



Negotiating the Boundaries of Equality at Work: Tensions about a Gendered Employment Norm in France and in the European Community, 1914-2014

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Abstract

This chapter explores the process of construction and deconstruction of gender-based categories of work and employment adopted in France over the course of the 20th century and beyond. Drawing on extensive archival sources (from international bodies such as the European Commission and the European Trade Union Confederation, and national bodies such as the French trade union centres), it examines how the demand for 'equal pay' gradually shifted towards broader frames of reference, such as the principles of 'equal treatment' and 'equal opportunities'. It focuses on the study of indicators such as collective agreements, the qualifications required of women seeking to enter the labour market and the transformation of relevant legal mechanisms. While the imperative of equal pay introduced in the aftermath of the Second World War gradually asserted itself, particularly following the Treaty of Rome, other cognitive frameworks (the post-68 critique, the liberal logic, the European normative framework, etc.) contributed to the recomposition of the mechanisms likely to ensure what would come to be known as 'professional equality'. The transition from the stage of formal equality to that of substantive equality is thus achieved through the construction of a citizenship of female workers indexed to the logics of performance, employability and mobility.

Introduction ¹

The principle of equality between men and women was set forth in the Preamble of the French Constitution of 1946 and then reintegrated into the Constitution of 1958. In the fields of work and labour law, this principle has long been associated with a logic of protection (i.e., protection of family life and the national birth rate through a prohibition on women's night work) which sometimes became a logic of *exclusion* (until 1965, a husband's authorization was required before his wife could work). In a context of weak support for the citizenship rights of women workers, the battle for equality, in France as well in Western Europe, was first waged as a battle for equal pay. Unable to rely upon full citizenship rights in the family sphere or the

¹ Special thanks to Catherine Marry for its comments on a preliminary version of this chapter presented at a workshop organised at the International Research Centre 'Work and Human Lifecycle in Global History' at Humboldt University in Berlin on January 2016 as well as to Daniel Hotard for its meticulous translation.

political sphere, it was therefore in the economic sphere that fundamental aspects of women's liberation played out, particularly in the post-World War I era, when women not only began to work in traditionally masculine sectors such as metallurgy, but began to weigh in on collective bargaining in those sectors as well. After World War II, the struggle against wage discrimination became central to both labour-union and feminist demands, while actors on the international level (like the International Labour Organization or the European Economic Community) began elaborating on and diffusing the ideal of 'equal pay for equal work'. Taking the affirmation of this principle as the starting point for a complex and difficult path toward emancipation, this chapter examines the modes of constructing and deconstructing gendered employment categories over the long term (from World War I to today), in France within the larger context of Europe (i.e. the European Economic Community space). If the principle of sexual differentiation in the division and organization of labour has been formally rejected, practical reality remains quite different and presents multiple situations of more or less disguised discrimination. Thus by looking at actual practices rather than normative texts, we may not only observe the fabrication of a gendered employment norm, but may also see its legitimacy called into question and its content effectively weakened during the period subsequent to the affirmation of the principle of equality between men and women at work. This principle was forged through struggle in the political sphere and the labour-union sphere, as well as through debate among experts and technocrats, at both a local scale (in France) and an international scale (notably in Europe). Observation in the fields of collective bargaining, professional classification and legislative production allows us to account for the tensions which have, since the early twentieth century, accompanied this two-fold process. Relying on a vast corpus of archival sources (including notably the archives of the European Commission, of the European Trade Union Confederation, and of French labour unions) and integrating an interdisciplinary body of academic work devoted to the same topic, this chapter proposes to present the issues which arose in relation to the representation and the laborious implementation of what is known today as workplace equality.

'Equal pay for equal work': an illusory principle?

Progressive implementation of the principle of equal pay must be situated within a long history of collective bargaining if the underlying mechanisms for elaborating employment categories and professional classifications capable of resisting discrimination are to be rendered visible. The starting point was World War I, which was the occasion for real change in the promotion and legitimation of women's work in France. However this relative change effectively hid the elements giving rise to wage inequality, which would long persist thereafter.

State-sponsored industrial mobilization during the Great War was undoubtedly beneficial for the promotion of woman employment. For example, in the Parisian metallurgy sector, women accounted for up to 30% of the total employee population in 1917 (Omnès 1997a). At the beginning of the conflict, the tasks entrusted to women were generally manual tasks involving simple, low-intensity, highly repetitive operations. The professional qualifications of women workers climbed steadily. Their wages climbed too. Nonetheless, possibilities for the promotion of women remained limited. Regardless of their level of work, women's salaries were subject to 15-20% reductions which effectively institutionalized the hitherto disguised minimization of women's wages. Employers justified these measures by arguing that they

covered costs arising from the new equipment and supervision necessary for the integration of inexperienced women workers. These additional costs were never taken into consideration, however, when it came to integrating equally inexperienced male workers. Although never explicitly stated, the perception that women's earnings constituted 'extra income' – derived from the perception that women did not need a 'real salary' because their needs were not as great as men's needs were – was pervasive in employer discourse, serving to justify a non-egalitarian wage structure which was sensitive to intangible 'natural' differences (Lee Downs 1995; 2006).

This approach was to be found in the collective agreement adopted by Parisian metallurgists, signed on 12 June 1936, during the period in which the French Popular Front (*Front populaire*), the left-wing coalition emerged during the 1930s, controlled the government. This collective agreement would serve as a model for subsequent agreements reached in multiple other industries in France.

The wage schedule which emerged from negotiations distinguished thirteen generic categories based on qualification, age and gender, each of which could be identified and assessed within each of the three hundred feminine and masculine occupations. The new generic categories tended to attribute greater value to masculine qualities and jobs and lesser value to feminine qualities and jobs. For example, a new categorization of male and female semi-skilled workers (*ouvrier spécialisé*, or OS) appearing in the agreement divided the old unskilled worker category (*manœuvre spécialisé*) in two, dissociating the manual set-up work from work on the machines themselves. Minimum salaries were attributed to these two new categories which represented a reduction in remuneration for feminine set-up work. During the negotiations, feminine OS set-up work was enduringly devalued (Omnès 1997b). Additionally, by eliminating the possibility of gaining qualification through on-the-job practice and by referring instead only to each employee's level of certification (*Certificat d'aptitude professionnelle*, or CAP), the collective agreement contributed to excluding women from qualified work positions. No CAP for feminine work existed in metallurgy, which translated into a negation of qualification for the work carried out by women (jobs merely requiring manual labour were considered innately feminine both by employers and by unions) (Machu, 2013). More generally, the collective agreement reinforced a sexual segregation of the work force which was engendered by the rationalization of labour, and simultaneously contributed to undoing or erasing women's place in the dynamic of professionalization which began during World War I.

Following World War II, these job-classification principles were reiterated by the French government, which, until 1950, assumed the power to fix salaries and to regulate labour relations. Minimum pay rates were determined through a centralized administrative process, which left companies with some discretion, notably with respect to individual salaries. By ministerial order (the *arrêtés* Parodi-Croizat of 1945-46), the government renewed the hierarchy of the job categories established in 1936 through collective bargaining with the metallurgist branch. These categories consisted of a wage coefficient which in turn fixed wage-rate hierarchy.² If, during the construction of this kind of classification, the principle of 'equal pay for equal work' was formally respected, there were nonetheless multiple criteria, which could influence wage determination, especially for women. First, the minimum pay rate varied according to sex, to the extent that certain clauses refer to a sex-based categorization of jobs.

² The occupational grid is based on qualifications, i.e. vocational skills certified by a diploma or developed with experience; each category corresponds to a coefficient proportional to the hourly minimum wage defined by the collective agreement of the branch (Saglio 1986).

For example, one ministerial order relating to Parisian metallurgy stipulated that under no circumstances could the minimum pay rate of women be more than 10% less than the minimum pay rate of men belonging to the same occupational category (Saglio 2007: 60).

A law passed on 11 February 1950, which allowed for a return to the practice of fixing pay rates through collective bargaining, made the 'equal pay for equal work' principle an obligatory element for collective agreements by making it a condition for their renewal. The suppression of that practice was accompanied by the guarantee that the minimum pay rates for women would be equal to the minimum pay rates of men belonging to the same occupational category, while the employer retained limited discretion to set the average maximum pay rate (notably through the payment of employee bonuses). And since only the minimum pay rate was the object of collective negotiation,³ the actual pay rates were set at the company level (Lanquetin 2006). Employee-qualification and job-classification mechanisms could then be mobilized to justify a gender-differentiated use of the work force, effectively making any detection of gender-based wage discrimination difficult to detect (Guilbert 1965).

While the formal principle of equal pay was instituted shortly after 1945, real equality remained evasive. The pay schedules which effectively differentiated between men's pay rate and women's pay rate were associated with the job classification schemes which were agreed upon through collective bargaining in 1936, which were taken up again after World War II, and which were not abandoned until 1968 (Eyraud 1978).

Article 119 of the Treaty of Rome, or regulation through persuasion

At the international and European levels, the principle of equal remuneration is codified by Convention No. 100 of the International Labor Organization (ILO), which was ratified in France in 1951, and then by the Treaty of Rome, which was signed in 1957 by the original Member States of the European Economic Community (EEC). Article 119 of the Treaty of Rome provided that '[e]ach Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work.' This article was inserted into the treaty at France's request, for reasons relating to economic competition. French textile manufacturers were concerned that competitors located in other Member States would engage in social dumping (the textile sector relied heavily on a female labour force). The principle of equality expressed here was therefore designed for the market, in the interest of preserving the freedom of contract and avoiding unfair competitive practices and protectionism (Jacquot 2009: 253).

Although seeming to make equal remuneration between men and women an exceptional circumstance required for economic integration, Article 119 of the Treaty of Rome nonetheless lays the groundwork for the principle of prohibiting sex discrimination (Hoskins, 1996: chapter 3). Over the following years, equality of remuneration, far from becoming mere 'dead letter', would become the object of European initiatives. Throughout the 1960s and 1970s, the European Commission, along with the European Council and various commissions associated with the European Parliament, employed a variety of means (i.e., questionnaires, investigations, expert opinions, official recommendations) to incite EEC Member States to

³ The minimum pay rate being understood as the rate of pay which could be sustained throughout the branch, regardless of disparities in productivity.

translate principle into practice and notably to make collective actors more sensitive to the issue of assuring equal remuneration for equal work.

Beginning in 1959, multiple initiatives were undertaken to encourage adequate implementation of Article 119, notably through interaction between government experts and representatives of professional organizations (i.e., meetings, letters, official events at the national and international levels).⁴ The implementation of wage equality gave rise to problems relating to the legal and technical aspects of bringing given instances of work into equivalence (through, for example, the use of occupational classification schemes) and still left room for effective discrimination. Thus an official recommendation issued by the European Commission on July 20, 1960, invited EEC Member States to take necessary measures to assure the complete implementation of the principle of equality.⁵ The next step consisted in a detailed examination of the status of implantation in each Member State with the help of a special study group composed mainly of jurists and statisticians.⁶ This group produced several reports, addressed either to the European Commission or to the European Parliament, as a means of building awareness among relevant actors, both by indirectly informing them of the group's findings and by indirectly soliciting measures intended to improve implementation. Upon reading these reports, which were dedicated mostly to the industrial manufacturing context, it becomes apparent that there were essentially two groups of countries: one group including those Member States which had legal instruments intended to allow women to avail themselves of the court system to protect their right to equal pay (France, Germany, Italy, and Luxemburg), and another group composed of Member States which still did not have any such instruments (Belgium and the Netherlands). With regard to collective agreements, however, gaps and insufficiencies were observed in most Member States: the inexistence of any collective agreement in some sectors or sub-sectors; direct discrimination arising from specific dispositions regarding women's wages; indirect discrimination arising mostly from job-classification schemes.⁷

Thus, if France and Germany saw lower gender-based wage gaps than other Member States (Table 1), the aggregate data still hid structural effects arising from the use professional qualifications or from the specificity of the industrial sectors in question. In Germany, for example, the presence of so-called 'light-wage groups' (*Leichtlohngruppen*) in the collective agreements of many branches of activity did not favour the detection of wage discrimination. In France, the numbers were misleading essentially because of the unequal valorisation of 'masculine' versus 'feminine' qualities formalized in occupational classification schemes.

⁴ ETUC Archives (European trade union confederation Archives, International institute of social history, Amsterdam), 2864, CEE-Commission, *Rapport de la Commission au Conseil sur l'état d'avancement des travaux relatifs à l'art. 119 CEE*, 12 octobre 1961.

⁵ ETUC Archives, 2865, Assemblée parlementaire européenne. Documents de séance, *Rapport intérimaire sur l'égalisation des salaires masculins et féminins*, 11 octobre 1961.

⁶ ETUC Archives, 2864, CEE-Commission, *Rapport de la Commission au Conseil sur l'état d'avancement des travaux relatifs à l'art. 119 CEE*, op. cit.

⁷ ETUC Archives, 2864, Commission des communautés européennes, *Rapport de la Commission au Conseil sur l'état d'application au 31 décembre 1968 du principe d'égalité entre rémunérations masculines et féminines*, 18 juin 1970.

Table 1: The negative gap (expressed in %) between the average hourly earnings of women compared to that of men belonging to the same group as defined by level of qualification (manufacturing industries)*

	S	SS	US	OTH	GEN
Belgium	33,2	28,7	25,0	17,7	31,9
West Germany	26,8	25,6	21,8	25,9	30,3
France	25,8	19,4	15,6	18,1	27,5
Italy	29,4	24,0	9,1	-	24,8
Luxembourg	47,0	27,7	44,3	48,1	45,5
Netherlands	40,1	39,9	31,3	7,7	39,3

Source: ETUC Archives, 2964, Commission des communautés européennes, *Rapport de la Commission au Conseil sur l'état de l'application au 31 décembre 1968 du principe d'égalité entre rémunérations masculines et féminines*, 18 June 1970, chapter 2, p. 7.

* The gap in question corresponds to the difference between men's average hourly earnings and women's average hourly earnings, divided by men's average hourly earnings

S = Skilled workers

SS = Semi-skilled workers

US = Un-skilled workers

OTH = Other workers

GEN = General result for the whole set

More generally, consensus arose among European civil servants that the legal implementation of Article 119 was insufficient in light of economic constraints:

... We attempted to 'level up' by raising feminine wages to the level of masculine wages. But we soon realized that on one hand, there were many ways to artificially circumvent the principle, and that on the other hand, the national legal systems had not relayed Article 119, which remained bogged down in economic considerations due to its insufficient legal buttressing, which undoubtedly reflected insufficient conviction with respect to the right to equality.⁸

A seamstress on the assembly line: occupational classification in the post-1968 era

In May 1968, as the mobilization of a variety of groups (including groups in favour of equality for women) besieged France (Zancarini-Fournel, Artières 2015), the principle of wage equality was still far from being effectively implemented. In the report of one among many European studies dedicated to the issue, one can read the following observation:

... If the classification systems established under the collective agreements are not, in principle, applied any differently according to a worker's gender, in reality there is an observable trend toward under-qualifying, or toward qualification-based discrimination, which in a number of cases tends to undervalue women's work.⁹

⁸ ETUC Archives, 2864, Commission des communautés européens, *L'emploi des femmes et ses problèmes dans les états membres de la Communauté économique européenne*, July 1970, p. 177. The original French text states: 'on a choisi d'égaliser 'par le haut' en relevant les salaires féminins au niveau des salaires masculins. Mais on s'aperçoit d'une part que par maints artifices on a tourné le principe, d'autre part que les droits nationaux n'ont pas relayé l'article 119, qui est demeuré englué dans l'économie par insuffisance d'armature juridique, et ceci, sans doute, par insuffisance de conviction dans le droit à l'égalité'.

⁹ ETUC Archives, 2865, Parlement européen. Documents de séance, *Rapport sur l'application du principe de l'égalité des rémunérations entre les travailleurs masculins et féminins*, May 8, 1968, p. 8. The original French text states: '[...] si les systèmes de classifications prévus par les conventions collectives ne sont pas en principe

The problem, which we have seen above, was not a new one and seemed even to re-emerge in a cyclical way since the 1930s. The context of 1968, however, seemed particularly encouraging for demands for equality. Labour unions, including notably the Democratic Confederation of Labour (*Confédération française démocratique du travail*, or CFDT), adopted a new focus on women's issues, and opened up new perspectives on gender-based division of labour. Within the context of its self-management (*autogestion*) project, the CFDT effectively proposed a tight link between class struggle and sexual conflict, quickly making the fight for employee equality a priority (Le Brouster 2010).

A law passed on 22 December 1972, concerning equal remuneration between men and women, increased an institutional and normative framework for this combat; however, the law did not seem to sufficiently meet the demands of union activists, nor did it satisfy the experts. Rather, it fell into step with the reformist vision which the Gaullist Prime Minister Jacques Chaban-Delmas was advocating at the time, which involved strengthening 'contractual policy' in such a way as to accommodate some of the demands being made by the labour and feminist movements (the Prime Minister's advisor on labour matters was Jacques Delors). After a long incubation period – the initial draft had been submitted in 1963 – the law transcribed the main provisions of ILO Convention no. 100 into the French labour code, including notably the principle of equal pay for equal work and the definition of remuneration structured around the notion of 'minimum' pay.

Before the law could even be approved, worker criticism was already strong. Already in October 1972, Jeannette Laot, who was in charge of women's policy matters at the CFDT, characterized a draft of the law as being poorly adapted to the situation, which it claimed to modify. While the situation was better than it had been during the war, during which time collective agreements seemed to naturally accept cases of gender-based wage discrimination, these cases had since become increasingly subtle and were increasingly perceived as the 'dupery' of characterizations through which feminine work was arbitrarily distinguished from masculine work.¹⁰ The CFDT's major concern was the meaning attributed to the notion of 'same work', which was derived from a system in which linked remuneration to cadence of work or to output, and not for example to the amount of knowledge acquired (through a degree program or through an apprenticeship), nor to the nature of the work itself, nor to the amount of responsibility assumed, etc.¹¹

Implementation studies conducted by the Women's Labour Committee (*Comité du travail féminin*), an advisory organism which was created in 1965 as part of the French Ministry of Labour and which has been heavily involved in the struggle for gender equality since that time, all pointed in the same direction (Revillard 2007). By mobilizing external expertise and member activism, mostly arising from the non-profit, academic and union communities, the Committee quickly became the leading authority on a particular kind of 'State feminism' which involved struggling against discrimination while also diffusing knowledge about women's work. During meetings of the *ad hoc* commission on remuneration, which was in charge of

appliqués d'une manière différente aux travailleurs des deux sexes, on observe dans les faits une tendance à la sous-qualification ou à une discrimination dans la qualification tendant, dans un certain nombre de cas, à dévaloriser le travail effectué par les femmes'.

¹⁰ Archives CFDT (Archives de la Confédération française démocratique du travail, Paris), 8H 785, Déclaration de Jeannette Laot au CES du 30 octobre 1972.

¹¹ Archives CFDT, 8H 652, Projet de rapport sur l'état d'application du principe d'égalité des rémunérations masculines et féminines, s.d. [1972].

informing the Committee on that subject, the notion of a 'work station' – and the ways in which work stations were attributed – were often called into question. According to Jacques Duraffourg, Professor of Ergonomics at the Conservatoire National des Arts et Métiers, who was invited to address the Committee on this very topic, a number of work-station studies in sectors involving mass production effectively allowed researchers to determine the characteristics of the work stations which were most often occupied by women. The work in question was often highly fragmented with low cycle duration and heavy time constraints. Remuneration was linked to output goals or established productivity norms, and the effective dissociation of design functions from implementation functions was often most pronounced. In short, these jobs bore the trace of a postulate implicit in Taylorism, which was that the remuneration of workers was endlessly adaptable. However, according to Duraffourg, nothing proved that women were more adaptable than men when it came to monotonous and repetitive work.¹²

Other variables were at play in the Taylorization of feminine industrial work, which were related to the structure of the labour market. For example, another report from the Women's Labour Committee underscored the way in which, paradoxically, the earnings gap between men and women persisted among industrial workers in spite of the fact that between 1968 and 1971 women working in industry had benefitted from larger pay raises than women working in the tertiary sector (+31% versus +27% approximately). In a situation where feminine employment was growing significantly in the industrial sector, feminine remuneration remained concentrated in lower steps of the pay scale. More generally, the average pay for women generally only exceeded the average pay of women manual workers by 27%.¹³ All the studies commissioned by the Committee pointed to the persistence of situations of wage discrimination, whether of the direct or indirect variety; consequently, new emphasis was put on the need for occupational training for example to counter the effects of sex-based employment discrimination (Revillard 2007).

These multiple instances of observed disparity in the remuneration of men and women led the Women's Labour Committee to propose, in 1976, a highly critical evaluation of the law of 1972.¹⁴ First, the Committee denounced the gender pay gap (which tended to be higher among manual workers), differences in career progression (which had been increasing over the previous fifty years), or even differences in socio-occupational category (discrimination being strongest among upper management). Then the Committee pointed out the 'defects', or even the stereotypes, which were hastily attributed to feminine work to justify their lesser remuneration: their 'potential maternity', their 'absenteeism', their 'instability' at work, and of course the widespread idea that a woman's earnings were merely 'extra' income for her family. The Committee therefore hoped to open up discussion about 'work of equal value' as a way of re-conceptualizing existing modalities of work evaluation in such a way as to better take account of the job-related qualities mobilized, including knowledge, skills, dexterity, physical strength, and psychological resiliency, the use of which implied physical or intellectual

¹² Archives CFDT, 8H 652, Ministère du Travail. Comité du travail féminin. Compte rendu de la réunion de la Commission ad-hoc sur les salaires du 18 décembre 1975.

¹³ Archives CFDT, Ministère du Travail. Comité du travail féminin, *Les salaires féminins (1968-1970-1971). Les salaires des ouvriers et des ouvrières (1972-1973-1974)*, septembre 1974.

¹⁴ Archives CFDT, 8H 652, Ministère du Travail. Comité du travail féminin, *Bilan de l'application de la loi du 22 décembre 1972 sur l'égalité de rémunération entre hommes et femmes*, mars 1976.

effort.¹⁵ While it is true that, as work inspectors at the time indicated, men and women oftentimes occupied different jobs, it was now the modalities of job attribution and the possibilities for promotion which were brought into question, rather than the simple comparison of pay levels attributed to workers who have the same coefficient.¹⁶

The Committee's re-conceptualization effort built upon that which labour unions had already begun. It called job classification schemes into question to the extent that they gave rise to indirect discrimination – discrimination not against women directly, but against 'feminine' jobs, which were less advantageously classified than 'masculine' jobs requiring equivalent levels of qualification. Disadvantageous classification entailed lower coefficients, and thus lower pay. Furthermore, this recognition deficit could be observed further upstream as well, in relation to training. For example, the feminine CAP (*Certificat d'aptitude professionnelle*) was often less valued than their masculine counterparts. Such was the case for women manual workers employing in the electronics sector, who held a CAP qualification as a seamstress. While the seamstress CAP assured a high level of dexterity, it was not recognized as a qualification at all by the electronics branch. Rather, the seamstress CAP was seen as originating from a distinct and inferior branch, in recognition of dexterity which merely came naturally to women. Thus, while the seamstress CAP proved to be indispensable for hiring purposes, it was not taken into account for classification purposes. Instead it could even penalize women as they built their careers as qualified workers (Gallot 2012, chapter 3). In this type of situation, the new law for wage equality had no effect. Consequently, it became the object of heavy criticism.

In this respect, union leaders from the CFDT and National Confederation of Work (*Confédération nationale du travail*, or CGT), the left-wing union, were among the law's most prominent critics. The devaluing of women's qualities for job-classification purposes became the main target of a discourse which not only attacked the perverse effects of gender-based division of labour, but which also attacked the technical and intellectual premises which justified the existing modalities of job evaluation and which penalized qualification levels by looking instead at job requirements as the operative criteria against which the quality of work should be measured. The language of the CFDT's denunciation of existing modalities of job classification deserves to be cited at length:

Women mostly occupy the jobs figuring at the bottom of the classification grids. That positioning is determined by the characteristics of the jobs they hold.

The so-called 'scientific' work-evaluation method, which is based solely upon time measurements and which is most frequently used to establish these classifications, is increasingly called into question.

The too-exclusively educational frame of reference for evaluating the level of worker training is more directly problematic for the female workforce because women generally have lower levels of technical training.

Numerous union organizations are raising issues relating to job classification schemes. But even the scheme set forth in the metallurgists' collective agreement cannot really change the situation for women, unless the larger power dynamic existing in many companies, and in the context of which these schemes are implemented, allows for implementation that is not strictly job-based.¹⁷

Within the CGT, opinions about the law of 1972 were no less severe, often integrating the CFDT's objections over the perverse effects which could arise when classifications were based

¹⁵ Ibid.

¹⁶ Archives CFDT, 8H 652, Ministère du Travail. Comité du travail féminin, Compte rendu de la réunion de la Commission ad-hoc sur les salaires du 10 février 1975.

¹⁷ ETUC Archives, 2832, CFDT, *Rapport sur l'état d'application de l'égalité de salaire en France*, 12 mai 1977.

on job characteristics rather than the professional skills of each individual person.¹⁸ Since women and men most often occupied different posts, it was the modalities of job attribution and promotion possibilities, rather than the wages paid to the set of individuals working at any given level, which accounted for gender inequalities with regards to pay. The great complexity of such a mechanism for setting pay rates also made it difficult for employees to appeal to the work inspector over instances of violation of the law. Consequently, in 1976, the first official evaluation of the law's implementation noted that there had only been eighteen formal complaints.¹⁹

The contribution made by European expertise: from the notion of 'same work' to that of 'equal treatment'

On 8 April 1976, the European Court of Justice ruled in favor of a demand for compensation brought by Gabrielle Defrenne, a former flight attendant for Sabena Airlines, in light of her remuneration at a level that was unequal to that of male colleagues carrying out identical work. Through its ruling, the Court recognized the general principle of equality, or non-discrimination, as the cornerstone of the European legal order.²⁰ The outcome of this legal battle, which, as Defrenne's attorney Elaine Vogel-Polsky pointed out, had lasted nearly fifteen years, showed that equivalence of pay, when considered in isolation, did not exist; rather, equivalence of pay could only exist within the larger framework for recognizing equal treatment (Gubin 2007: 91-97). From that perspective, the Court reinterpreted the meaning of Article 119, emphasizing its dual purpose – both economic (as a measure to protect competition) and social (as a measure to improve the living and working conditions for the workforce) (Lanquetin 2006).

For the purposes of this paper, the Defrenne-Sabena case is of particular interest because it established a distinction:

Between, on the one hand, direct and overt discrimination susceptible to being observed through criteria relating to the identity of the work and to the equality of pay ... and, on the other hand, indirect and disguised discrimination which cannot be identified except as a function of more explicit European or national implementation measures.²¹

If the applicability of the principle of equal remuneration were to remain limited to 'direct and overt' cases of discrimination alone, the Court suggested that full implementation of the objectives pursued by Article 119, through the elimination of both direct and indirect discrimination between male and female workers not only within individual companies but also within entire branches of industry or even within the global economy, would imply in some cases the intervention of adequate European and national measures.²² In other words, the Court's decision validated an expansive reading of the 'same work' element so that the

¹⁸ CGT, *Antoinette*, septembre 1971, n° 88.

¹⁹ ETUC Archives, 2832, CFDT, *Rapport sur l'état d'application de l'égalité de salaire en France*, op. cit.

²⁰ AHUE (Archives historiques de l'Union européenne, Florence), FDE 80, *Service juridique de la Commission des communautés européennes, Note aux membres de la Commission*, 15 juin 1978.

²¹ Archives CFDT, 8H 652, Commission des Communautés européennes. Groupe spécial article 119. Groupe de travail paritaire ad hoc « Égalité salariale et classifications professionnelles », *Discrimination indirectes par les biais des classifications professionnelles*, 10 mars 1981, p. 2.

²² Ibid.

job-evaluation criteria and worker classification schemes, which were often sources of effective discrimination, could be considered as part of the issue and eventually revised.

It was precisely the definition of 'same work' that was at issue, to the extent that the ILO convention provided that equal remuneration was only applicable to work of equal value, and the EEC Directive of 10 February 1975 (the so-called Equal Pay Directive), seeking to harmonize implementation of the equal pay principle at the Member State level, indicated that the principle would only apply to instances involving the 'same work'. The interpretation of this latter notion became a matter of jurisprudence, as nothing else specified any other common measure against which the remuneration of feminine work and masculine work could be measured.²³

Again in 1979, in France, ambiguity with regard to the criteria for evaluating masculine and feminine jobs was pervasive. According to a study by the Center for Studies and Research on Qualification (*Centre d'études et de recherches sur les qualifications* or CEREQ), job classification depended less upon difficultly comprehensible evaluation criteria than it did upon descriptions of the tasks to be carried out, which allowed the definition of qualifications to become rather arbitrary. For example, in the retail sector (department stores, etc.), which was normally quite feminized, job classification always set out definitions to determine the characteristics of the job (i.e., entry-level sales representative, qualified sales representative, highly qualified sales representative); however, these definitions did not refer to common criteria which could be evaluated (i.e., type of activity, degree of autonomy, level of knowledge) because in most instances they designate the tasks to be performed and the kinds of performance required. And whether job-evaluation operations were actually carried out or merely envisioned, it seemed that reputedly 'feminine' qualities (dexterity, coordination, rapidity, or interpersonal relations) were insufficiently valued.²⁴ Generally, in most European countries, the ambiguity of the exact meaning of 'equal value' (which could depend upon a variety of factors, including job-related knowledge, educational degree, skills acquired through experience, responsibilities, physical or psychological resiliency), and the very small number of court decisions taking up the issue of equal pay, could only hinder efforts to actually implement the equal-pay principle.²⁵

Since the mid-1970s, prominent thinking about issues relating to equality between men and women at work related to concerns about the qualifications necessary to carry out feminine work. Expert opinions from the EEC were addressed to the major actors in the labour field of each Member State, pleading for some deep re-thinking of occupational classification schemes in order to prevent all forms of gender discrimination, including implicit forms. Among the measures envisioned were the following: the rejection of different qualification rules for men and women; the rejection of job-evaluation criteria which had no relation to the concrete reality of the conditions under which work was being carried out; commitment to considering all of the job-related qualities required for all of the relevant tasks, particularly when determining the value of so-called 'feminine' work; the refusal to push artificial classification differentiation too far, because it was often women who found themselves in

²³ Archives CFDT, 8H 652, Confédération européenne des syndicats, *Projet de rapport sur l'égalité de salaire entre main-d'œuvre masculine et féminine*, 2 février 1978.

²⁴ Archives CFDT, 8H 652, Centre d'études et de recherches sur les qualifications, *Rôle joué par les critères d'évaluation de postes dans les écarts de rémunération par sexe*, mai 1979.

²⁵ AHUE, FDE 101, Commission des Communautés européennes. Réseau d'experts sur l'application des directives relatives à l'égalité, *Rapport final de synthèse*, 1987, pp. 28-34.

the lowest subcategories all while assuming responsibilities that were practically identical to those assumed by men.²⁶

The effort to revise job-classification schemes fit into a larger movement of awakening to both the social and economic stakes of gender discrimination within the EEC, as seen from within the framework of the social action program launched by the European Commission in 1974. A specialized agency in charge of women's issues was set up within the Commission in 1976 in order to promote workplace equality through new *ad hoc* legal instruments (Directives) or simply through the dissemination of information to Member State institutions and collective actors, and even to the public at large (i.e., through pedagogical films).²⁷ This commitment gradually became formalized, as evidenced by the Directive 76/206 of 9 February 1976, on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, and by the Directive 76/7 of 19 December 1978, on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

Considering the goal of equal pay had remained unattained despite multiple efforts undertaken at the national level and multiple European-level recommendations, European experts – most of whom were women – favoured widening the scope of intervention. Promoting 'equal treatment' effectively entailed eliminating the many differences in treatment that were manifest in working life, by addressing their root causes (i.e., occupational training, maternity, differentiated regulation relating to working hours, the need for work-life balance).²⁸

A French perspective on the principle of equality: the Roudy law and workplace equality

Among the propositions brought forward in the early 1970s by the Women's Labour Committee in order to resolve the problem of wage equality, was a new proposition to 'improve women's occupational training'.²⁹ Having observed the ineffectiveness of measures intended to close the wage gap between men and women directly, ministerial experts were thus leaning toward measures to improve the levels of qualification prevalent among women workers. This new policy orientation was relayed both via governmental representatives and via employers' associations which, since the 1960s, had promoted the feminization of certain jobs in the industrial sector in order to encourage the insertion, integration, and professional growth of women. Furthermore, by following the lines of reflection laid out by European institutions, the ministerial experts were also able to move the debate gradually beyond mere wage equality and to consider instead the larger issue of equal treatment.

With an eye toward proposing a new law, Nicole Pasquier, who was the Minister of Women's Affairs under the right-wing Raymond Barre's government (during the presidency of Valéry

²⁶ Archives CFDT, 8H 652, Commission des Communautés européennes. Groupe spécial article 119. Groupe de travail paritaire ad hoc « Egalité salariale et classifications professionnelles », *Discrimination indirectes par les biais des classifications professionnelles*, 10 mars 1981, pp. 29-36.

²⁷ AHUE, FDE 281, *Note de réflexion*, 28 juin 1976; *Documents sur les actions communautaires dans le domaine de l'égalité homme/femme devant l'emploi*, 13 juillet 1976.

²⁸ AHUE, FDE 64, Commission des Communautés européennes, *Egalité de traitement entre les travailleurs masculins et féminins*, 12 février 1975.

²⁹ ETUC Archives, 2866, Commission des communautés européennes, *Projet de rapport de la Commission au Conseil sur l'état d'application au 31 décembre 1972*, op. cit., p. 29.

Giscard d'Estaing), began a consultation initiative in 1980 involving the leaders of certain companies. The companies in question provided the Ministry with specific indications about the measures they had adopted to promote women's employment. Their responses to the Ministry's questionnaire related mainly to the gap between the training already acquired by women job-seekers and the skills needed to be hired (the 'feminine' CAP certifications, as we saw above, were not recognized by many branches of industry) and to the relative absence of occupational training among women (and the fact that opportunities for the promotion of women appeared quite rare). A number of stereotypes figured among the obstacles which respondent companies evoked: women had less availability to work overtime; women habitually would only accept certain kinds of jobs; men resisted the de-valorisation of work that was progressively becoming feminized, etc. These representations effectively reinforced a gender-based division of labour. Despite all of that, respondent companies still made efforts to promote women's employment, even if only for the purpose of increasing productivity and 'modernizing' labour relations. Thus in 1974, Peugeot launched an internal investigation, through occupational physicians and psychologists, regarding the difficulties which its women employees experienced upon integrating 'traditionally masculine' jobs (Gallot 2012: 320-327). These voluntary commitments taken by the respondent employers, and supported both by the government and by some workers' organizations, contributed to changing the focus by shifting the dominant discourse from the issue of wage equality to that of workplace equality (*égalité professionnelle*). The promotion expanded training and better qualifications for women became a preferred means for improving their classification and thus their remuneration.

It was in this context of both reflection and experimentation that France passed its law of 13 July 1983 on workplace equality, which became known as the Roudy law (*loi Roudy*) in honour of Yvette Roudy, who was the Minister of Women's Affairs under the socialist government of Pierre Mauroy (during the presidency of François Mitterand). The law prohibited employers from using gender as grounds for refusal to hire, to promote, or to train potential or current employees. In the event of litigation between employer and employee, the employer would henceforth bear the burden of proof, which had been previously borne by the employee. In transposing Directive 76/207 into law, Member States had to respect its anti-discrimination purpose. The French legal tradition, which upheld the principles of equality and protection as part of a larger pro-family or paternalist outlook, would consequently be modified. New opportunities for affirmative action (*actions positives*) as a means for accomplishing 'substantive' equality, and new recognition of indirect discrimination as a grounds for legal action, were indicative of a transformation in the legal paradigm of equality at work. As for implementation, the main provisions of the law imposed new measures of vigilance with respect to the working conditions, the remuneration, the training, and the promotion of employees (evidenced by an annual company report) and the negotiation, among social partners, of 'equality plans' (*plans d'égalité*) which were to define the remedial measures to be taken to allow women employees to catch up with men employees (notably in the area of training) (Lanquetin 2004).

This latter measure – the 'equality plans' – was the Roudy law's most emblematic measure. By addressing issues relating to training and effective discrimination, the new law integrated elements which were responsive to the Women's Labour Committee's criticism of the law of 1972. The new law was also responsive to suggestions made by the CFDT, which was directly involved in its drafting and which integrated the content of contemporary European debates relating to discrimination into union discourse as well as into technocratic and civil-service

discourse. The idea, defended by the confederation, of addressing workplace inequality through remedial 'catch-up' measures (affirmative action) was consistent with the principle of equal opportunity (*égalité des chances*), which henceforth found new favour among labour unionists in Europe.³⁰ As of 1979, the European Trade Union Confederation, for example, widened the scope of its actions in favour of women workers via a program for procuring rights and opportunities for women. In this program, which was elaborated in Munich by the Confederation's third congress, access to employment and wage equality were not only part and parcel of a larger occupational training reform initiative, but also related to more general efforts to improve work-life balance (notably for reasons relating to maternity).³¹

By the end of 1992, only thirty company 'equality plans' had been formalized, to the benefit of fewer than five thousand women. No retail companies figured among the signatory parties, and only 30% of companies having more than fifty employees actually followed the law by drafting an annual report comparing the situation of workers (Jobert 1989: 79). Upon closer inspection, at the company level, the results were even more modest than reported. The historian Fanny Gallot studied the implementation of the first 'equality plan' at the Moulinex factory in Alençon in 1983 (specialised in the production of the home appliance), the employees of which were mostly women. Her study revealed that the training initiatives adopted to help women in gaining access to better jobs were complicated by uncertainty with respect to the company's future need for qualified workers in light of increasingly automated modernization which mostly affected 'masculine' jobs (Gallot 2012: 333-336). Notwithstanding legal obligations and the corresponding risks of legal sanction (which were small), the mechanisms which were intended to assure the law's success only worked when there was voluntary commitment on the part of employer companies.

Despite these difficulties in implementing the Roudy law, it is important to emphasize that it did channel a significant change in discourse by leading the debate over equal pay into a larger and more politically ambitious debate over workplace equality. This cognitive adjustment involved moving beyond the simple question of pay to consider a plurality of larger questions about the different stages of women's career development, ranging from training to retirement, and including intermediary questions about the balance between family life and professional life. Thus a new representation of gender relations in the working world was sketched out, fusing rights-based and opportunity-based guarantees against a regulatory backdrop encouraging the integration of women workers. This social-liberal orientation was itself validated by the discourse circulating among European institutions.

From workplace equality to employment diversity: social dialogue and the 'modernization' of social relations

With the Roudy law falling short of expectations, legislative revision began in the late 1980s. Several initiatives were undertaken under the auspices of the Rocard government, and then the Chirac government (always during the presidency of Mitterrand). These initiatives essentially went in one of two directions. The first was to encourage gender diversity in the workplace as a means of offsetting the risks of discrimination arising out of gender-based

³⁰ Archives CFDT, 8H 760, *Observations de la CFDT sur l'avant-projet de loi relatif à l'égalité professionnelle entre les hommes et les femmes*, 26 juillet 1982.

³¹ ETUC Archives, 2836, Confédération européenne des syndicats, *Programme pour l'obtention de l'égalité des droits et des chances des femmes*, 1979.

divisions of labour and the perverse effects of implementing occupational classification schemes. The second was to pursue the goal of workplace equality through collective negotiation. In the first scenario, by garnering labour-union support notably from the CFDT, and by leveraging European-level recommendations to make equal opportunity into an essential and transversal element for all of the EEC's economic and social policy (so-called 'gender mainstreaming'), new 'diversity contracts' (*contrats de mixité*) were progressively being put into place beginning as early as in 1987, especially within small and medium-sized businesses.³² These contracts, which were touted as being more responsive to company demands to protect their competitiveness, were intended to gradually replace existing workplace-equality policies. In the second scenario, the goal of workplace equality continued to figure into the inter-professional accord concluded on 23 November 1989, which itself figured into larger agreements to promote the 'modernization' of business in times of rapid technological change and to adjust legal limitations on working hours and working conditions (Jobert 1989). In a context of heavy unemployment and a weakening of French unionism, these accords wagered on the success of an initiative simultaneously reforming the framework for a company's productive activities, organizational activities, and labour relations. However this initiative went forward without first gaining consensus from the CGT or the French Confederation of Catholic Workers (*Confédération française des travailleurs chrétiens*, or CFTC) for example, which opposed an emerging questioning of the existing prohibition on women's night work in the industrial sector. This prohibition would remain in place in France until 2001, when it was repeatedly condemned by the European Court of Justice.

The new policy based on voluntary commitment on the part of companies took form through a very rich and active round of collective bargaining, with successive initiatives moving forward throughout the 1990s and early 2000s. However, while these initiatives sometimes appeared to complement each other, they also appeared to be globally ineffective. The Genisson law (*loi Genisson*) adopted in France on 9 May 2001, established an obligation to negotiate at both the company and branch levels to reach the goal of workplace equality (we recognize here a certain degree of continuity with the Roudy law). A few years later, the inter-professional accord of 1 March 2004, followed along similar lines. It addressed equality and workplace diversity while also envisaging new initiatives in the areas of recruitment, on-going training, promotion, professional mobility, and of course equal remuneration. Upon renewing that accord, a law on equal remuneration passed on 23 March 2006, obliged social partners to negotiate various matters at both at the branch and company levels. Among these matters were the measures to be undertaken to close the gender pay gap, to improve the relation between family life and work life, and to improve access to occupational training. Additionally, the Law for real equality between men and women, adopted in France on 14 August 2014, insisted on reinforcing collective bargaining while providing new resources for the pursuit of equality (i.e., public guarantees to offset unpaid alimony, public information campaigns to combat sexual stereotypes). Generally, all of these efforts were focused on the social dialogue and effectively valorised it for the purpose of addressing the obstacles which impeded women from integrating the workplace on equal footing with men in terms of employment-related rights and career opportunities.

³² Archives CFDT, 8H 761, Bureau national, *Pourquoi la CFDT a-t-elle réclamé une loi-cadre pour assurer la mixité des emplois ?*, 16-17 avril 1980; see also Toutain (1992).

If, in the end, consensus among unionists for the triumvirate of 'equal pay', 'workplace equality' and 'employment diversity' might henceforth be legitimately posited as a given, the goals would nonetheless remain unattained. Certainly, more than fifty accords relating to these issues were signed in the years following 2001, especially among large corporate groups. The themes of workplace equality and equal remuneration nonetheless remained inadequately addressed at the branch level in spite of the fact that the 2006 law established 31 December 2010 as the deadline for negotiating measures to close the gender pay gap. The accords specifically addressing workplace equality often merely referred to previous negotiations to guide implementation efforts, particularly for matters concerning equal pay, which henceforth would be hinged to annual wage-specific rounds of collective bargaining. Today, the gradual institutionalization of the principles of workplace equality and equal opportunity is observable within an evolving legislative framework and within collective agreements; however, at the same time, implementation measures again seem to lack steam and are sometimes merely swallowed up by newer but only tangentially-related policy mechanisms (human resource management, company-specific social policy measures, etc.) (Laufer, Silvera 2006). Yet nothing about the specific context of labour relations in France, or about the weakness of union representation in companies, would seem to put France into a position where it can effectively support an institutionalization of the principle of equality between men and women. Furthermore, gender-based discrimination – and especially gender-based pay discrimination – today remains perceived as a subject of marginal importance (Ardura, Silvera, 2001). Finally, while attempting to reinforce the coercive dimension of its legal mechanisms, the State – acting as a *de facto* motor for equality policies since the post-war era – seemed to show more affinity for a diversity-toting company discourse focused on economic performance than it showed toward social justice objectives (Laufer 2014).

Conclusion

This chapter has sought to shed light upon the construction and deconstruction of gender-based employment categories adopted in France during the twentieth century by focusing its study upon such indicators as collective agreements, qualifications required of women seeking to integrate the workplace, and the transformation of relevant legal mechanisms. A relevant change in the cognitive and institutional frames of reference for the notion of workplace equality can be observed. The demand for equal pay, which arose during the period immediately following World War II and which made use of the principle of 'equal pay for equal work' (*à travail égal, salaire égal*), gradually shifted toward larger frames of reference, such as the more comprehensive principles of 'equal treatment' and 'equal opportunity'. This shift is occurring in a context where arguments associating social protection with market-driven economic demands are cutting across national borders. This cognitive adjustment is effectively indebted not only to the commitment of unionists, political leaders and feminist activists (some of which held positions of power within the cabinets and ministerial commissions of French government) as well as to the commitment of authorities associated with the European Community, which has contributed to making policies which were once considered to be applicable as limited exceptions into more generally applicable norms (van der Vleuten 2007).

We are observing a paradoxical convergence between, on the one hand, an egalitarian discourse derived from the experience of May 1968, which targeted the supposedly technical

and intellectual premises of Taylorist evaluation practices which were prejudicial for women, and, on the other hand, the liberal logic underpinning the construction of the European common market, which tends to equate equal rights with equal opportunity. Common criticism of job-classification schemes and of systems of functional evaluation – particularly in the industrial sector – tended to reveal the sources of indirect or disguised discrimination, which was itself an expression of the contentious effects of a gender-based division of labour. When engaging in employee classification, the ‘qualities’ of women were often devalued, albeit merely owing to the fact that elements of qualification were not all recognized as having equal value (physical strength was valued in men, but rapidity was not valued in women).

In France, the trajectory of legislative mechanisms intended to counter or even to resolve the problems of gender inequality in the workplace, as well as the trajectory of certain heavily-involved actors such as the CFDT, attest to the gradual redefinition of social issues and to the gradual redesigning of the legal and normative instrumentation mobilized by the State. The law of 1972 on equal remuneration was replaced by the law Roudy in 1983, which by transposing part of the European legal corpus, brought the challenge of defining equality into the French labour code. The Roudy law wagered on the success of efforts to improve women’s level of occupational qualification when mobilizing a discourse with liberal characteristics, demanding that public agencies take charge of various relevant social variables (from training to maternity) for the purpose of favouring the insertion of women into the workplace. Similarly, the conversion of the CFDT into an organization in favour of remedial ‘affirmative action measures had the effect of affirming the principle of equal opportunity (for the purpose of improving women’s working and living conditions) and drawing support from unionists throughout Europe.

If criticism of the system of work evaluation and remuneration is making it increasingly clear that there is a real need to rethink occupational qualifications (in such a way as to better account for acquired knowledge, the nature of the work undertaken, and the importance of the responsibilities assumed by the employee), there is also reason to observe that both the legislative solutions and the solutions derived through collective bargaining have adhered to a ‘contractual policy’ framework which essentially takes care to improve women’s access to the labour market. The shift from formal equality to substantive equality, in other words, was accomplished by constructing a citizenship of women workers indexed on a complex logic of performance, employability and mobility.

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