administration in monitoring labor agreements more generally was quite lenient with employers: validating illegal wage agreements or extending sectoral collective agreements not in compliance with wage equality. Rather than not approving non-compliant agreements, they would approve them with "reservations" (DGT 2010).[5] In 2009, only 9.5% of agreements (110 out of the 1161 negotiated this year) included equality objectives (DGT 2010) and in most of these there was a brief mention of the 1983 law and vague reference for future firm negotiations to define operational measures to reduce pay gaps.

Bowing to EU pressure more than anything else, right-wing President Nicolas Sarkozy asked his government in January 2005 to present a draft law on equal pay with a stipulation to achieve results in 5 years. It was a watered down version of the 2006 European directive, missing three key elements: implementing the principle of equal pay for work of equal value; incorporating a clear definition of sexual harassment; and extending the law to the public sector (State civil service, hospitals and local government). Trade unions, like employers, did not want the additional negotiation on equal pay either and defended the systemic and structural approach of the 2001 Genisson Law. In addition, the unions had negotiated a National Intersectoral Agreement on professional equality in March 2004, considered that had included two new priority areas for action: labor market gender segregation and work–life balance and family; however, this was in a traditional protectionist logic that also fit the neoliberal EU discourse on equality opportunities for women (Alwood and Wadia 2009). The National Assembly's delegation for women's rights had also defended the maintenance of the "dual system" (equal pay and equal employment), in the name of a systemic analysis of the causes of gender pay gaps:

> Far from being weakened in its content, the specific negotiation on professional equality remains more necessary than ever. Indeed, to be effective, measures to reduce wage gaps will have to be accompanied by indirect and simultaneous measures addressing all the other factors contributing to wage gaps, such as working time, job de-segregation, access to vocational training, and the reconciliation of work and family life.[6]

At the same time, the labor administration had defended the 2006 law, in a "*gender mainstreaming*" perspective (integrating equality into annual wage agreements, the most frequent negotiation), but also pragmatically, in a monitoring perspective, because employers were obliged to submit the Minutes of pay negotiations to the administration[7] (unlike professional equality agreements). However, this possibility of control was poorly implemented until 2012, partly because of the low number of labor inspectors, but above all because it was not a political priority for the labor

[5] A reservation formally states that an agreement was made without any consideration of firm-level reports of women's and men's status and failed to make any mention of gender equality issues.

[6] Délégation aux droits des Femmes, Rapport d'information no. 2243 sur le projet de loi égalité salariale de 2006, Assemblée nationale, 12 avril 2005.

[7] Wage agreements may only be accepted by the labor administration if they are accompanied by a report certifying that the employer has opened negotiations, seriously and fairly, on the reduction of pay gaps (Article L. 2242-7 of the Labor Code).

administration.[8] The process of monitoring when the negotiations were filed was not very effective, because almost all wage agreements even without opening equal pay negotiations were accepted. Post-agreement monitoring was considered a time-consuming activity as well and complex to carry out. Above all, both employers and trade unionist representatives were reluctant to enter into positive discrimination logic and preferred general wage increases. Moreover, trade union representatives were not always well trained or informed on equality laws and failed to grasp the notion of "indirect discrimination" justifying women-only measures.[9] The mid-term evaluation report of 2006 law written by Brigitte Grésy, then inspector at the Ministry of Social Affairs, who later took over the chairmanship of the CSEP (Conseil Supérieur de l'Egalité Professionnelle), was emphatic about the short falls of the Policy: "Negotiators negotiate little, except in large companies. Controllers have little control. Judges judge little" (Grésy 2009, p. 88). A study carried out for the Delegation for Women's Rights of the Ministry of Social Affairs (Rabier 2009) had also shown that more than half of the companies did not carry out their RSC and that only a minority of agreements (specific or generalist) recognized wage gaps and included budgeted measures to remedy them.

… to the adoption of more concrete incentives (2010–2012)

At the same time, by 2010 trade unions had been calling for sanctions for non-compliance and for more monitoring by the labor administration for several years. In theory, they could have brought a judicial action for obstruction of equality bargaining, but neither trade unions nor labor inspectors wanted to use the ultimate weapon of criminal justice, the penalties provided for being either too strict (imprisonment of the company director) or too lenient (a fine of 3750 euros). At the same time, the outcome of an official meeting between the labor minister, labor and employers' organizations, a part of the mid-term review of the 2006 law, fail to call for stricter monitoring, financial penalties for non-compliance or incentives for companies which did take equal pay initiatives. While Xavier Darcos, the Labor Minister, publicly expressed intent of sanction for companies that did not submit their annual equality monitoring report (RSC), no decree followed this oral commitment (Grésy 2009). The employers' organizations (particularly the MEDEF—Mouvement des entreprises de France) vocally opposed any increased authority and sanctions, complaining the growth of the "administrative burden" on French companies, particularly since additional mandatory company negotiations on working time, seniors and disability (Mias et al. 2016). In May 2009, in the context of the adoption of a new law on administrative procedures for citizens and administration, employers had

[8] The example of a monitoring campaign in March 2008 on professional and wage equality by the labor inspectorate of 1000 companies is very emblematic: at the end, only 415 inspections were carried out in 14 months (41%) with strong regional variations (Grésy 2009).

[9] Which since 2006 had allowed labor inspectors to ask that after maternity leave, women receive an annual mean wage increase (including bonus) similar to their colleagues with the same level of job (socioeconomic group) in the company.

even obtained, through behind the scenes lobbying, the removal of the requirement to submit RSC to the labor inspectorate.[10]

Nicolas Sarkozy's government disregarded the reluctance of the MEDEF during the debate on pension law in 2010, because feminist associations[11] and trade unions were strongly vocal on equality issues, stressing that wage inequalities are one of the main causes of very high pension gap between women and men (around 40% in 2010). Women were also highly visible in street demonstrations and testified to the injustice of their small pensions.

In the report made by the Delegation of Women's Rights in the National Assembly on the law,[12] the injustice toward women of the symbolic polices was clearly identified as well. For example, Catherine Coutelle, Socialist MP stated

> The issue of women has finally come to the forefront, at the time of the debate on pensions. Women were numerous in the demonstrations to testify to the injustice they are victims of, an injustice that affects their retirement. On that occasion, I spoke with a woman who has worked all her life, who has contributed to seventeen pension funds, and who now receives 900 euros a month, leaving her 6.60 euros a day to live! Women feel this injustice.

Pascale Crozon, CFTC trade unionist echoed the same sentiment:

> Today, I am distributing on markets a leaflet I wrote, and a letter indicating why I did not vote for the pension bill. A woman came to tell me that she is receiving a pension of 600 or 800 euros! How can she live?

Article 99 of the 2010 Pension Act established a maximum penalty of 1% of wages paid out in companies with 50 employees or more for failure to file a professional equality agreement or, in the absence of such an agreement, to formalize an action plan that included a list of action areas, objectives and indicators to be posted for employees to see in the workplace. In return for these binding measures, the December 31st 2010 deadline for closing all equal pay negotiations was removed. During the debates on the draft pension law, the Delegation of Women's Rights in the National Assembly, taking up the arguments of the various trade unions, firmly supported the new sanctions:

> The Delegation reiterates its opposition to any form of excessive indulgence towards companies which, for nearly 30 years, have not respected the law. It

[10] Loi no. 2009-526 de simplification et de clarification du droit et d'allégement des procédures du 12 mai 2009; the report must simply be made available to the administrative authority 15 days after consultation with employee representatives.

[11] Particularly the Collectif National pour le Droit des Femmes (National Collective for Women's Rights) and Osez Le Féminisme (Dare to Be Feminist).

[12] Délégation aux droits des femmes de l'Assemblée nationale, Rapport d'information no. 3621 sur l'application des lois sur l'égalité professionnelle au sein des entreprises, July 2011, p. 88.

points out that although the legislator has indeed provided for a modulation of the penalty, it has never authorized a total exemption from it.[13]

After adoption, however, the definition of the sanction implementation tools led to a battle of texts between the Ministry of Labor and trade union representatives (who wished to avoid the possible circumvention of social dialogue through "unilateral action plans" designed only by employers) as well as state feminists. A coalition was built between the Women's Rights Department (of the Ministry of Social Affairs), the Women's Rights Delegation in the National Assembly and the five major trade unions to put pressure on the Ministry of Labor. As on the work-family reconciliation policy (Windebank 2012), there was a risk that under a right-wing government, feminist discourse was used only as a symbol or even to justify reducing public expenses and labor rights. The first version of the article 99 decree was rejected in May 2011 by all CSEP trade union representatives, with a new version published in July 2011.[14] As soon as François Hollande's socialist government was elected, the new Minister for Women's Rights, Najat Vallaud Belkacem, announced in June 2012 (only 1 month after her appointment) a new version of the Article 99 decree. At the initiative of the Delegation for Women's Rights of the National Assembly, in September 2012, on the occasion of a draft law on youth employment,[15] the obligation to file the unilateral action plan was introduced, in order to check compliance, but also for reporting purposes, since it allowed an exhaustive inventory of plans and agreements drawn up at regional and national level. In order to give priority to negotiations with the social partners in companies with more than 300 employees, in the absence of an agreement, was also introduced the obligation to submit a statement of disagreement attesting to the failure of negotiations on professional equality between women and men. Finally, a decree in 2012 specified the procedures for control by the administration and made remuneration mandatory in the areas of action imposed by the State (three or four depending on company size).[16]

Tools for collective bargaining on equal pay: a prescriptive framework that provides for company flexibility

By promoting collective bargaining as the main lever of action for equal pay, successive governments subcontracted social actors to achieve this public policy objective (Miné 2017). However, as a principle, legislators defined precisely the details of the required stipulations for all companies in the labor code; thus a mixed approach of state and self-regulation with companies allowed to choose the concrete steps to be taken with strict legal parameters for their actions. The operating principle here was

[13] Délégation aux droits des femmes de l'Assemblée nationale, Rapport d'information no. 3621 sur l'application des lois sur l'égalité professionnelle au sein des entreprises, July 2011, p. 14.

[14] Décret du 7 juillet 2011 relatif à la mise en œuvre des obligations des entreprises pour l'égalité professionnelle entre les femmes et les hommes (no. 2011-822).

[15] Loi du 26 octobre 2012 portant création des emplois d'avenir (no. 2012-1189), article 6.

[16] Hiring, training, promotion, qualification, classification, work conditions and work–family balance.

to allow for the economic and structural realities of the firm context and allow them some flexibility in achieving solid goals. For small companies (less than 50 employees), self-regulation dominated; they had to take into account the objective of equality between women and men and take action to reduce it, without constraints or incentives. In companies with more than 50 employees, the requirements increased and were combined with positive and negative incentives. First, companies were required to annually monitor and report on the gap in working conditions between women and men, particularly in terms of pay, and to develop an action plan on this basis that included equal pay. Then, the report and the action plan were to be discussed with the workers' representatives and negotiations were to be launched in order to reach a collective agreement on objectives and measures in favor of gender equality. Otherwise, the employer would have to establish a unilateral action plan that was renegotiated each year. In any case, measures to eliminate the gender pay gap were still to be discussed as part of the mandatory annual wage bargaining. With regard to incentives, companies not covered by an agreement or action plan on professional equality would face a financial penalty and not be considered for government contracts from December 2014. In addition, companies with more than 200 employees had to set up a professional equality committee to guide the company's policies in this area.

While this legal framework can be seen as being quite strict, it was actually quite voluntary in practice (Santoro 2016). Following Schneider and Ingram's (1990) classification used in the GEPP framework, this policy consisted, therefore, mostly of "capacity and learning tools." First, the mandatory annual report aimed to provide information and resources to identify gender gaps and companies had access to free guides and online applications to help them calculate and interpret relevant indicators and determine appropriate measures. Second, the mandatory action plan allowed considerable flexibility in the actions to be taken and the recourse to collective bargaining helped to build consensus. Finally, the obligation to monitor these actions was intended to encourage companies to learn from experience through formal evaluations. Thus, in actuality, companies were required to follow certain procedures to promote equal pay, and were punished for non-compliance, but not for actually no achieving any specific reduction in the wage gap between men and women in their firms.

Equal pay evaluation and implementation: a gap between policy expectations and the practices of companies

Ministries of labor and women's rights have evaluated the overall results of this gender equality policy through different channels. At the regional level, impact studies were carried out by the administrative authorities (Direccte—regional labor inspectorate) to which companies must submit their agreements and action plans. At the national level, studies were conducted by the Research Department of the Ministry of Labor and by the Higher Council for Professional Equality (CESP), an advisory body that participates in the definition and implementation of the public policy of professional equality. The labor ministry funded study by Pochic et al. (2019), to which the authors of this present article contributed, was one of the most comprehensive studies to assess how companies used the various instruments and tools of the new equal pay policy. It

used a mixed method approach based on two kinds of data. The first kind consisted in a sample of 186 collective agreements and unilateral action plans across 10 sectors that were transmitted by companies to the regional authority and were entered into an administrative database. By carrying out a textual analysis of the content of agreements and plans, it was possible to observe to what extent the legal requirements were formally respected and which measures were most frequently chosen. The second type of data collected was based on 20 company case studies, which have been used for a better understanding of the process of implementing the gender equality policy, in particular using the new procedures to develop an equal pay plan in the firm. The case study analyses also made it possible to assess the relevance of the chosen measures with regard to the particular configuration of gender inequalities within the firm.

The textual analysis showed that the requirement to address the issue of pay was met, with 95% of unilateral action plans and 91% of collective agreements examined including it, although this inclusion was made more to avoid the sanctions than to address wage gaps in the firm. For example, the diagnostic tools provided by the law for employers to identify the causes of pay gaps were not widely used. Few texts acknowledged the existence of a pay gaps in the company (19%) and even fewer provided any numerical data to show the gaps (14%). The analysis of wage gaps appeared on the whole to be rudimentary and rough compared to the indicators prescribed by the implementing decrees. Moreover, when they were acknowledged, these differences were not systematically considered problematic. Some texts thus arbitrarily set acceptability thresholds or relativized the significance of these differences by relating them to what is observed at the level of the sector or branch.

The effects of a glass ceiling or job segregation were therefore largely ignored. When pay gaps were made, they did not take into account the differentiated career dynamics between men and women within specific professional categories and failed to identify tendency of women to work more than men in the lowest paid jobs. New compensation practices based on individualization and performance were presented as a means to guarantee equity between employees even though they fueled inequalities. Wage inequalities between women and men were thus justified by the reference to evaluation criteria that are supposed to be objective and gender-neutral, either because these criteria were set outside the company or, conversely, because they were based on an individual assessment of the employee's merits.

This reluctance of companies to acknowledge, quantify and take responsibility for gender pay gaps was obviously linked to the fear of legal action for discrimination, in a context where judicial decisions in favor of pay equity were on the rise in French labor tribunals, based on the principle of unequal treatment at the individual level[17] (Chappe 2011; Silvera 2014). Failure to recognize inequalities also allowed

[17] Thanks to a new law on discriminations voted in 2001, individual employees, supported by lawyers and/or trade unions, could sue a case based on individual comparisons of salary progression with colleagues in the same company; burden on the employer to demonstrate that it did not discriminate. French trade unions have supported and won many cases around union bullying and victimization that created jurisprudence (the panel method), a dynamic comparative methodology to "prove" discrimination. This method have been

the employer to avoid collective compensatory measures. In fact, our study shows that the equal pay measures were not very ambitious and, contrary to what is legally required, their cost rarely evaluated: 15% of the texts mention a dedicated budget, of which only 3% determine the amount. Similar to more general equal employment policies in the firms, the equal pay measures focused on preventing individual cases of discrimination by line manager, without any general cost implications to the firm. The texts thus refer repeatedly to raising managers' awareness, formalizing managerial processes to ensure greater transparency in decisions taken in terms of compensation at the recruitment level and throughout the career, and using individual interviews to deal with employees' possible grievances, without any concrete outcomes.

In view of these results, there is a clear gap between the expectations of the law and the practices of companies. Case studies confirmed that companies rarely used this required process to have a critical discussion of about gender bias in the firm, which was the intent of the new policy. Interviews conducted with company's executive managers shows that the legal system for promoting gender equality in companies was seen by them more as a constraint than as a lever for action. While this legal constraint did have an incentive effect, it did not in itself raise awareness of company responsibility for existing professional inequalities between women and men, nor did it guarantee the effectiveness of social dialogue on this issue. For example, employers had no knowledge even of the meaning of indirect discrimination, even though the notion had been explicitly mentioned in the law (law of 27 May 2008) and was presented in a guide for employers published by the Human Rights Defender in 2013 to better explain the legal principle of "equal pay for equal work," including specific pay equity grids for salary. This was particularly the case in firms with less than 1000 employees. In these structures, the management recognized that the legal system allowed for raising the issue of unequal pay, but this line of inquiry remained very external to the company and did not lead to questioning organizational practices, unless the management was pushed to act by employee representatives. While the analysis of the firm-level studies of the comparative situation of women and men revealed significant disparities, particularly linked to the concentration of women in the lowest paid jobs, management representatives interviewed attributed these disparities to external causes (women's socially conditioned preferences) or technical causes (physical constraints), arguing that there was no overt discriminatory behavior toward women within the company.

In larger companies, the presence of a human resources department and a professional equality commission (mandatory for 200 employees or more) ensured greater sensitivity and understanding of this issue, as well as a wider use of the diagnostic tools provided for by law. However, in these companies, the commitment of the management to gender equality was determined by a business case approach, leading to a focus on diagnostic and action methods that could ensure a positive return on investment. From this point of view, the legal framework again appeared to be a

Footnote 17 (continued)

expanded to trials on discrimination due to gender or maternity/family status, and validated as a legal tool by the Haute Autorité de Lutte contre les Discriminations et pour l'Egalité (Halde) in 2007.

constraint, in that it imposed areas of action and a process of information and negotiation with employee representatives that do not "spontaneously" align with the requirements set by management. The margin of maneuver granted by management to negotiate the means and objectives of the company's action in favor of equality was then limited. Depending on the mobilization and bargaining power of employee representatives, it resulted either in conflictual negotiations or in the instrumentalization of the negotiation process.

On the side of employee representatives, the interviews show that their negotiating capacity was weakened by a lack of trade union unity in a context where the balance of power with employers was generally unfavorable. This lack of unity was primarily due to the lack of interest shown by some representatives in gender equality issues, when other representatives, trained in these issues, made it a priority action (see also Brochard and Letablier 2017). This lack of unity then stemmed from disagreements on the more or less offensive measures to be implemented and, in particular, on the relevance of corrective actions (salary envelope) or structural actions (revision of classifications) in favor of women. Another factor that may explain the weak effect of the negotiation on the quality of the texts produced and the few differences generally observed between the contents of negotiated agreements and those of unilateral plans, was the organization of the negotiations. Many union representatives interviewed deplored the severe restrictions on time and information imposed by management. They frequently denounced negotiations conducted in haste and with incomplete information, not leaving employee representatives with sufficient resources to participate in an adversarial debate.

The findings from our firm-level study are confirmed in more macro analyses of sex-based pay gaps and women's status in the labor force. If the general evolution of wage differences between women and men is considered, there is a slight decrease from 20.9% in 2010 to 19% in 2016.[18] It is difficult to say whether this evolution is the consequence of the new equal pay policy. Indeed, the gaps had begun to narrow at the same rate before the obligation to negotiate on women's and men's pay was affirmed. Moreover, while the figures produced by the General Directorate for Labor show an acceleration in the pace and volume of negotiations (+172% of texts recorded in the DIRECCTEs between January 2013 and February 2016), it should be pointed out that 60% of SMEs with over 50 employees do not yet have a gender equality policy, either in a negotiated agreement or in a "unilateral" plan. Moreover, very few companies with less than 50 employees[19] have developed equality plan on their own initiative, even though just over one-third of women work in these small businesses.

Finally, since feminized sectors have the lowest wages, feminized sectors should be under the microscope for improvement of women's employment and working conditions. However, the Labor Administration indicates that some highly feminized sectors (such as trade, human health and social action) are over-represented

[18] https://www.insee.fr/fr/statistiques/2407748#tableau-Donnes.

[19] In France, 40% of employees are working in companies with less than 50 employees. Source: Ministry of Labor. https://issuu.com/ministere-solidarite/docs/livret_sans_prud_hommes_v-20_paco/4.

among companies sanctioned for non-compliance. Despite the legislative impetus, many branches in which employment is predominantly female are not covered by a specific branch agreement. Finally, interviews with employers and employees' representatives of highly feminized companies revealed a tendency to consider that the issue of equality does not arise in their structures, on the grounds of the over-representation of women in their workforce. Even more than elsewhere, equality seems difficult to construct as an issue and often reduced to the question of gender diversity, giving rise to actions focused on men. At first sight, the impacts of this policy seem minimal. Nevertheless, one may wonder whether policy empowerment occurred: to what degree women were present among the actors who negotiated the agreements (paying due attention to diversity and intersectionality) and did their participation change the policy issues?

Limited descriptive and substantive empowerment of women in the firms

To be sure, women were involved in the negotiation process in most companies, as the Human Resources (HR) profession is largely feminized; they were present on the side of the employer representatives. But in all the SMEs we studied, the high turnover of HR managers, their lack of time and training hampered their authority and monitoring of the process. On the side of employee representatives, given the gendered division of labor in trade unions and women's interest in this issue, it was also often women who invested in this bargaining process. Nevertheless, negotiations remained a matter for specialists and therefore concerned a minority of people who were not representative of women's diversity. The form of negotiation did not allow the emergence of a "political subject" of women employees and the expression of their demands. Few employees took advantage of the opportunity of the bargaining process to speak out or assert their power. By giving this negotiation a strong quantitative and technical dimension, the public policy limited the dissemination to the concerned employees. Although some women's business networks could be places of awareness and expression on these issues (Blanchard et al. 2013), they mainly concerned managers and rarely addressed the issue of remuneration.

In terms of substantive representation in the process, we found that women managers and professionals were the main target of agreements and unilateral plans, especially in companies that were growing or employed qualified staff. There were no measures focusing on low wages, atypical or night working hours or part-time work. French women at the bottom of the scale have little involvement in trade unions and associative organizations that would enable them to make specific demands, especially since their working and employment conditions leave them little time to campaign. The absence of organized spokespersons representing female low-qualified workers is a central dimension of the "opportunity structure" for understanding why their specific interests and concerns were reduced in unilateral plans and negotiated agreements (Milner and Gregory 2014). The case of POWER, a company with more than 5000 employees (45% of women) in the energy sector, shows how representation issues in trade unions can shape equality policy in favor of one category of women

rather than another. In this company, the agreement signed in 2015 was less favorable to employees and supervisors, predominantly female categories, concentrated in commercial and administrative services, which were not a strategic target for management. The presentation of the wage gap into three main socio-professional categories (workers-employees/supervisors/managers)—a method nevertheless recommended by the Labor Code—tended to strengthen the social hierarchy. This method of calculation concealed the problems of the "dirty floor," to use Berrey's (2015) expression: women, who were in the majority among workers and supervisors, had much lower wages and bonuses, while bonuses for senior managers had risen sharply. As the main measure to "achieve equal pay," the agreement announced that each year managers responsible for the annual evaluation of employees would be informed that remuneration should respect the formal principle of equality, i.e., "be based solely on professionalism, performance and skills." This wording reflected how much this equal pay policy could be drafted, even with a female HRD, without questioning the gender biases embedded in the evaluation tools. As a result, two of the unions in this company (CGT and CFDT) that tried to represent and organize non-management women were much more critical of this agreement than were the reformist unions established (or aiming to develop) among P&MS, such as CFE-CGC and FO.

When considering diversity and intersectionality, the representativeness of women's interests is therefore not ensured in terms of social classes. Our study found almost no references to disability, ethnicity or age discrimination in agreements or HR policies, even in large firms covered by a "diversity label."

Gender accommodation in employment practices and equality polices in the firm

In general, the definition by the law of the areas for negotiation—recruitment, remuneration, promotion, work/life balance—led to an individualized analysis of gender inequalities, and hence to actions that were unlikely to radically change the organizational practices of companies. Thus, gender pay disparities were predominantly associated in our study with skills and recruitment rather than career progression, pay structures, or the work-family interface. As the control of compliance is on formal procedures, negotiators respected the separation between domains of bargaining and did not develop a global approach of the problem. Moreover, among the measures relating to remuneration, corrective actions (costings for remedial salary adjustments) were preferred to more structural actions that would address the causes of these inequalities (job evaluation and measurement of equal value, in-service training to obtain a qualification). The case of ASSURANCE is a good example of the difficulty that companies, even those most involved in promoting equality, have to tackle the causes of inequality. This company in the banking and insurance sector, with more than 5000 employees (54% women and 51% female managers), has dedicated €1.8 million to correcting pay gaps for the period. The 2014 agreement was signed by the CFDT trade union delegate but not by the FO trade union delegate who, while acknowledging

the importance of the financial effort made by the firm, underlined the absence of structural action to eradicate the causes of inequality:

> The agreement aims to reduce, not eradicate! Structurally, the same causes produce the same effects, even if some measures are taken to correct these gaps, they are not eliminated, and these gaps are likely to persist.

Job classification, which contains a systematic undervaluation of female-dominated jobs (employees but also some functional managerial jobs), is the main source of pay and career inequalities, but management refused to open this topic for discussion.

In a general way, agreements and plans of action incorporated many elements of managerial rhetoric. The word "diversity" was present in 43% of the studied sample, reflecting the diffusion of this category in all sectors and for all sizes of company. The rhetoric of the "business case," according to which "equality" (often restricted to the presence of women, parity—40% or 50%, or "mixité"—fair proportion) favors the performance of the company, was also very present in the texts. This argument was widely used in "unilateral" plans, but was also present in agreements elaborated with trade unions negotiators. While the link between gender equality and economic performance is often seen as a means of encouraging companies to invest in the field of equality, it is not without danger. The involvement of companies is determined by an anticipated performance counterpart, and not by a desire of social justice. In addition, this link between equality and performance can be a way of limiting collective salary catch-up in favor of women, with individual performance being put forward as a way of explaining pay gaps.

Our study found that the formulas used in some agreements provided managers with an opportunity to justify differences in treatment and increased their margins of freedom in implementing the negotiated policy. The case of INFO.inc highlights the possible perverse effects of this freedom left to managers' discretion. Indeed, in this company of more than 5000 employees (29% women and 95% managers) belonging to a global IT group, while a salary catch-up budget had been negotiated following the identification of wage gaps (thanks to the use of a linear regression method), managers tended to largely favor men in individual promotion review process to offset the targeted increases. According to the unions, managers took from women with one hand what they gave them with the other:

> In this agreement there was a side effect that was… Because these wage catches were planned… I don't know, just before the annual wage revisions. And we noticed afterwards that there are some managers, when they saw that a woman on their team had a pay review for gender equality, she didn't get anything at the next annual pay review. (CFTC Negotiator)

At the confluence of law and managerial practices, the measures planned in the texts gave managers a pivotal role in the achievement of equality, thus contributing to the rise of an equality thought in an individual way, case by case (as illustrated by the predominant practice of individual interviews). Equality has been therefore

mainly conceived as a dimension to be added to the individualized management, without analyzing sexist biases in individualized management tools, based on skills and objectives (Steinberg 1990; Saari 2013). Faced with this "managerialization of (equality) law" (Edelman et al. 2001), some union negotiators refused the agreement, developed their own analysis and counter-proposals, or even denounced illegalities to labor inspectors. This can be seen as an attempt by trade unions to regain control of the issue in order to impose their social justice framework.

A feminist mobilization and rising interest in pay equity since 2015

In recent years, there has been a renewal of collective action initiated by trade unionists and feminist movements on equal pay that can influence "equality awareness" at societal level. Indeed, since 2015, women activists have been taking part in public debate to demand equal pay for equal work. While it is difficult to establish a causal link between these movements and the adoption new equal pay policy, the social movement on equal pay has gradually been built around the defense of this policy. In 2015 feminist associations and trade union organizations began to clearly mobilize around the new legal obligations on equal pay. When, in 2015, a draft law on social dialogue and employment, led by the Minister of Labor François Rebsamen, provided for the abolition of the annual comparative report, a relatively new alliance between more than fifty feminist associations and trade union organizations was formed to "save the tools of gender equality."[20] The new coalition circulated a petition ("Do not abolish professional equality") gathered nearly 45,000 signatures in 1 week and completed a series of advocacy actions carried out as part of a campaign entitled "SOS Égalité pro." The need to quantify gaps between women and men in each company was then presented by the campaign leaders as an imperative necessity. Thus, despite the limited effects on the actual gender pay gap, a network of actors were invested in the new policy and came to its defense when it was call into question. An article written by Margaux Collet and Claire Serre-Combe (from a feminist association called Dare Feminism!), Laurence Cohen (Senator of the Communist Group), Céline Verzeletti (Confederal Secretary of the CGT) and Sophie Binet (Commission Femmes-Mixité de la CGT), spells out the position of this campaign *L'Humanité* in 2015:

> No longer forcing companies with more than 50 employees to produce an RSC and organise negotiations dedicated to equality is an unprecedented and incomprehensible step backwards. This diagnosis in each company is the reference for identifying and understanding inequalities, but also, of course, for tackling them. We cannot fight against what we do not know: without figures and indicators specified in the texts, it is impossible to negotiate corrective measures… and even more so to punish recalcitrant companies![21]

[20] https://www.ufal.org/feminisme-2/feminisme-breves/sos-egalite-pro-sauvons-les-outils-de-legalite-professionnelle-entre-les-femmes-et-les-hommes/.

[21] https://www.humanite.fr/un-projet-de-loi-qui-jette-legalite-professionnelle-aux-oubliettes-574512.

This mobilization of activists and citizens to maintain the new equal pay tools clearly shows an increasing sensitivity to the issue of wage inequalities, but also a certain confidence in the new legal system setup by parliament. Indeed this first campaign saved the RSC and in doing so initiated a broader movement. A few months later, a feminist webzine (*Les Glorieuses*) launched a call for a "women's strike" against gender pay gaps and invited workers to stop working on 7 November 2016 at 16:34, the date on which women began to "work for free" until the end of the calendar year. In the same vein, three unions (CGT, FSU and Solidaires) and some thirty feminist associations called for a strike on March 8, 2017: around the slogan #8mars15h40! in the name of equal pay. Most recently, the feminist association Les Éffronté-es and Julien Bayou (elected ecologist to the regional council in Ile de France) came out in favor of publishing the list of companies that received fines for non-compliance in a name and shame approach. This renewed interest of feminist associations and trade unions in equal pay can be explained both by the presence among their members of young women, graduates and managers concerned by these issues, and by the challenge of organizing new generations of managers.

While a number of these activists now believe that these arrangements need to be complemented by measures outside the scope of companies (care for children and dependent elderly people, reform of parental leave, etc.) to remedy the 9% unjustified gap, the choice to pass a law on pay transparency in 2018 showed the governments' resistance to acting outside the labor market. This recent law attempts to transform business practices but does not address structural factors, such as the distribution of domestic and family tasks between women and men, which lead to indirect discrimination.

Conclusion

Under the impetus of the European Union, reducing the gender pay gap became a strategic priority for the French state as of 2010. The stagnation of the observed gaps over the past 20 years could have led the governments to drastically reconsider the strategy applied so far. Instead, they have maintained the collective bargaining framework in which the professional equality policy has been implemented since the early 1980s, while making it more prescriptive. An obligation to focus on equal pay within the mandatory collective bargaining on gender equality and a financial penalty for non-compliant companies was setting up.

As our impact study and others have shown the strengthening of the existing framework was not sufficient to counter the reluctance of companies to make a firm commitment to closing the gender pay gap, with that commitment depending on the context of each firm in terms of the company size, the balance of power between employers and unions and the awareness and training of the social partners. The absence of public support to finance positive actions reinforces this voluntary approach in firms with economic difficulties or in "low-cost sectors" with a majority of blue or pink collar. This new equal pay policy seems more favorable to qualified women in lucrative sectors, promoting an "elitist equality" that strengthens social

disparities between women (Pochic 2017). Finally, this "bargained public policy" fails to reveal the cause and extent of wage gaps: the objectification of these inequalities requires technical expertise that few social partners have and the notion of indirect discrimination is poorly understood. In most cases, the dynamics of inequality are not identified, and no measures are taken to address occupational segregation. In other words, the outcome appears to be a clear case of "gender accommodation" in GEPP terms.

At the same time, since 2015 an emerging coalition of feminist groups have mobilized around the implementation of these limited policies to protect and promote equal employment for women as well as an increase in equal pay cases being won in the courts; developments that actually challenge the symbolic reform dynamic. Thus, in the final analysis, the process toward real change is a slow and incremental one, that indicates promise for the future, more than concrete results now. Only the test of time will prove that the symbolic dynamic for equal employment policy in France has been broken and that in the future the ambitious goals of wage equality between men and women can be achieved.

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