

# Historical framework equal pay in the european union law european essay

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## **Introduction**

Within the realm of politics and governance, a shortage of policies does not exist. No matter the country, policy, or a proposed or adopted course of action, inundates nearly every dimension of life. Across the globe, these procedures guide decisions, actions, and a plethora of other matters of governments and organizations. In current times, increased scrutiny has been allotted to policies that embody social dimensions. Policies concerning gender dynamics constitute one such realm of social policy formation, specifically the issue of equal pay among men and women. Even more numerous than these policies themselves are the policy-making procedures that dictate policy formation within a governing entity. It seems every governmental body vastly ranges in their implementation of policy formulating procedures. The European Union and the United States both portray the notion of prominent variation in the creation of policies between governing organizations. Using policies regarding equal pay for men and women in the EU and US as a vehicle, an analysis of policy implementation will be rendered. By first briefly discussing the historical foundation and current initiatives regarding equal pay policy in both the EU and US, a critique of each entity's policy-making effectiveness and motives becomes possible. It is through these investigations that the future of this pertinent gender issue can be appraised.

## **Historical Framework: Equal Pay In the European Union**

While the policy-making dynamics in the Eurozone have been less than consistent over time, a pattern of European Union acquisition of more competencies exists. As member states' domestic policy mechanisms fluctuate and international climates shift, the EU political agenda must react. In order to cope with these obligations, complex policy-making systems have been conceived (Bache, George & Bulmer, 2011). The historical progression of gender equal pay policy at the EU level conveys this notion. Starting with the Treaty of Rome in 1957, the European Community (EEC at the time) realized the need to implement unifying policy in the arenas of health and safety in the workplace and labor. The social policy elements of the Treaty of Rome, as illustrated in Article 119, focused on leveling the playing field for competition via gender equality. With the establishment of the common market, more legislation concerning equal rights for men and women in the workplace ensued. The Equal Pay Directive on 1975 provides one example. This directive imposed a mandate for equal pay for equal work. Similarly, the Equal Pay Directive of 1976 banned discrimination in employment access, training, and dismissal. Moreover, the Social Security Directive of 1978 required equal access to state benefits. Each of these European level directives came into policy formation based on the demands of various member states and the pressure of lobbyist groups (Bache, George & Bulmer, 2011). European Court of Justice rulings further bolster equal pay policy. The ECJ interpreted Article 119 in the Defrenne case of 1978 to deal explicitly with equal pay for men and women. It was asserted that Article 119 did indeed mandate the abolition of discrimination between genders as a

fundamental component of the European Community law (Bache, George & Bulmer, 2011). Since that time, social policy in the field of equal pay for men and women has stagnated somewhat. However, in the efforts to catalyze policy, other European Union institutions have come into play. In 1994, the Council of Europe established the Steering Committee for Equality Between Women and Men. This entailed the Council of Europe's first involvement in this social issue. This committee reported directly to the Council of Ministers and was granted the task to establish measures to promote equality (History of Gender Mainstreaming, 2010). In 1995 The Inter-Directorate Group was created to develop training programs and EU strategies of relevance for gender equality. The 1996 publishing of The European Commission of the first annual report on the subject of " Equality for Women and Men in the European Union" further demonstrated the push for equal pay policy. In 1997, the European Parliament took action through the recommendation of a double strategy aimed at achieving equality between women and men, monitoring of all proposed legislation for its impact on gender equality, and the gathering of data and statistics. All these efforts from various European Union institutions lead up to the enactment of The Treaty of Amsterdam in 1999. The treaty asserts that the road to gender equality shall be implemented using gender mainstreaming as a method and Article 119 became Article 141 (History of Gender Mainstreaming, 2010). From this point onward, the conjunction of action programs, conferences, annual reports, and the monitoring of each member states' employment guidelines by the Commission all aim to improve gender equality in the workplace on the EU level. Furthermore, the creation of " Roadmaps for Equality Between Men

and Women" every five years and the establishment of the European Institute for Gender Equality in 2007 indicate further efforts of targeting the inequality of pay via policy-making. It is through this institute that the EU attempts to ensure that the gender equality trickles down from the international and EU level to national, regional and local levels. The institute has become an agent to evaluate the level of gender equality in specific domains and on international or national levels via the Gender Equality Index that will be unveiled in June 2013 (EIGE, 2013). Most recently, members of the European Parliament are pushing a proposal to increase the presence of women in higher-level positions. Emphasizing the notion that women hold only 14% of the seats on the EU's largest companies' boards, parliament members such as Evelyn Regner and Rodi Kratsa-Tsagaropoulou are proposing that boards should have to be comprised of 40% women (EPN, 2013). Finally, the creation of European Equal Pay Day, the EU-wide event that marks the extra number of days that women would need to work to match the amount earned by men, seeks to spread awareness on the need for policy regarding equal pay in the EU (EPN, 2013). However, despite what appears to be a myriad of efforts to ensure equal pay for men and women, the current state of affairs does not reflect such efforts. As of 2010, the average pay gap based on gender across the EU is estimated at 16.2%. This figure provides an overall picture of gender discrimination and the inequalities in the labor market that explain gender differences in pay (European Commission, 2010). As further evidence of the persisting problem, statistics out of Britain, the nation with one of the worst gender pay gaps, assert that women face a 57-year wait before their salary is equal to that of

their male peers. Despite forty years of equal pay policy, women in the UK are paid 79% of male rates, while across the 27 countries of the European Union the figure is 82% (Allen, 2010).

## **EU Policy Analysis: Effectiveness and Motives**

The historical foundation and current statistics just elicited render an assessment of the EU policy initiatives concerning equal pay based on gender. This analysis specifically pertains criticism to of EU policy effectiveness and discussions of perhaps hidden motives or broader agenda behind equal pay legislation. Throughout the history of equal pay policy, the effectiveness has been questionable. Beginning with The Treaty of Rome, the text of the policy was vague. Article 119 left many inquiries open to interpretation such as what "wage work" constituted and what comprised "equal work." Thus The Treaty of Rome only put forth a strict interpretation regarding equal pay in the sense that it had to be identical (History of Gender Mainstreaming, 2010). While the Treaty of Rome illustrates a very specific example, it lends itself to much larger criticisms of the EU's gender policy. The numerous Directives handed down by the Commission all address the equal pay issue from the perspective that women are merely components in the workplace (Pollack and Burton, 2000). Perhaps more effective policy would stem from alternative perspectives. Such ulterior mental frameworks might try to confront the issue through acknowledging that women are first and foremost treated unequally in European society at large. Policy amending the subordination of women in society, such as reproductive issues and violence, might more effectively facilitate changes in pay gaps. Essentially, unequal pay may be a byproduct of failed policy in

other regions of European society. Fixing these policies would trigger change in workplace policy. Furthermore, the latest attempts at solving the gender pay gap are largely inadequate. The proposal currently in the European Parliament to establish more women at higher-level jobs ignores the larger number of women in the workplace. New research reveals that disparities between professional and unskilled women workers are significantly higher than those between the same groups of men (EPN, 2013). The attempts at shattering the "glass ceiling" for women at the top is leaving the women at the bottom stewing in inequality. Thus, a larger gender pay gap may be present at the bottom of the wage distribution, which creates a "sticky floor" phenomenon (Arulampalam, Booth, Bryan, 2007). Clearly, this newest policy proposal suffers from ineffectiveness. Then again, maybe the failures of equal pay policy in the EU are not due to the actual text within the policies, but rather the idea that the procedures implemented to make the policies are not effective. Having to first be conceived in the Commission, then passed through the Council of Ministers, and then implemented in the member states, clearly any policy designed to address equal rights faces many obstacles. Not only do the Commission and Council have to accurately identify the issue and create adequately encompassing policy, the subsequent member states' legislation implementation then varies (Pollack and Burton, 2000). Enforcement of the equal pay directives becomes dismal. Thus the idea that there is substantial change for women in Europe at the end of this directive process is a far-fetched imposition. With these criticisms in mind, a reasonable inquiry would thus be whether or not the EU is even the correct forum to address the equal pay issue. Yet, no other entity

possesses the resources and power to enact such overarching changes in the realm of equal pay for European woman than the EU. Thus perhaps the existence of some hidden motives regarding equal pay are impeding or impacting its creation of effective policy. These motives begin with the original agenda behind equal pay. The primary reason the Treaty of Rome even harbored an article addressing equal pay was because France had extensive policy concerning equal compensation (Bache, George & Bulmer, 2011). The French urged the European Community to encompass similar policy in order to ensure French companies would still remain competitive and would not be damaged by their domestic equal pay legislation. Thus, equal pay in the EU was never truly about the principle of equality, but rather of member states' self-interest and economics. With these motivations of greed and competition, it is not surprising that the gender pay gap has not been abolished. Another proposition regarding the true motives of equal pay is that policy makers are hindering equal pay efforts to avoid the inevitable transparency that comes along with such policies. The real concern may lie in preventing the creation of transparency in the publication of pay roll data. A desire to continue to hide private sector salary publication from the public salary might be a genuine motivation (White, 2010). Especially considering many of these private entities lobby EU institutions in the formulation of policy according to liberal intergovernmental theory. In a time when many companies are sweeping the true salaries and bonuses of executives under the rug, the plight for equal pay may inadvertently expose these occurrences. Thus effective equal pay policy has not resulted because it impedes policy-makers self-interest. Similarly, perhaps the EU is not



focused on creating equal pay policy that is truly enforceable because an ulterior goal exists. Directives result in uneven implementation across states and thus effects on equal pay for men and women are bound to vary. With this in mind, perhaps the EU is not concerned with solving the gender pay gap, but rather finds satisfaction is simply diffusing a gender perspective in the formulation of future EU policies (Pollack and Burton, 2000). If this broader agenda theory holds truth, then it is no wonder why equal pay policy has yielded substandard results.

### **Historical Framework: Equal Pay In the United States**

The discussion of the historical evolution of equal pay legislation in the United States presents an interesting foundation for analyzing current gender pay gap policy. Gender issues have constituted a relevant and vital controversy throughout the duration of the last several decades of US history. While the struggle for women's suffrage ended in the 1920s, and the feminist movement was reaching a crescendo in the 1960s, gender equality efforts continue. Despite the label as the "land of equality," the United States is still a country grappling with the task of redefining societal gender roles; the equal pay debate illustrates this notion. Perhaps World War II constitutes the most logical place to begin the historical framework of equal pay policy in the US. As massive numbers of American women took jobs in the war while the men were off in battle, the National War Labor Board suggested that employers voluntarily make adjustments to equalize pay rates for females and males for comparable quality and quantity of work in 1942 (Brunner, 2007). This request was not only ignored, but after the war most women were pushed out of their jobs by returning veterans.

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Furthermore, into the 1960s, newspapers published jobs openings according to sex. Higher-level jobs were exclusively male and even identical jobs harbored with separate pay scales for the each (Brunner, 2007). The passage of the Equal Pay Act in 1963 was the United State's first effort at equal pay legislation. The law entailed that it was illegal to pay women lower rates for the same job strictly on the basis of their sex. Thus gender could no longer be viewed as a hindrance on a resume. Through this policy back wages totaling more than \$26 million were paid to 71, 000 women in 1971. Like in the EU, several court cases, including Schultz v. Wheaton Glass Co (1970) and Corning Glass Works v. Brennan (1974) offered judicial interpretations of the policy (Brenner, 2007). In 2009, President Obama signed the Lily Ledbetter Fair Pay Restoration Act. This policy allows victims of pay discrimination to file a complaint with the government against their employer within 180 days of their last paycheck (Brenner, 2007). He also as publically promotes and supports Equal Pay Day, an initiative first started in 1996 by a woman's interest group. Additionally, President Obama supports passage of the Paycheck Fairness Act, a policy that bolsters the Equal Pay Act (Bassett, 2013). This act, that would mandate more transparency in pay data, was blocked in the House of Representatives in April 2013 (Bassett, 2013). Currently, women make 82. 2% cents to a man's dollar in the workplace (Coy and Dwoskin, 2012). Over four decades after the first equal pay policy, only 6% of CEO's of Fortune 100 companies are women, none of which manage companies in the top 39, and only 15% of senior managers in all industries are women (Bradshaw, 2011). These trends extend into the realm of politics as well. After the 2008 elections, only 16. 8% of all U. S.

Congress members were women. Despite these low percentages of females in office, 9.7 million more women than men voted in the 2008 elections (Carroll & Fox, 2010). These current statistics in the United States represents a conundrum.

## **US Policy Analysis: Effectiveness and Motives**

In comparison with the European union, the United States nearly has an identical pay differential between men and women in the workforce. The US possesses an enormously less complex structure of governance and organization than the EU, thus it would seem logical that the US would not still be combating this issue. Much like the EU, the US faces a myriad of its own policy hindrances and broader agendas that possibly explain persisting gender pay gap. Much of the effectiveness of US legislation becomes hindered by several factors. For one, much like the EU, the US lacks effective means to enforce the equal pay policies. The Federal government currently resides in a state of economic deficit and has limited resources to ensure that the Equal Pay Act is being upheld across the nation. Serving as a watchdog in every tiny company, corporation, and business is not feasible. The policy depends on women being advocates for themselves or whistle-blowers that will take the issue to court, provided they have access to payroll data that proves they are being paid less for equal work. However, uncovering salary information presents a burden to equal pay policy's success. Additionally, those who challenge their salary run the risk of losing their jobs, which are hard to come by in the current economy, and face thousands of dollars in court fees. Moreover, although the US Supreme Court has upheld the Constitutionality of the Equal Pay Act, and ruled favorably on <https://assignbuster.com/historical-framework-equal-pay-in-the-european-union-law-european-essay/>

several occasions, the court has no enforcement mechanism; it merely interprets. Thus, even if an employee were to challenge their pay differential, the courts are not able to enforce anything. Much like the EU and its directives to member states, the US government faces challenges imposing Federal law in the states. The US illustrates a small-scale model of the directive implementation problem in the EU. Many times state laws overlap or contradict Federal law. While Federal law technically trumps state law, the gender gap's variation from state to state demonstrates that a disparity lurks between theory and reality. However, compared with the EU, the US should logically have an easier task in overcoming this issue. The 50 states all constitute one united nation, while in the 27 member states there is no European polity. Furthermore, as discussed earlier, perhaps the ineffectiveness of US policy is grounded upon the notion that the policy fails to address the genuine issue. Perhaps equal pay is merely a consequence of a problem deeply rooted in American society, much like proposed in Europe. Policy inadequacies in realms of reproductive rights and sexual abuse would trigger the diminishment of gender pay gaps (Pollack and Burton, 2000). Instances of broader agendas may also shed light on the issue of why the gender pay gap persists. Time after time the Republican Party has unanimously blocked equal pay reform policies in the Congress. Members of the Republican Party espouse endless rationale as explanation for blocking such policies such as citing a lack of evidence for gender pay gap, accusing the data of being misleading, and asserting that equal pay disputes "clog up the legal system" (Bassett, 2013). Perhaps these justifications are just excuses to mask hidden agendas. Prioritizing the growth of small business

being one such agenda. Senator Scott Brown of Massachusetts referred to equal pay policies as "job-killing burdens on small businesses and employers" (USA Today, 2012). The Republican Party may be more concerned with business enterprises and profit than equality in the workplace. Such an agenda hinders equal pay policy in the United States. Moreover, the plight to cripple transparency in the private business sector may constitute another broader agenda that undermines gender pay gap policy. Much like the EU, individual actors lobby US Congress members in attempts to influence legislation. Private corporations, that would suffer if pay data were transparent and accessible, comprise some of these lobbyists. The transparency that comes with equal pay policy would not serve these private interests.

## **Conclusion**

Through the discussion of the historical basics and recent events regarding equal pay policy in both the European Union and United States, an evaluation of each entity's policy-making effectiveness and motives became visible. The EU and the US both face the persisting policy issue of a gap in workplace compensation based on gender. While these political bodies have numerous differences, they face similar issues in policy effectiveness and under-covering hidden agendas that impede policy progress. Looking to the future, clearly something more profound is impacting the ability to create legislation that solves the equal pay dilemma in the European Union and United States. Whether it is attitudes and norms of inequality in society, or intentional obstacles erected by policy makers, the culprits behind the equal pay problem must be identified. It is through this identification that a deeper

understanding of the issue will be obtained. Both factors will hopefully yield a solution to the problem of equal pay in both entities.