

# WRITTEN CONTRIBUTION UNEQUAL PAY NETHERLANDS

Collective complaint of the University of Women of Europe

March 2018

# Unequal Pay in the Netherlands

## 1. Introduction

In light of the collective complaint of the University of Women of Europe (UWE), the European Committee of Social Rights of the Council of Europe has requested information on the situation in law and in practice as regards equal pay in the countries concerned focusing on the implementation of measures aimed at reducing and closing the gender pay gap, through the work of equality bodies or otherwise.

Upon request of Equinet, the Netherlands Institute for Human Rights (hereafter: the Institute) submits its observations regarding the situation in the Netherlands. We will first describe the situation in the Netherlands regarding unequal pay. Subsequently, we discuss the activities of the Institute in this area offering insight into the root causes of wage discrimination and the legal framework to address the issue. Finally, policy measures will be evaluated.

## 2. Statistics on the gender pay gap/wage discrimination in the Netherlands.

Statistics show that the differences in pay between men and women ('the gender pay gap') is a persistent problem in the Netherlands. Data from biennial research shows that, in 2014, the gender pay gap in the private sector was 20% and in the public sector 10%.<sup>1</sup> The differences between the average hourly salary of all men and women is slowly declining as can be gathered from the latest EU statistics. Between 2011-2016, the average gender pay gap in the Netherlands dropped from 18.6% to 15.6%.<sup>2</sup> This data show that the Netherlands takes up a middle position when compared to other EU countries. Although the pay gap is an important emancipatory indicator, it does not necessarily tell us much about wage *discrimination*. The gender pay gap does not provide an answer to the question whether women are paid less than men for work of equal value. After taking into account factors that objectively can explain differences in pay such as work experience or the specific sector of employment a difference in wage between men and women in the Netherlands remains: 7% in the private sector, 5% in the public sector.<sup>3</sup> This unexplained difference may point in the direction of wage discrimination.

## 3. Activities of the Netherlands Human Rights Institute

### 3.1 Legal framework: equal treatment legislation

The Equal Treatment Act providing that women and men must be paid equally for work of equal value entered into force in the Netherlands in 1975.<sup>4</sup> article 646, Book 7 of the Civil Code prohibits employers from discriminating between men and women, *inter alia*, in the conditions of employment. The manner in which wages can be compared is provided for in the articles 7-9 of the Equal Treatment Act, which implements article 119 of the Treaty establishing the European Community (currently article 157 of the Treaty on the European Union).

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<sup>1</sup> Statistics Netherlands (CBS), 2016 'Gelijk loon voor gelijk werk? Banen en lonen bij de overheid en bedrijfsleven, 2014' .

<sup>2</sup> Eurostat, Gender pay gap statistics, 8 March 2018

<http://ec.europa.eu/eurostat/documents/2995521/8718272/3-07032018-BP-EN.pdf/fb402341-e7fd-42b8-a7cc-4e33587d79aa>

<sup>3</sup> Statistics Netherlands (CBS), 2016 'Gelijk loon voor gelijk werk? Banen en lonen bij de overheid en bedrijfsleven, 2014' .

<sup>4</sup> Division 2, Equal treatment Act.

### 3.2. Individual wage discrimination cases

In accordance with its legal mandate, the Institute investigates in individual cases whether discrimination is or has been taking place as referred to in the equal treatment legislation discussed in the previous section. In individual wage discrimination claims it can be established whether differences in pay amount to wage discrimination in violation of Dutch equality laws. Since 2005, the highest number of pay discrimination complaints received per year the Institute received was 15. The last two years these numbers were even lower. Wage discrimination remains a persistent problem in the Netherlands yet the number of cases brought before the Institute concerning a possible violation of the Dutch equality laws is very low. Several reasons can be identified why discrimination in general, and more specific concerning wage discrimination goes underreported. One of the reasons is the lack of knowledge and awareness (inter alia on the part of employers) regarding, not only the legal framework, but especially the mechanisms that may cause wage discrimination. For this reason the Institute has carried out research into the occurrence and mechanisms causing wage discrimination on a more systematic basis (see. 3.2.) Moreover, individual employees most often do not have full access to relevant data concerning wages in their organisation. This makes it very hard to know whether the remuneration is lower compared to colleagues in a comparable job with equivalent work experience. Also filing an official complaint is risky (most employers do not welcome discrimination cases) and may involve a big time investment. As the European network of legal experts in gender equality and non-discrimination put it in their report of 2017 “ A number of barriers are reportedly responsible for that, including costly proceedings, a lack of pay transparency, a lack of sensitivity for/knowledge of sex-based pay discrimination, the fear of victimisation and a lack of trust in the national judicial system”.<sup>5</sup> Therefore it is not surprising, that the Netherlands institute for human rights receives far less payment discrimination complaints than what one may expect based on the statistics and the results of the studies carried out by the Institute.

### 3.3. Research into wage-discrimination

To address wage discrimination requires, first, more insight into the occurrence of wage discrimination, and second, insight into the mechanisms that may cause wage discrimination. Such insights can be obtained by conducting micro-level research. That is why the Dutch Equal Treatment Commission, the predecessor of the Institute, conducted three intensive micro-level studies into the occurrence and the underlying root causes and mechanisms of wage discrimination in three sectors: 18 general hospitals in 2011<sup>6</sup>; the education sector in 2015 (6 colleges)<sup>7</sup>; and, in 2017, the insurance sector (4 insurance companies)<sup>8</sup>. In all three sectors the Institute found differences in pay in favour of men that cannot be explained by objective criteria, such as work experience. In contrast to individual wage discrimination cases and research into the general pay gap, the three studies show that women are systematically paid less for the same performance. With

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<sup>5</sup> European network of legal experts in gender equality and non-discrimination. *The enforcement of the principle of equal pay for equal work or work of equal value. A legal analysis of the situation in the EU member states, Iceland, Liechtenstein and Norway*, July 2017.

<sup>6</sup> Commissie Gelijke Behandeling. ‘Onderzoek en oordeel Gelijke beloning van mannen en vrouwen bij de algemene ziekenhuizen in Nederland’. April 2011.

<sup>7</sup> College voor de Rechten van de Mens. *Verdient een man meer?. Gelijke beloning van mannen en vrouwen bij Hogescholen*, January 2016.

<sup>8</sup> College voor de Rechten van de Mens. ‘*Gelijke beloning verzekerd? Gelijke beloning van mannen en vrouwen bijverzekeringsorganisaties*’, November 2017.

these studies, the institute identified the mechanisms in remuneration policies that create the risk of wage discrimination.

In the three studies the Institute, looked into pay differences between men and women with equivalent jobs. Jobs are considered equivalent when they fall into the same job category and are of equal value. In every organisation five job categories were chosen in which wages were investigated in more detail at the level of individual employers. Based on personnel files, individual wages were broken down to study the criteria applied that determine an employee's pay. An employer determines an employee's salary on the basis of various criteria such as job grade and professional experience. These criteria are referred to as remuneration criteria in those investigations. Criteria may be either neutral or non-neutral. The non-neutral remuneration criteria are the criteria which could lead to wage discrimination.<sup>9</sup> By studying individual files, the average wage based on non-neutral remuneration criteria for men and women within a certain job category could be calculated unveiling differences in pay for which there is no objective justification. Some of the remuneration criteria are quit common in practice, but nevertheless carry the risk of leading to wage discrimination. For example, while negotiating your wage is a common practice in the Netherlands, this practice does carry the risk of wage discrimination as the negotiations are not always related to the relevant working experiences someone has. Negotiation pay turns out to be an important explanation of potential wage discrimination. Another common practice is that for new employees alignment with the previous salary is sought. Not only is the previous salary not necessarily related to the value of the job, the use of this criterion as a determining factor for wage may allow past wage discrimination to continue to have its effect. These are just a few examples of the practices that were unveiled that explain how wage discrimination comes about.

We found that wage discrimination against women indeed exists in the three investigated sectors and there are no reasons that indicate that the situation is different in other sectors. In the higher paying jobs, differences in salary between male and female employees based on non-neutral criteria seem to be higher than in lower paying jobs. For example in hospital sector women in the highest paying profession, of the five investigated professions, got on average 187 euro less per month based on non-neutral criteria than men. While in the lowest investigated job women got on average 56 euro less per month based on non-neutral criteria. In the college sector, the difference ranged from 71 euro till 269 euro on average in the disadvantage of women, per month. In the latest research this average difference within a profession was at most 211 euro per month.

Based on the findings of these three sector studies, the Institute has engaged in awareness-raising activities in the three sectors and beyond. Results of the investigations were presented to representatives of organisations such as the Management board, the HR department and the line manager. The insights into the causes of wage discrimination offer employers a perspective on how to tackle the root causes of wage discrimination within organisations.

However, to address wage discrimination in earnest will require more measures than awareness raising and the possibilities for individuals to lodge an individual complaint for violation of the equality legislation. Policy measures and possible legislative amendments are required.

#### **4. Possible measures**

Reaching greater equality in pay between men and women requires various efforts. There clearly continues to be a need to increase the awareness of the problem of wage discrimination and the mechanisms that cause it. A lot of emphasis is put on the individual to address the problem of unequal pay. Efforts are often directed at empowering women,

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<sup>9</sup> Some of these criteria stem from ECJ jurisprudence. For example, in Enderby (C-127/92) it was ruled that a shortage of labour in a certain profession cannot legitimize long term additional remuneration. Applying labour shortage as a criterion can be considered a non-neutral criterion..

for example, by stressing the need to improve their negotiation skills. However, research shows that women not only tend to negotiate less, but also when they do negotiate their requests are less successful as it is less accepted.<sup>10</sup> Policies aimed at encouraging women to negotiate more often or better can therefore never be the answer to solve wage discrimination. Wage discrimination is a structural and persistent problem and the possibilities to address wage discrimination for the individual are limited. As discussed earlier, individuals do not have full information about the wages within their organization. Giving employees more insight into the salaries in an organization, may support the individual wanting to file a legal complaint. For example in Germany, employees of companies with more than 500 employees are entitled to access the salary of colleagues with a similar position. Legislation can also help in enforcing neutral remuneration systems. Legislation in Iceland offers an example. According to this legislation, organizations are obliged to show that they reward men and women for the same work. In March, 2018, four Dutch political parties presented a bill that finds inspiration in the example of Iceland. According to the proposed bill organizations with more than fifty employees, will be obliged to show that they pay men and women equally for equal work. These organizations will have to provide figures every three years on the salary of the employees. If unequal pay is established, organizations will be given time to improve this. When improvement fails to follow fines. Earlier a bill was presented in which work councils got a bigger responsibility within organizations to prevent unequal pay. The Institute encourages strengthening the principle of equal pay between men and women through transparency. Later this year, the Institute will be offering its advise on the proposed bill.

## 5. Conclusion

Unequal pay continues to be a problem in the Netherlands. The gap is becoming less wide but this development is extremely slow. Further efforts in the field of awareness-raising, transparency and amendment of legislation shifting the burden from the individual to the employer are needed to address the issue in the Netherlands earnest.

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<sup>10</sup> Amanatullah, E. T., & Tinsley, C. H. (2013). Punishing female negotiators for asserting too much... or not enough: Exploring why advocacy moderates backlash against assertive female negotiators. *Organizational Behavior and Human Decision Processes*, 120(1), 110-122.