



Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Peer Country Comments Paper – Spain

Legislative measures and social partners' involvement to support pay transparency in Spain

Peer Review on "Reducing the gender pay gap through pay transparency - legislative measures and digital tools targeted at employers"

Online, 15-16 April 2021



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1 Introduction

This paper has been prepared for the Peer Review on "Reducing the gender pay gap through pay transparency: legislative measures and digital tools targeted at employers" within the framework of the Mutual Learning Programme. It provides a comparative overview and assessment of the policy situation in Spain relative to that in the host country (Estonia). For further information on the host country policy example, please refer to the Host Country Discussion Paper.

2 Situation in the peer country

The gender pay gap has been diminishing in the last seven years from 18.7% in 2012 to 11.9% in 2019, and has been below the EU-27 average since 2014: in 2019, it was 2.2 percentage points below the EU-27 average of 14.1%¹. Yet, according to ILO's Global Wage Report 2020-2021, which informs on the impact of Covid-19 pandemic, women's wages have diminished by 14.9% in Spain, compared to 11.3% among men, during the second half of 2020, due to the higher reduction in the number of hours worked by women.

Regarding age, the gender pay gap is larger among Spanish older women and men, a clear expression of differences in employment careers. The gender pay gap in terms of education level is also an expression of differences between men and women employment careers, as it is mainly explained because low-educated women participate less than low educated men in the labour market, and are also more likely to interrupt careers. On the contrary, the gender pay gap among women and men with high educational levels, is rather an expression of unequal pay for equal work, since highly educated women tend to work as many hours as men do (they would not reduce working time for caring after children): in this case, stereotypes on gender roles, career building and individual salary negotiations play an important role^{2 3}.

There are three main drivers behind the gender pay gap:

- a) Flexible working arrangements, including temporary employment (25.6% for women, 22.6% for men in 2020⁴) and, mainly, part-time employment, much higher among women in Spain (22.7% for women, 6.7% for men in 2020): these contracts are frequent in sectors with relatively low wages, so that the gender pay gap was 20.6% among part-timers and 6.5% among full-time workers in 2019.
- b) Horizontal and vertical segregation, that is, concentration of female workers in sectors and occupations with lower wages. The highest skilled and paid occupations show the largest gender pay gaps, whilst those worse paid entail lower gender pay gap, mostly due to the existence of a statutory minimum wage.
- c) The 'glass ceiling', that prevents or hinders, on the one hand, women's access to the most relevant and better paid positions in the organisations; and, on the other hand, lower wages for women who do manage to access such positions⁵.

¹ Source: Eurostat, *earn_gr_gpgr2*

² CCOO Trade Union (2015): Informe sobre la Brecha Salarial de Género: Impacto, Negociación Colectiva y Actuación Sindical (Report on the Gender Pay Gap: Impact, Collective Bargaining and Union Action).

³ Conde-Ruiz, I., Marra de Artíñano, I. (2016). Brechas Salariales de Género en España (Gender Pay Gaps in Spain).

⁴ Source: INE (Spanish LFS, EPA)

⁵ Spanish Confederation of Employers' Organizations (CEOE) (2019): Análisis de la Brecha Salarial de Género en España (Analysis of the Gender Pay Gap in Spain).

The collective bargaining and, specifically, the wage negotiation system, may also explain an important share of the gender pay gap, in particular in which refers to pay complements (bonuses, fringe benefits and in-kind benefits). In this context, lack of transparency for wages and complements as well as lack of explicit definition and classification of positions, tasks and roles with their corresponding salary ranges, additionally contribute to explain the gender pay gap. Yet, according to a study carried out in 2018, 83% of the active population (89% among women and 79% among men) and 58% of companies in Spain support companies making wages transparent as a measure against gender pay gap⁶.

3 Legislative and policy measures to support equal pay

The right to equal pay for equal work and to no gender wage discrimination is specifically recognised in the Spanish Constitution (art. 35), the organic Law for Effective Equality between women and men (Law 3/2007, known as the Equality Law, art. 5) and in the Workers' Charter. More recently, Royal Decree Law (RDL) No. 6/2019, of 1 March, "with urgent measures to guarantee equal treatment and opportunities between men and women in employment" modified the Equality Law (2007) and the Workers' Charter.

- RDL 6/2019 extends gradually⁷ the obligation to elaborate, together with workers' representatives, Equality Plans (EP), in companies with 50 or more employees (before the RDL the ceiling set in the Equality Law was 250 employees). Equality Plans need to be preceded by a diagnosis of the gender situation in the company that shall include a "wage audit".
- In line with the 2014 Recommendation of the European Commission on strengthening the principle of equal pay between men and women through transparency, the concept of "work of equal value" has been included in art. 28 of the Workers' Charter, which addresses "Equal remuneration on the grounds of sex"⁸. Moreover, this article establishes the obligation of all companies, regardless their size, to keep a record of average wages, wage complements and extra-salary remuneration disaggregated by sex and by professional groups/categories or groups of equal job posts or posts of equal value. Employees are entitled to consult, through the workers' legal representation, this wage record. When in a company with 50 or more employees, the average wage of employees of one sex differs by 25% or more from the average wage of the other sex, then the company shall include in the wage record an explanation for this difference, justifying that it is not related with the sex of the workers.

The methodologies for the elaboration of Equality Plans and wage audits have been regulated in 2020, in agreement with Trade Unions. Thus RD 901/2020, regulating Equality Plans (EP) and their recording in a public register, establishes the minimum content for EP, which includes, among others, a wage audit; it also states the obligation of companies to register their EP in the existing "Register for collective agreements and (after the approval of RD 901/2020) equality plans" from 14 January 2021 on.

RD 902/2020 on equal pay between women and men, in force from 14 April 2021, complements the former RD in that it defines the principle of pay transparency. Thus, pay transparency is defined as "the guarantee of obtaining relevant and sufficient information about the value of the remunerations of workers and the factors underlying

⁶ Infojobs (2018). Press release '8 de cada 10 españoles afirman que sigue existiendo brecha salarial en España'. <https://nosotros.infojobs.net/prensa/notas-prensa/8-de-cada-10-espanoles-afirman-que-sigue-existiendo-brecha-salarial-en-espana>

⁷ Companies with between 151 and 250 workers need to approve their Equality Plans by March 2020; companies with 101 to 150 by March 2021 and companies with 50 to 100 by March 2022.

⁸ The following definition has been adopted: "A job will have the same value as another when the nature of the functions or tasks actually entrusted, the educational, professional or training conditions required for its exercise, the factors strictly related to its performance and the working conditions in which the activities are carried out are equivalent".

these remunerations". The aim of pay transparency is to identify direct and indirect discrimination, especially related with incorrect assessment of jobs. Further, RD 902/2020 develops five tools for the pay transparency:

2. Wage record: as stated in RDL 6/2019, all companies shall keep record of the average (arithmetic wage and median value) wages and all complements disaggregated by sex and professional category. The Ministry for Labour and the Social Economy and the Ministry for Equality in close cooperation with the social partners, are about to publish a wage record tool to be used by companies⁹.
3. Wage audits: companies obliged to have an Equality Plan¹⁰ shall include a wage audit whose aim is to retrieve all necessary information, including the average and median values of jobs of equal value in the company to assess whether the wage policy of the company complies with gender equality. The wage audit shall include an evaluation of all posts of jobs, regarding the remuneration and promotion, an assessment of the initial situation and of the reasons behind the gender-based differences (if any) and an action plan. As stated in RD 902/2020, the Women's Institute, in cooperation with social partners, will elaborate a Technical Guide for carrying out wage audits. It is interesting in this context to highlight that the trade union UGT developed in 2015 a tool to assess the gender pay gap in companies and has therefore valuable experience¹¹. The elaboration of the Technical Guide will take place only after a system for the evaluation of job posts is designed (see next point).
4. System for evaluation of job posts by the professional classification used in the company or in the respective sector collective agreement. RD 902/2020 includes the criteria of adequacy, completeness and objectivity to correctly assess job posts and states that a specific procedure to assess job posts will be prepared, also in cooperation with social partners. The Ministry for Equality along with the Ministry for Labour and the Social Economy, and the social partners have started working on this system; in the meantime, other existing tools can be used, such as the "System for evaluation of job posts with a gender perspective" elaborated by the Women's Institute in 2016¹². The RD states that collective bargaining committees must ensure that the criteria for an adequate evaluation of jobs are respected.
5. The right of workers to information. In companies without legal representation of workers, individual employees shall receive information on the wage record, but not about the average values, only about the percentage difference between women and men, duly disaggregated by the prevailing classification in the company. This is so because of the requirements of the General Regulation on Data Protection (GRDP) on small companies. In companies with legal workers' representation, the complete content of the wage record shall be made available.
6. Guide for collective bargaining. The first additional disposition of RD 902/2020 on institutional participation, states that the Ministry for Labour and the Social Economy, the Ministry for Equality and the social partners will collaborate to create and disseminate among workers and companies a guide or protocol with

⁹ Some regions and companies have already prepared some templates, although not always in accordance with what is established in RD 902/2020. An interesting example has been prepared in excel format by Catalonia region (https://treball.gencat.cat/web/.content/24_igualtat/Plans_igualtat/Registre-salarial.xlsx).

¹⁰ See footnote 7 for deadlines according to the size of companies.

¹¹ The UGT tools are available at <https://www.ugt.es/ugt-pone-en-marcha-una-web-con-herramientas-para-combatir-la-brecha-salarial>

¹² Two tools were prepared in 2015-2016, but need to be improved. A tool aimed to assess the value of jobs in a company with a gender perspective, with information provided by the company, gives back the quantification of the gender pay gap in the company and recommendations about how to reduce it. Secondly, a tool for companies to self-measure their gender pay gap, which is also accompanied by recommendations as to how to treat and address it. Both tools are available at: <https://www.igualdadenaempresa.es/asesoramiento/herramientas-igualdad/home.htm>

good practices for the collective bargaining. With it, gender stereotypes in hiring and promoting female and male workers, especially among managers and human resources staff, will be identified and dealt with. The Women's Institute, together with social partners, shall carry out information and awareness raising campaigns targeting negotiators of collective agreements or EP.

Further, a guide for the elaboration of Equality Plans¹³ in companies has been prepared by the Women's Institute to support them in the process, in accordance to the obligations established in the two new regulations.

It is to highlight that the new regulation framework has been elaborated in close collaboration between the Ministries for Employment and the Social Economy and the Ministry for Equality on the one hand; and also, in close collaboration with trade unions, since it relies heavily on the collective bargaining at sectoral and at company level. Additionally, all the tools included in the new regulation are expected to be developed with social partners. As a matter of fact, RD 901/2020 (article 5.3) states that companies without a legal representation of workers¹⁴ are obliged to set up a bargaining commission for the elaboration of Equality Plans made up of the company representation and of workers' representation from the most representative trade union. The employers' representation has recently brought the RD 901/2020 to court, arguing that the obligation of bringing in external trade union representation plays against the representation right of the company's workers.

This new legislative framework has an important impact on the role played by the Labour and Social Security Inspectorate (LSSI). Within the new framework, the scope for direct intervention of the LSSI is enhanced, so that it will be able to monitor whether companies have an EP negotiated with workers' representation, a wage record, a wage audit, evaluation of job posts, etc.

RD 902/2020 envisages also to monitor and analyse the effectiveness of the fight against the gender pay gap and foresees that meetings shall be held every six months between social partners and the Ministry of Labour and Social Economy and the Ministry of Equality.

4 Considerations for future policies and initiatives

The situation as regards the size of the gender pay gap, the labour market context and the gender equality policies in Estonia and Spain differ widely. Similar to what is observed across other EU countries, low (high) female participation in employment frequently coexists with low (high) gender pay gap: thus, while female employment participation in the labour market in Estonia is 14.2 percentage points higher than in Spain (76.3% and 62.1% respectively in 2019), the gender pay gap is lower in Spain (11.9%, compared to 21.7% in 2019, according to Eurostat).

In general terms, general awareness of society, trade unions and employers on gender equality is relatively high in Spain, as possibly reflected by the existence of a Ministry for Equality since 2018. Also, some specific policies may play a difference, as for instance, following RD 6/2019, equal, equally paid and non-transferable parental leaves of 16 weeks that are a reality since 2021. This contrasts with the Estonian generous but less egalitarian parental benefit scheme.¹⁵

As regards specifically the gender pay gap, the commitment of social partners is key in Spain, which is a significant difference with the Estonian case. As described above, social partners are currently collaborating with the Ministry of Labour and the Social Economy

¹³ Available at: https://www.igualdadenlaempresa.es/asesoramiento/diagnostico/docs/Guia_pdi.pdf

¹⁴ Basically, those companies with less than 10 workers.

¹⁵ According to Statistics Estonia, "27,989 women and 3,920 men received parental benefit in Estonia in 2019. The average monthly parental benefit paid to men was a third higher than that paid to women", available at <https://www.stat.ee/en/uudised/news-release-2020-078> (included in Host country discussion paper).

and the Ministry of Equality in the development of the wage record tool and in the System for the evaluation of job posts and will also be involved in the future Technical Guide for carrying out wage audits.

The application developed by Statistics Estonia to visualise the gender pay differences at detailed occupation level may be a first step and should be kept, but it needs to be complemented with other tools at company level. The Pay Mirror for entrepreneurs is an interesting initiative, which could be complemented with incentives for employers to use it and with a set of recommendations for action when gender pay differences are high. Moreover, the use of public registers of wages by the Pay Mirror, while efficient, may leave out companies with less than ten workers. In these cases, small companies willing to analyse and, if needed, address the pay gap, could provide their own data.

Thus, it would be interesting that the reports (or similar) generated by the Pay Mirror are accompanied by a set of recommendations as to how to address the gaps eventually identified. The Spanish Institute of Women has a service to support companies to elaborate Gender Equality Plans, including carrying out wage audits, with recommendation of measures to reduce inequalities, among which the gender pay gap. Also, companies that stand out for being particularly well performant in gender equality are labelled by the Ministry of Equality (Label DIE) and a network of DIE companies share knowledge and good practices. Both the support service and the label might be considered by Estonia to encourage companies to undertake such actions.

This said, legislative measures, such as those passed in Spain and described above, could be necessary to oblige companies to advance decisively in the fight against the gender pay gap.

5 Questions

- What is the position towards the Gender Pay Gap of Estonian trade unions? Is the role of trade unions relevant for those workers that are not unionised (only 10% of workers are unionised)?
- It is not clear if some measures envisaged in the Gender Equality Act and in the Other Acts Amendment Acts have been implemented: private and public employers must inform at least once every two years on the gender balance, including comparison of average pay of women and men; setting up of the Pay Competence Centre at the Labour Inspectorate (LI); or the conduction by the LI once a year a comparison of wages for each public sector. Have these measures been implemented? If not, why? If yes, what are the results?
- In the text, it is argued that, since in the private sector no pay system or scheme is in place, it might be difficult to introduce the duty to carry out pay audits, why?
- What are the specific competences and role of the Gender Equality and Equal Treatment Commissioner and of the Labour Inspectorate in the fight against the gender pay gap?

6 List of references

CCOO Trade Union, 2015. *Informe sobre la Brecha Salarial de Género: Impacto, Negociación Colectiva y Actuación Sindical (Report on the Gender Pay Gap: Impact, Collective Bargaining and Union Action)*.

Conde-Ruiz, I., Marra de Artíñano, I., 2016. *Brechas Salariales de Género en España (Gender Pay Gaps in Spain)*.

Infojobs, 2018. Press release '8 de cada 10 españoles afirman que sigue existiendo brecha salarial en España'. <https://nosotros.infojobs.net/prensa/notas-prensa/8-de-cada-10-espanoles-afirman-que-sigue-existiendo-brecha-salarial-en-espana>

Spanish Confederation of Employers' Organizations (CEOE), 2019: *Análisis de la Brecha Salarial de Género en España (Analysis of the Gender Pay Gap in Spain)*.

Annex 1 Summary table

The main points covered by the paper are summarised below.

Situation in the peer country

- The gender pay gap has been diminishing in Spain in the last seven years from 18.7% in 2012 to 11.9% in 2019, and remains below the EU-27 average. However, during the pandemic, women's wages have fallen by 14.9%, compared to 11.3% among men.
- The gender pay gap is larger among older women and men reflecting differences in employment careers. The reasons behind the gender pay gap among the lower qualified lay on lower participation in employment of low skilled women, but on unequal pay for equal work for higher qualified women.
- The wage negotiation system, lack of transparency and lack of classification systems contribute to explaining the gender pay gap. 83% of the active population and 58% of companies in Spain support transparency against the gender pay gap.

Legislative and policy measures to support equal pay

- RDL 6/2019 extends gradually the obligation to elaborate, together with workers' representatives, Equality Plans (EP), to companies with 50 or more workers; it also obliges all companies, regardless the size, to keep a record of wages and entitles workers to consult this wage record;
- RD 901/2020 regulates the EP's content, which includes, among others, a wage audit and states that EPs shall be recorded in the public "Register for collective agreements and equality plans".
- RD 902/2020 on equal pay between women and men defines the principle of pay transparency and develops five tools for the pay transparency: the wage record; the wage audits, that shall be based on evaluation of job posts; a (future) system for the evaluation of job posts; the right of workers to information; and a guide support gender mainstreaming in collective bargaining (not yet published).

Considerations for future policies and initiatives

- The application developed by Statistics Estonia to visualise the gender pay differences at detailed occupation level may be a first step and should be kept, but it needs to be complemented with other tools at company level.
- The Pay Mirror for entrepreneurs is interesting and could be complemented with incentives for employers to use it and with a set of recommendations for action when gender pay differences are high.
- Legislative measures could be necessary to oblige companies to advance decisively in the fight against the gender pay gap.

Questions

- What is the position towards the Gender Pay Gap of Estonian trade unions? Is the role of trade unions relevant for those workers that are not unionised (only 10% of workers are unionised)?
- It is not clear if some measures envisaged in the Gender Equality Act and in the Other Acts Amendment Acts have been implemented: obligation of employers to inform on gender pay gap; setting up of the Pay Competence Centre at the LI; or the comparison by the LI of wages for each public sector. Have these measures been implemented? If not, why? If yes, what are the results?
- In the text, it is argued that since in the private sector no pay system or scheme is in place it might be difficult to introduce the duty to carry out pay audits, why is this so?

Annex 2 Example of relevant practice

Name of the practice:	Approval of RD 901/2020 on the elaboration of Equality Plans (EP) and on their record in a public register and approval of RD 902/2020 on equal pay between women and men in close collaboration with Trade Unions
Year of implementation:	Approved in 2020, RD 901/2020 entered into force on 14 th January 2021 and RD 902/2020 on 14 th April 2020
Coordinating authority:	Ministry for Labour and the Social Economy and Ministry for Equality
Objectives:	To promote the elaboration, implementation and evaluation of Equality Plans (EP) among a larger number of companies, enhancing the obligation among companies with 50 or more workers (before, it was 250 workers). Also to promote pay transparency, through the obligation of all companies to keep wage records, and the obligation for companies compelled to implement EP to include in the EP wage audits, that require gender sensitive evaluations of job posts.
Main activities:	<ul style="list-style-type: none">• Collaboration between the Ministry for Labour and the Social Economy and the Ministry for Equality• Negotiations with social partners and final agreement with Trade Unions
Results so far:	As result, the Spanish response to the Recommendation of the European Commission of 7th of March 2014 on strengthening the principle of equal pay between men and women through transparency is addressed through: i) obligation of all companies, regardless the size, to keep record of wages disaggregated by sex and category; ii) guarantee of individual workers' right to access to the wage record disaggregated by sex; iii) guarantee of workers' representation's right to access to complete wage records; iv) obligation that companies with 50 or more workers (the Recommendation states companies with more than 250 workers) prepare, together with workers' representatives, EP that include wage audits.

