

What slips through the cracks: the distance between regulations and practices shaping the gender pay gap

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Abstract

Studies have often examined the effects of one dimension of work organization (WO) on the gender pay gap (GPG) by considering single contexts. However, research has rarely addressed how different factors of WO intersect to shape the GPG across contexts. This paper fills this gap in the literature by comparing the chemical industry and financial services sectors in Spain. This paper analyses how WO is formalized in collective bargaining and how regulations translate in practice at the company level. While different configurations of intertwining inequalities emerge in each analysed context, managerial discretion is a common key feature contributing to the GPG. Gaps in regulation allow unilaterality in recruitment, promotion and pay practices. Simultaneously, managerial practices distort or circumvent regulation by abusing or misusing certain concepts. The distance between regulation and practice is embedded in gendered organizational cultures and institutional inertias leading to gender inequalities in pay.

Keywords

Gender pay gap, work organization, collective bargaining, managerial practices, organizational culture

Introduction

Early studies referred to discrimination in pay to describe situations of unequal remuneration in equal jobs (Abel Kemp & Beck, 1986). Subsequently, the definition was broadened to include situations of unequal remuneration in jobs of comparable worth (Acker, 1989; Steinberg, 1990). Authors have also used indirect discrimination to refer to inequalities that are not the result of a situation related to direct discrimination but a consequence of women's situation of systematic disadvantage in employment (Olsen & Walby, 2004). Thus, indirect discrimination captures the effects of occupational segregation, women's presence in less-valued activities and jobs, their reduced access to training opportunities or promotions, and the disadvantages derived from a lower time availability for employment. From this perspective, the Gender Pay Gap (GPG) appears as a synthetic expression of women's situation of disadvantage in the labour market and is intimately related to key aspects of the organization of work.

Traditional econometric analyses of the GPG have focused on measuring the differences between men and women's individual characteristics to quantify the explained and unexplained parts of such a discrepancy following an approach that relegates gender to a sort of residual (Baudelot, 1995). This type of analysis disregards the knowledge generated by the sociological and industrial relations literature, which has highlighted that wages are the product of social, institutional and managerial forces with gender effects rather than merely reflective of productivity differences (Rubery, Grimshaw & Figueiredo, 2005). The structure of the labour market, the control of the work process and the underlying wage relation are inherently gendered (Acker, 1990). Work organizations are characterized by 'inequality regimes' (Acker, 2006), that is, interlocked sets of practices and processes that shape gender relations along with those of class and race.

From this standpoint, this paper adopts an interdisciplinary approach to analyse how regulations and practices related to key areas of work organization (WO) shape the GPG across different

employment contexts in Spain. This study focuses on the following four dimensions of WO that constitute basic components of gendered organizations (Acker 1990) and have been identified as key factors accounting for the GPG in the literature: a) job evaluations and the construction of professional classifications, b) recruitment and promotion processes, c) pay structures and systems, and d) the organization of working time. This paper examines how different regulations and practices related to these different areas of WO intertwine in shaping the GPG by comparing the following two activity sectors: the chemical industry and financial services. The focus on the activity sector is particularly pertinent to the Spanish context given that its collective bargaining (CB) system pivots on sectoral multi-employer agreements.

This paper contributes to the literature by addressing different constellations of factors across contexts, whereas previous studies have examined a single or few dimensions of WO either a-contextually or by exploring single professions or activities. The second main contribution is the adoption of an interdisciplinary perspective combining law and sociological perspectives to simultaneously analyse how WO is formalized in CB and how this regulation actually translates in terms of the practices shaping the GPG at the company level. Such an approach has not been applied to the study of the GPG to date, particularly in the Spanish context.

This paper is structured as follows. The first section reviews the literature to highlight the pertinence and novelty of the approach examining the intersection between regulations and practices in shaping the GPG across different contexts. The second section provides some contextual information regarding the Spanish case. The third section describes the research design, case selection strategy, data and methods. The findings of each sectoral case study are then presented as a whole. A fifth section discusses the main results in relation to the literature. Finally, the concluding section notes possible paths of intervention.

Regulation and practices of work organization and gender inequalities in pay

The literature provides numerous examples of studies showing that different dimensions of the organization of work can shape the GPG, revealing its multifaceted character. The analysis of the gendered construction of skills and the undervaluing of women's work has a long tradition in the literature (Acker, 1989; Grimshaw & Rubery, 2007; Steinberg, 1990). Studies have shown how professional classifications, which define and rank jobs within a company's hierarchy, are far from gender neutral (Acker, 1990). Occupational segregation has proven to be entrenched as gendered perceptions of the suitable worker influence recruitment and hiring processes (Acker, 2006). Moreover, women's increased access to previously male-dominated occupations has often resulted in processes of differentiation and reconfiguration within these categories (Acker, 2006; Crompton & Sanderson, 1990). In turn, vertical segregation stems from gender biases occurring during promotion processes, which tend to place women at a disadvantage when they are based on seniority criteria, long-hour cultures, or patronage and informal decisions made in 'boys' networks' (Bertrand, Goldin & Katz, 2010; Rubery & Grimshaw, 2015; Wass & McNabb, 2006). Certain pay systems also tend to operate to women's detriment, particularly when they reward seniority or features of typically male jobs. Moreover, pay grading and merit- and performance-based systems have shown to be disadvantageous given that they are generally linked to higher discretion and lack of transparency (Davies, McNabb & Whitfield, 2015; Koskinen Sandberg, 2017; Rubery & Grimshaw, 2015). Finally, gender differences in hours worked, perceived availability for employment, and career interruptions tend to result in gender inequalities in pay either directly or indirectly through their effects on promotions or variable pay (Goldin, 2014; Leuze & Strauß, 2016; Noonan, Corcoran & Courant, 2005; Olsen & Walby, 2004).

These cited studies have not explicitly considered contextual differences or are context-specific, often focusing on professional, high-income occupations in law or finance (Bertrand, Goldin & Katz, 2010; Crompton & Sanderson, 1990; Noonan et al., 2005; Wass & McNabb, 2006). The findings of more recent research suggest that these different factors may operate in significantly different ways as they are embedded in different contexts. For instance, Goldin (2014) showed that different workplaces value and reward long hours or the lack of career interruptions differently because due to occupational characteristics, flexibility may be costlier in some sectors compared to that in other sectors. The increasing prevalence of overwork and its rising returns are most pronounced in professional and managerial occupations, where the norm of long hours is deeply embedded in organizational practices and occupational cultures (Cha & Weeden, 2014). Grimshaw, Whitehouse and Zetlin (2004) revealed the complex interactions between pay systems and wage structures in shaping gender pay equality by comparing two occupations in Australia and the UK. Overall, existing research suggests that the organization of work in its different dimensions is key in shaping the GPG and that the way these factors operate depends on the context. However, existing research has generally focused on one dimension of WO and often examined a single context. Thus, empirical studies examining how different configurations of factors may shape different expressions of the GPG across contexts are lacking. Indeed, scholars have called for more fine-grained analyses of specific sectors and groups of workers, which could account for the different and specific factors hindering the reduction in existing GPGs (O'Reilly et al., 2015). Only recently, Bergmann, Scheele and Sorger (2019) analysed the factors shaping the GPG in the financial and human health sectors in Germany and Austria and showed that the sectoral level is highly relevant in accounting for the GPG, even across countries. From an industrial relations perspective, Grimshaw, Bosch and Rubery (2014) used sectoral case studies in different countries to reveal the intersections of minimum-wage policies and CB systems that shaped bargaining strategies and pay-equity outcomes. However, to date, no attention has been paid to the effects of regulation regarding specific areas of WO on the GPG across contexts.

This paper aims to fill these gaps in the literature by analysing how different dimensions of WO intertwine in shaping the GPG in two different activity sectors in Spain. Therefore, we draw upon Koskinen Sandberg's (2017: 156) notion of 'intertwining inequalities' as 'complex structures, processes and practices that are mutually reinforcing in producing and reproducing gender inequality in wage determination'. This study is also innovative because it adopts an interdisciplinary approach integrating sociological and legal perspectives to analyse how the formalization of WO in CB may affect the GPG and how this regulation translates into actual practices across different employment contexts. In fact, based on the literature, it is known that there is not necessarily a correspondence between the formalized and realized systems of job evaluation or pay as a variety of mutually reinforcing mechanisms may intersect with formally delimited processes, thereby distorting their outcomes (Koskinen Sandberg, 2017). The gendered valuations attached to jobs and an understanding of the appropriate wage levels for men and women, prevailing job hierarchies and wage structures, discrimination and favouritism, and other factors may affect their implementation and result in the persistence of gender differentials (Koskinen Sandberg, 2017). We examine whether such correspondence between regulations and actual practices exists in our analysed cases across different areas of WO and analyse which factors could explain their eventual gap.

In summary, this paper's main goal is to analyse the extent to which different constellations of factors shape different expressions of the GPG across contexts and how this is embedded in the regulations and practices of the organization of work. Our aim is not to determine the relative weight of each of the considered factors, but to uncover the mechanisms and interrelations involved in shaping the GPG. The following research questions guide our study: a) Which dimensions of WO are relevant for shaping the GPG in each analysed sector? b) Do these factors compensate for each other or are they rather mutually reinforcing in different contexts? c) Can we

identify gaps in regulation leading to gender inequalities in pay? d) Is there a mismatch between regulation and its implementation? e) Which factors account for such a lack of correspondence?

The Spanish context

The Spanish gender regime has long been characterized as familialist and traditional with respect to women's labour market participation. However, women's employment patterns have undergone major changes over the last decades in this country (Sánchez-Mira, 2016). Female activity rates have continuously increased since the mid-80s during periods of both economic expansion and recession reaching 68.86% in 2018, which is only slightly below the 69.3% of the EU-15 average (Eurostat, LFS). The lower employment rates (56.9% in Spain versus 63.9% of the EU-15 average) are largely due to the structurally high levels of (female) unemployment. These transformations reflect a rising labour market commitment, a strong preference for full-time employment and an increasingly critical contribution to household budgets by Spanish women (López-Andreu & Rubery, 2018; Sánchez-Mira & O'Reilly, 2019). Despite these important transformations, the GPG has remained stable, oscillating by approximately 15-17 percentⁱ over the last decade, a figure that is slightly below the European average (Eurostat, SES). This immobility reflects the entrenchment of gendered structures and practices in the Spanish labour market.

The legal framework, along with its judicial interpretation and CB processes determine the scenario in which gender inequalities in pay occur in Spain. The main legal framework of the regulation of work in this country is the Worker's Statuteⁱⁱ, which is developed by CAs. It should be noted that the regulatory framework also includes case-law doctrine and that the strong tendency towards the individualization of wages in Spain is largely due to the consolidation of a given judicial interpretation of the legal framework in this country. The structure of the CB system in Spain provides a significant degree of homogeneity at the sectoral level in key areas of WO with respect to countries with different institutional settings. Despite the recent regulatory reforms towards

disorganized decentralization (López-Andreu, 2019), CB in Spain still pivots on sectoral, multi-employer agreements. The wages of more than 60 percent of covered workers are set by regional sectoral agreements, while national-level bargaining affects nearly 30 percent of workers, and firm-level bargaining affects less than 10 percent of workers (Felgueroso, Pérez-Villadóniga & Prieto-Rodríguez, 2008). Moreover, CAs are automatically extended to all workers at the level at which they are negotiated regardless of their union status, which explains the high coverage rate of CB in Spain (above 75 percent) (López-Andreu, 2019). To the best of our knowledge, only one study examined the effects of CB on the GPG in Spain. That study focused on the differences across levels of bargaining and showed that national and regional agreements seem to produce more compressed wages and less discrimination at the bottom end of the distribution, while women in the upper part of the distribution appear to be more protected under firm-level agreements (Felgueroso, Pérez-Villadóniga & Prieto-Rodríguez, 2008).

Subsequently, we synthesize the main features of the Spanish regulatory framework regarding the following four areas of work organization most relevant in shaping the GPG: a) job evaluation and professional classification; b) recruitment and promotion, c) pay structures and systems, and d) working time. The description that follows refers to the state of things in 2017, when the study was conducted. However, it should be noted that a reform of the Worker's Statute touching upon some of these areas was passed in early 2019. The reform had not yet been implemented at the level of CB at the moment of writing the paper and therefore its potential future implications are discussed in the concluding section.

A) *Job evaluation and professional classification*: Article 22 of the Worker's Statute establishes that professional classifications are to be organized based on the definition of professional groups, grouping tasks considered professionally equivalent, and using objective and neutral criteria. Professional equivalence is intended to enable functional mobility and professional promotion. Accordingly, CAs shape professional groups following criteria, such as qualifications, initiative,

autonomy, responsibility and command. However, CAs rarely incorporate the principle of comparable worth from a gender perspective even though the same article establishes the need to guarantee the absence of direct and indirect discrimination between men and women and article 28 of the same legislation recognizes the principle of equal remuneration in jobs of comparable worth in terms of professional knowledge, skills and efforts. Nonetheless, CAs tend to use typically male jobs as a reference to define supposedly objective criteria, such as responsibility or physical strains, but they do not value other characteristics more present in typically female jobs that are related to skills, efforts and conditions of job performance.

B) *Recruitment and promotion*: Processes of recruitment and promotion have traditionally been reserved to the companies' human resources (HR) policies and thus subject to a wide margin of discretion. Recruitment processes are barely regulated in Spanish legislation outside of the public service. Article 17 of the Worker's Statute merely establishes a generic anti-discrimination clause in access to employment that is applicable to private companies. CAs rarely establish criteria or procedures for recruitment and at best set the companies' obligation to report to the workers' representation about the job to be filled, the requirements of the candidates or the tests to be conducted. The situation of promotion processes is similar. In addition to non-discrimination, article 24 establishes the need for CB to consider training, merits, seniority, and the organizational faculties of the employer in promotion processes. Seniority is known to be, in given contexts, a non-neutral criterion given that women change jobs or interrupt their careers more frequently due to caring responsibilities. In turn, the guarantee of the organizational faculties of the employer favours the existence of spaces immune to individual and collective control.

The Organic Law 3/2007ⁱⁱⁱ for effective equality between men and women introduced the possibility for CB to regulate positive action measures (in recruitment, promotion and training) to promote women's access to all professions. However, only a minority of CAs establish measures of positive action, and those that do only establish these measures as recommendations.

- C) *Pay structures and systems*: Pay supplements are known to reflect larger gender gaps than basic salaries (Sánchez-Mira, 2017). Article 26 of the Worker's Statute defines three types of pay supplements to be established through CB. First, personal supplements are set on the basis of the personal conditions of the worker (e.g., seniority). Second, work-related supplements remunerate the specific conditions of the work performed (including quality and quantity). The third type of supplement rewards the situation and results of the company. The second type of supplements tends to reflect gender-biased job definitions and is generally based on the characteristics of predominantly male jobs. For instance, these supplements reward physical overt psychosocial effort, the quantity of work in terms of long hours or availability of employment instead of the quality of the work. Performance-related payments in the form of bonuses or incentives paid voluntarily by the company also constitute a main source of gender inequality. Whether regulated in collective agreements or set unilaterally by companies, these payments share the same problems in practice as follows: a lack of clear and precise criteria determining their accrument and a lack of transparency in their distribution.
- D) *Working time*: Article 34.8 of the Worker's Statute establishes the right to adapt the duration and distribution of the working time to effectively reconcile work and family life and encourages the use of continuous working days, flexible working hours and other modes of organization of working time, including remote work, and rest, allowing the compatibility of this right with the companies' productivity. However, the specific modes of concretion of such a right have been minimally developed by CB to date, relegating its effective implementation to the individual negotiation between employers and employees.

Research strategy, data and methods

Case selection strategy and main characteristics

On the basis of exploratory quantitative and qualitative information, we chose to compare the chemical industry and the core of the financial services (banking). Both sectors are similar in some respects and, thus, provide a certain basis of homogeneity for comparison. However, these sectors differ in the nature of the production process, the gender composition, key areas of WO, and managerial practices and organizational cultures. This setting allows us to address how different ‘inequality regimes’ (Acker, 2006) or ‘intertwining inequalities’ (Koskinen Sandberg, 2017) shape the GPG across different contexts. Table 1 provides the summary characteristics of the selected sectors and reflects some of their internal heterogeneity.

Both the chemical industry and financial services have a skilled labour force and are characterized by stable full-time employment and high average wages. These sectors have a long tradition of centralized CB with comprehensive coverage under their respective national sectoral agreements, albeit with very different approaches to gender equality issues. In both cases, the sectorial agreements are generally supplemented by firm-level agreements.

The chemical industry is a manufacturing sector with workers directly employed in production, logistics, R&D, and sales. The chemical industry has the most compressed GPG within the manufacturing industries in Spain, albeit with some differences among the subsectors. The gender composition also differs across the subsectors as women are the most present in the pharmaceutical industry and there are different degrees of occupational segregation across different departments within companies.

Financial services had been traditionally a male-dominated sector in Spain but witnessed an increasing presence of female employees since the mid-90s and became a gender-mixed sector.

The GPG in core financial services is below the national average, and this sector has recently undergone a major process of externalisation of tasks to ‘auxiliary activities’ that are notably female-dominated, worse paid, have higher rates of temporary and part-time employment and a much higher GPG^{iv}.

[Table 1 about here]

Both sectors are currently under transformation and have undergone substantial pressures due to the economic crisis. The chemical industry is undergoing significant changes in productive processes, leading to increased mechanization. Moreover, this sector has been under increased strain due to the passing of a national decree that changed the prices of pharmaceutical products for companies contracting with the administration. In turn, the banking sector has undergone a major process of restructuring in the context of the economic crisis and increasing digitalization. These processes have resulted in numerous mergers and downsizing and increased pressures towards the deregulation of working time and increased performance.

Data and methods

The research methods included an analysis of sectoral CA, expert interviews with key informants (mainly trade union officials) and focus groups with employees. The fieldwork was conducted during 2017 and followed a top-down logic from the national level (Spain) through the regional level (Catalunya) to the level of companies based in the metropolitan area of Barcelona (Table 2). Access to the field was facilitated by the secretariat for gender equality of a major trade union. Successively, the first informants provided access to other relevant informants in their branches, who, in turn, facilitated access to the companies and HR managers. The participants in the focus groups were also recruited among trade union members. This purposive sampling strategy, which relied heavily on union officials as expert informants and employees recruited through the union as focus group participants, certainly did not yield an impartial picture, nor did it aim to. The main

goal was to access highly knowledgeable and observant informants who could provide us with valuable insights on the practices shaping the GPG in their corresponding contexts, which we could have not obtained by other means.

The data collection followed the same basic structure in both sectors but was adapted based on their specificities. At the *national level*, we reviewed the CAs applied in the selected sectors and interviewed members of the negotiating tables or other national trade union officials with expert knowledge regarding the sectors. At the *regional level*, we conducted interviews with trade union officials and 2 focus groups in financial services (one with male employees and one with female employees with intermediate positions in the job hierarchy). Due to the heterogeneity of the chemical industry in terms of both branches and departments, it was impossible to find a reduced number of profiles that could be representative of the whole sector. Therefore, we did not conduct focus groups in this sector and instead conducted more expert interviews. At the *company level*, we conducted interviews with worker representatives and HR managers. The companies included a) a large (>250 employees) pharmaceutical company and a medium-sized (50<250 employees) enterprise producing plastic components and b) two large financial companies. We were unable to interview HR managers in the financial services sector^v.

In total, we conducted 19 expert interviews with 28 informants and 2 focus groups with 14 participants. The interviews often included more than one participant, explaining why the number of interviews is smaller than the number of interviewees. The interviews and focus groups were conducted by the lead author of the article at the premises of the trade union organization or at the companies involved. The interview and focus group guides were structured based on the following main areas of WO theoretically identified as having the most influence on the GPG: a) selection and recruitment; b) job evaluation and professional classification; c) promotion processes; d) pay structures and systems; and e) working time. Furthermore, the interviewer applied the guides flexibly, allowing for the emergence of new themes. The interview and focus group guides were

adapted to the specific characteristics of each sector. The first analysis of the CAs allowed us to introduce questions specific to the different cases. The guides were continuously refined by building upon the information collected in previous interviews, allowing further deepening and concretization. This knowledge was subsequently used for another round of analysis of CAs.

The analysis of the qualitative material followed a process of hierarchical coding by means of Atlas.ti software. The codes generated were classified within the broadest theoretically derived categories and newly generated categories. First, the cases (sectors) were analysed as entities, and then, cross-sectional analyses were performed to identify the similarities and differences between the cases.

[Table 2 about here]

Findings

The GPG identified in both sectors could be related to the following different relevant factors to different degrees: horizontal and vertical segregation, the undervaluing of typically female jobs, gender biases in recruitment, promotion and pay practices, and differential availability for employment derived from the unequal division of domestic and care labour. However, while each factor operates in each analysed sector, their influence varies in its relevance and in how it is materialized. Gender inequalities in pay are embedded in the specific contexts of WO, regulated differently through CB, and characterized by different managerial practices and organizational cultures. Certain factors gain more importance and fuel each other in a specific manner in a given context. To illustrate this notion, the findings of each case are first presented as a whole as we examine the key areas of WO. Table 3 presents a synthesis of the main findings. Then, the similarities and differences across the cases are addressed in the discussion.

The chemical industry: circumventing, misusing and underusing regulation

The GPG in the chemical industry relies on both horizontal and vertical segregation. Women are more represented in departments and jobs associated with fewer work-related supplements. Women are also promoted to positions of command less often and benefit less from discretionary variable payments. These inequalities persist even though the CA in the chemical industry is amongst the most advanced national CAs in Spain from a gender perspective. The measures included in the CA reflect a long tradition of CB targeting gender equality issues in this sector led at the national level by trade union officers sensitized with this matter. The high and comprehensive awareness shown by the national trade union officers about the sources of gender discrimination in this context is to some extent translated at the regional level but has reached the company level more unevenly. This sector provides illuminating examples of how managerial practices exploit gaps in regulation and of how potentially advanced measures are misused or underused.

The CA provides a systematized and detailed **definition of professional groups** incorporating a gender perspective. Responsibility is measured not only in economic terms but also in terms of staff management and customer handling. The CA also considers skills and efforts in task performance and working conditions. Given that such elements can show significant variation across companies, the CA includes a model of job evaluation such that the adscription of each job post to a professional group can be conducted at the company level. Such a model is frequently not applied with companies relying largely on the inertia of previous classifications or is not applied correctly such that the classifications continue to undervalue women's skills and efforts. The interviews provided several examples of such undervaluing, particularly in production (minute repetitive work or even physical efforts of female-dominated jobs), resulting in the classification of typically female jobs in lower professional groups.

The **recruiting** process is regulated in detail in the CA, which favours the participation of worker's representatives; the CA obliges companies to provide detailed information and establishes the requirement to publicize the job offer internally. However, the CA still does not specify the selective criteria beyond the need to be objective and neutral, and the participation of the workers' representatives in selection commissions is not institutionalized. Horizontal segregation in access to positions persists in practice; for instance, women are the most present in base positions within production lines, while men are overrepresented in logistics or maintenance. These jobs may be in the same professional group, but the latter include work-related supplements, resulting in inequalities in pay.

Regarding **promotions**, the CA establishes a system of competition based on objective criteria (degree or qualification, knowledge of the position, professional history, having performed a function in the superior professional group, and specific tests) and obliges the workers' representatives to rule on the rating system and participate in the commission deciding upon the promotion with a voice but no vote. However, vertical segregation persists, and women are less represented in middle management and directive positions. This situation can largely be explained by the expansive application of the concept "position of command" or "position of trust", which is excluded from the requirements of the CA regarding recruitment and promotion, thus significantly limiting the practical incidence of these regulations. The CA reserves the possibility to make free appointments for certain positions under the pretext that such posts must be especially deserving of the company's trust given their position in the organigram. In practice, outside of manual operators, almost any new position to be filled is defined as a position of trust or command, which enormously increases the company's margin of discretion.

The **pay structure** established in the CA is significantly complex and is a result of a decade-long exercise by the negotiators to integrate the multiple supplements existing across subsectors and companies into a single structure. These supplements have all been merged into a single concept,

i.e., *the agreement supplement (plus convenio)*, which is the general payment to all employees in the same professional group working in any given company. Any amount received for a regular working day and regular work that exceeds the *minimum guaranteed wage* and the *agreement supplement*, existing supplements rewarding seniority, shift work, night work, or hazardous working conditions, or other *job post supplements* constitute the employees' *personal supplement*.

The subsumption of pluses under a single category likely had a positive effect on the reduction in the GPG because it homogenized wage structures as argued by the trade union officers. However, inequalities appear to slip through the *personal supplement*, which is often used at the employer's discretion as a sort of incentive, to women's disadvantage. These supplements increase as we climb the professional scale in technical and intermediate command positions, but especially for directors and high executives, intertwining with the existing vertical segregation. This is also the case for *incentives* or *performance-related pay*. Moreover, *job post supplements* can represent a source of discrimination as they are frequently incorrectly used to reward certain employees rather than remunerate the particular and temporary conditions of performance in a given job post as established in the CA. These findings are consistent with figures showing that in the chemical industry, the GPG is mostly due to pay supplements rather than basic wages (Table 1). The CA includes the possibility of using a part of the gross mass to adjust for wage differentials among employees in the annual process of wage increases by absorbing *personal supplements* and increasing the *agreement supplement*. However, if and when applied, the corrections impacted by this mechanism are very small, creating a very long road to closing the GPG.

The complex intertwining of occupational segregation and pay practices is particularly revealed when paying attention to the changing workforce composition in the sector. For instance, recently, highly educated women have appeared to be entering increasingly skilled technical positions (quality technicians and engineers). However, middle-management positions in production (supervisors and foremen) are dominated by men with longer trajectories. Despite being in a lower

professional group (5), the latter can have higher wages due to their personal supplements, while female employees are paid at the group 6 basic level^{vi}. Another example is related to women's overrepresentation in production in the manufacturing of pharmaceuticals. Women massively entered the sector during a period when manual meticulous work was required for production. However, due to increased mechanization, workers with mechanical skills are increasingly desired, and older women with high wages due to seniority and personal supplements are being replaced by younger men with vocational training certificates in mechanics. Thus, the GPG is likely to increase in this sector as this change in the composition of the labour force evolves.

The **working time** does not appear to be a major concern for trade unions in this sector. The CA leaves the possibility to establish measures for flexible working time whenever the conditions of WO allow to firm-level negotiation. These measures tend to apply to technical, administrative or commercial departments and are rare in production plants. Part-time employment is virtually non-existent, although women continue to be the main beneficiaries of work-life reconciliation measures (leaves and working-time reductions). The CA provides some protection for the latter as the irregular distribution of working time cannot be applied to employees enjoying these measures and pregnant or breastfeeding women.

Finally, the CA recommends advanced measures for affirmative action in recruitment, training and promotion, which are rarely practiced at the company level. Overall, the CA of the chemical industry shows how despite significant efforts to introduce measures aiming to reduce gender inequalities in pay, the GPG slips through the cracks of regulation.

The financial services: across-the-board managerial discretion in a presentist environment

The GPG in financial services is the product of the intertwining of strong vertical (and to a lesser extent horizontal) occupational segregation and gender biases in variable payment schemes and

pay supplements. This situation results from a lack of transparency and an undefinition of criteria and procedures, offering management a wide margin of discretion across-the-board, which intersects with a long-hours culture that has perverse effects on women. Despite being a gender-mixed sector, social partners have traditionally been minimally concerned with gender equality issues. This lack of concern is reflected in the content of the national CA, which merely translates the basic obligations established by statutory regulation into its script for most issues. The levels of awareness and implication for trade union officers with gender equality issues starting at the national level are significantly lower compared to those in the chemical industry.

The CA establishes one single **professional group** divided into 12 pay levels (level 1 being the highest). Only some general criteria (level of qualification, degree of responsibility and autonomy in work performance) are used to distinguish between levels 9 to 11 and levels 1 to 8. The contours delimiting each level are completely blurry, and the lack of definition of functions opens the door to the broad discretion of management in assigning pay levels. There is often a discrepancy between the functions performed and the pay level assigned, especially as employees cannot be deprived of their acquired pay levels if their functions change. As extreme examples of such a mismatch, the informants mentioned previous branch or zone directors ousted for some reason to perform bank teller tasks, earning more than the current branch director. In general, women are classified at lower pay levels even though they perform the same tasks as their male peers, and this situation is very much related to the characteristics of promotion processes.

The regulation of the **recruitment process** is virtually non-existent in the CA, which basically reproduces the general indications of the legislation on equal treatment and lack of discrimination. The CA establishes the following three main tracks for **promotion**: a) agreement between the employee and employer; b) the decision of the company if it entails an economic gain for the employee; and c) seniority only among the lowest levels (up to level 9). Thus, the norm endorses promotions occurring by the unilateral decision of the firm without establishing any predeterminate

criteria. The employer's margin of discretion is virtually unlimited considering the lack of criteria for the evaluation and ranking of jobs within the only existing professional group. As a result, women are overrepresented in the lower categories, generally hitting the glass ceiling at levels 7 or 8. Moreover, the exam-based promotion track previously recognized was eliminated in the last revision of the CA, which clearly has negative implications for gender equality. In one of our case studies, the worker's representation detected that more women than men are promoted through the exam-based system but then hit the glass ceiling at level 5, where this system no longer applies, and promotions are based on unilateral management decisions. In this case, the exam-based system was developed in the firm-level CA, which allowed the trade unions to enforce its maintenance in the company much to the managers' discontent. Moreover, positions to be filled are rarely announced internally. These positions are either directly filled through the external job market or changes are carried out internally without previous notice. When they are published, the job offers rarely include the wage or pay level. Additionally, as in the case of the chemical industry, there is an expansive use of the concept "position of trust", reinforcing management's margin of discretion. The findings also highlight the role of informal decisions in promotions, which occur in 'boy's networks' often outside office hours in informal spaces, operating to women's disadvantage.

The relatively simple, objective and apparently neutral **pay structure** established in the CA (based on the basic salary, extraordinary payments and seniority payments) is altered in practice by the unilateral establishment of incentive-based variable payment schemes and 'voluntary wage improvements'. As in the case of the chemical industry, the GPG in this sector is mostly due to pay supplements rather than basic wages (Table 1). Variable payments are particularly important for the highest job levels (from levels 5 to 1) and within male-dominated departments or divisions (investment, wholesale or corporate banking), thus intertwining with existing vertical and horizontal segregation. At the base of the companies' job hierarchy, these payments can represent up to 10% of the total wage, but the share easily rises to 50% or more for management. Middle

management (directors or subdirectors of company branches) in retail banking, whose wages largely depend on incentive-based variable payments, exert enormous pressure on their subordinates to meet sales targets. The sales objectives and system for the distribution of incentives are not clearly defined, leaving a significant margin of discretion in their allocation. In some cases, the objectives are even changed halfway as they are close to being reached. As one participant in a focus group stated, “The target of the target is for you to not meet the target”. In the other divisions (wholesale and investment banking), the objectives are even more difficult to objectivize and measure as they may refer to “finishing a project” or even “being aligned with the bank’s values,” leaving the interpretation completely open to management’s discretion. In the case of “voluntary wage improvements,” such payments are not even necessarily performance-related payments and can be unilaterally assigned at the employer’s discretion.

These pay systems are intimately related to the **organization of working time** in the sector. The regular working day regulated in the CA is from 8 a.m. to 3 p.m. However, the prolongation of the working time has progressively become the norm and is very much embedded in the organizational culture. In the context of sectoral restructuring following the economic crisis, which has been marked by several mergers and considerable downsizing, employees are under increased pressures to improve performance and, thus, work longer hours. Moreover, widespread digitalization is increasing the pressure on the deregulation of the working time, and consequently, the CA has introduced a voluntary split working day and the possibility to set different working schedules for certain positions (directors and their auxiliary staff, customer handlers or visitors).

Working long hours is generally an unwritten criterion for promotions, negatively impacting women, who tend to have less time availability due to caring responsibilities. The prolongation of the working time is also linked to variable payments. The pressure to meet objectives emanates from not only management but also co-workers given that these objectives are often collective and set at the branch or division level. Working after hours is a common practice, and being the first to

leave the floor is often viewed negatively by peers. There are judgemental attitudes towards employees taking leaves or reductions in their working time because the objectives of the whole branch are not adjusted accordingly and, thus, need to be shared among the remaining employees. Paradoxically, instead of favouring a more efficient organization of work and a greater autonomy in employee's working time, performance-related pay seems to reinforce the presentist culture. Furthermore, whether selling more products will be rewarded accordingly remains unclear as previously argued. In fact, incentives or 'voluntary wage improvements' often appear to reward time spent at work rather than the quality of work or the objectives achieved. The employees in our focus groups seemed to be aware of the perversities of such a system. Overall, whether the longer working hours are related to meeting the objectives attached to variable payments, pressure from management or co-workers, or awareness that such behaviour is valued in terms of promotions remains unclear. Nonetheless, this long-hour culture clearly places women at a disadvantage.

In summary, the GPG in financial services is the result of the complex intertwining of the discretionary and non-transparent processes of promotion and pay practices and the long-hour culture. In this context, the comparatively compressed level of the GPG (13,93%) appears surprising. However, this figure is likely an underestimation of the real level because an important share of the salaries within the industry are set outside of the CA and, thus, are not likely collected in the SES survey.

[Table 3 about here]

Discussion

This paper adopted an interdisciplinary approach to analyse the extent to which different constellations of factors shape different expressions of the GPG across contexts and how this is embedded in the regulations and practices of the organization of work. The findings reveal that

different configurations of intertwining inequalities take shape at the sectoral level. Certain factors are more important in some contexts than others, and how they are interrelated is context-specific.

In the chemical industry, the GPG persists despite regulation efforts through CA measures aiming to reduce gender inequalities in pay. An expansive use of the concept of 'positions of trust' overrules in practice the dispositions regarding recruitment and promotion established in the CA, limiting the capacity for individual and collective control. A significant degree of managerial discretion also operates in the assignment of *personal supplements* and other special payments to women's detriment. Moreover, potentially advanced tools, such as job evaluation models or affirmative action measures, are often underused or misused at the company level. Their implementation strongly depends on the union's willingness and capacity to enforce their implementation.

In the financial services, management's wide margin for discretion across-the-board is strongly embedded in the organizational culture, particularly with respect to recruitment, promotion and pay, which have traditionally been considered key areas belonging strictly to HR policy. The sector's CA reflects this reality in its undefinition of the criteria and processes across all areas of WO. This wide managerial discretion intersects with the sector's presentist culture in which the prolongation of the working time is rewarded with promotions and special payments, clearly placing women at a disadvantage. Our findings in the banking sector show remarkable similarities with those reported in recent studies in other countries regarding the dynamics of both vertical and horizontal segregation, the perverse effects of individualized pay instruments, the increasing pressures towards the deregulation of the working time and their link with performance-oriented measurement systems or the role 'old boy networks' and 'informal mentoring' among male colleagues (Bergmann et al., 2019; Bertrand et al., 2010; Dølvik & Nergaard, 2012; Nicolaisen, 2014).

The main concerns of this study were to analyse possible gaps in regulation leading to gender inequalities in pay, determine the extent to which there is a mismatch between the formal procedures and actual practices at the company level, and identify the factors accounting for such a lack of correspondence.

In this sense, the findings show that in both analysed sectors, managerial discretion is a major contributor to the GPG. Managerial discretion is particularly evident in the banking sector, where discretion rests on a virtually complete undefinition by regulation of criteria and processes across all areas of WO. In the chemical industry, discretion appears to slip through the cracks of a more advanced regulation, conveniently exploited by management. In banking, the blurriness of professional groups, the lack of criteria for recruitment and promotion procedures, the limited access to information by the candidates and the absence of participation by the workers' representatives constitute a set of conditions that favour discretion, potentially resulting in gender discrimination in recruitment and promotion. In the chemical industry in which the CA guarantees more transparency and participation, the expansive use of the concept 'position of command' or 'position of trust' allows companies to circumvent such requirements. Management in banking also makes a similar use of such an instrument, but this appears more crucial in the chemical industry due to its more tightly regulated context.

Managerial discretion in pay practices is even more relevant in shaping the GPG. The distance between the *formalized* and *realized* pay system (Koskinen Sandberg, 2017) accounts for most of the GPG in our two highly skilled sectors. This distance reflects the trend towards the expansion of more individualised and performance-related systems of wage determination in the 1990s and 2000s and the reduced importance of job grading as a part of the total remuneration (Rubery et al., 2005). In the Spanish context, the trend towards the individualization of wages has been largely due to a certain judicial interpretation of the normative framework and to the lack of specific measures at legal level and in CAs favouring pay transparency and the collective control. In the

analysed sectors, the gap between the regulated system and the system actually implemented can stem from the abuse or misuse of certain formalized concepts, such as personal supplements or job post supplements in the chemical industry or incentives or performance-related pay in both sectors. This gap also occurs because companies unilaterally introduce concepts not recognized in the collective agreement as is the case of voluntary wage improvements in banking.

Gendered organizational cultures and institutional inertias are the two main factors explaining why managerial discretion and gaps between formalized and realized processes lead to gender discrimination in pay. Our findings show that the processes of recruitment and promotion and the assignment of pay supplements and discretionary payments are influenced by the sex-typing of occupations, gendered prejudices about suitable workers, gendered valuations of efforts and responsibilities, perceptions about the appropriate wages for men and women, and dynamics of patronage among men. Moreover, institutional inertias regarding prevailing job hierarchies and wage structures may prove difficult to overcome even when they are in open opposition with regulatory principles. For instance, the work-related supplements associated with maintenance or logistics positions in the chemical industry clearly have a discriminatory component but are firmly established within many companies' wage structures. In turn, the use of special payments is intimately linked to an organizational culture fostering long hours in the banking sector. The underuse at the company level of potentially advanced measures, such as affirmative action or job evaluation models incorporating a gender equity perspective, can also be understood from the point of view of organizational cultures and institutional inertias. In the chemical industry, the application of the job evaluation model established in the CA is hindered by difficulties in breaking with pre-existing professional hierarchies and perceptions of the value of jobs.

Finally, our findings show that the role of trade unions is key for the introduction and enforcement of gender equality measures. These findings are in line with recent studies arguing that it is the strength of unions rather than the architecture of joint regulation that accounts most for outcomes

regarding equality in pay (Vernon, 2011). Trade union awareness and commitment can strongly vary across sectors and companies with different traditions of CB regarding gender equality, and this is not necessarily linked to the gender composition of the labour force as shown by our findings.

Overall, our findings show that there are important deficits in regulation leading to gender inequalities in pay in the analysed contexts. Furthermore, we identified several mechanisms through which managerial practices distort or circumvent regulation by the abusive use or misuse of certain concepts or the introduction of concepts not regulated in CB. The distance between regulation and practice is expanded as potentially advanced measures established in the CA are underused. These findings show some similarities with Koskinen Sanberg's (2017) study as they show that a variety of informal, mutually reinforcing mechanisms intersect with processes that are formally delimited, distorting their outcomes and resulting in the persistence of gender inequalities.

Implications for statutory regulation and collective bargaining

The discussion of our findings draws attention to key issues that should be addressed in CB and reforms of the statutory regulation. A major finding of our study is that there are fundamental gaps in regulation that allow a wide margin of managerial discretion in recruitment, promotion and pay practices. Regulation continues to maintain significant spaces immune to individual and collective mechanisms of control, and these gaps allow gender inequalities to take shape. A tighter regulation of the areas of WO traditionally reserved for company HR policies appears fundamental for gender equity in pay to be achieved. With this aim, CB should introduce specific clauses that regulate promotion processes on the basis of criteria of transparency, merit and objective tests, and establish the need to advertise all promotion processes, including the post's requisites and conditions, internally. CAs should clearly define the different concepts composing the pay structure, including all types of bonuses, supplements or incentives, and establish objective and measurable criteria for their perception, paying special attention to variable payments or *ad personam* supplements. CB

should also limit the excessive role of supplements rewarding presence, long work hours, availability for employment and seniority. Moreover, it is essential to recognize both in statutory regulations and CAs specific information rights regarding processes of recruitment, promotion and pay to workers' representation and workers considered individually to guarantee the individual and collective control of the GPG.

Against arguments positing that restricting manager discretion in pay setting may conflict with goals of profitability and competitiveness, we would claim that the opposite can also be contended. We have shown that discretion and arbitrariness can lead to the remuneration of individual attributes other than skill or effort. Therefore, one could argue that establishing formal and merit-based criteria that are transparent, objective and measurable would be beneficial for firms' profitability and competitiveness, as it would allow to remunerate skill and effort more adequately. We have also seen that rewarding long hours is not equivalent to rewarding more or better work. Limiting rewards for long hours would contribute to mitigating long hours cultures, with benefits for all workers, regardless of gender.

The reform of the Worker's Statute passed in early 2019 in Spain, to which have previously referred, introduced specific measures in this direction. First, it represents an advancement in information rights on pay as it establishes the legal obligation for the employer to keep a record of the average wages and pay supplements disaggregated by gender and professional groups, professional categories or jobs of equal worth. The reform also recognized employees' right to access such a register through the workers' representation. An analysis of the future deployment of such a legal obligation in CAs and of its practical implementation would be of great interest. The evidence of the current study suggests that the extent to which the already existing information rights are exercised strongly depends on the willingness and capacity of the worker representation to enforce these rights.

Second, the reform attempts to foster the implementation of the principle of equal pay for jobs of equal value. With this aim, the new legal text requires professional groups to be organized around the notion of gender equity in pay and not only based on professional equivalence as was the case until recently. In order to reinforce its practical effectiveness, the reform also establishes criteria for consideration when delineating jobs of equal worth. Again, future research should target eventual developments regarding the deployment of these legal principles in CB at the sectoral and company levels. In the face of the evidence presented in this paper, we can expect its potential to be significantly modulated by the context-specific institutional inertias, organizational cultures, and the willingness and capacity of the actors involved to enforce it. An even more ambitious proposal to limit the individualization of wages could be to extend the scope of the principle of equal pay for jobs of equal value to individual employee relations beyond gender differences as is already the case in the French legal order.

The findings also showed that affirmative action measures are still very much underdeveloped in CB. The few CAs that introduce such measures only set recommendations that are rarely applied at the company level. Overall, the establishment of recommendations for the introduction of gender equality measures appears rather ineffective against the backdrop of institutional inertias and organizational cultures that hinder their adoption and effective implementation. Therefore, it is necessary to extend the obligation to negotiate the systems of professional classification and pay following the notion of gender equity and the introduction of affirmative action measures in the Spanish context.

Finally, in both analysed contexts, the reduction of working time and leaves of absence are basically used by women to the detriment of their careers and wages. Therefore, actions aiming to facilitate work-family reconciliation should not rest fundamentally on the implementation of this type of measures. Instead, CB should favour the introduction of mechanisms of rationalization and adaption (flexible schedules, continuous working hours, and telework) of the working time. The

exclusion of workers enjoying reconciliation measures from the application of irregular working hours in the CA in the chemical industry is an example of a good practice in this respect. Despite the difficulties of applying these types of measures in production work or customer-based services, more flexible management of the working time could still be facilitated by favouring functional polyvalence and swaps between employees.

While the previous considerations are of general applicability and could benefit workers in different contexts of employment, our findings also show that different dynamics shape the GPG in different sectors. In fact, the important similarities between our findings and those reported in other studies in the banking sector strengthen the idea that sectoral effects can remain significantly strong beyond country-specific dynamics. This finding is also relevant from the perspective of intervention and suggests that initiatives to close the GPG should be not only general but also context-specific. CB has the potential to be a powerful tool in tackling the GPG, particularly in contexts with coordinated sectoral-based bargaining and strong unions sensitized and willing to fight for gender equality.

Finally, while the focus of our recommendations has been on CB and statutory regulations, it should not be forgotten that public policies favouring co-responsibility in domestic and care work remain essential to addressing the fundamental source of gender inequality impacting the GPG. Finally, while the focus of this study was on sectoral dynamics, the study of specific companies suggests that organizational dynamics are also significant within sectors and could arguably be stronger in contexts in which regulation at the sectoral level is non-existent. Future research could deepen the understanding of such organizational differences and how they may be linked to specific patterns of WO, strategies of labour force management, organizational cultures or actor coalitions.

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ⁱ This figure corresponds to the GPG “in unadjusted form” indicator commonly used by Eurostat, which is calculated as the difference between the average gross hourly earnings of male paid employees and those of female paid

employees as a percentage of the average gross hourly earnings of male paid employee. In the paper, we measure the GPG using monthly average earnings.

ⁱⁱ *Estatuto de los Trabajadores*. Full text accesible at: <https://www.boe.es/buscar/act.php?id=BOE-A-2015-11430>

ⁱⁱⁱ *Ley Orgánica 3/2007, de 22 de marzo, para la igualdad efectiva de mujeres y hombres*. Full text accesible at: <https://www.boe.es/buscar/act.php?id=BOE-A-2007-6115>

^{iv} Insurance and auxiliary activities are covered by other CAs and, therefore, were not the object of our analysis. Table 1 provides information regarding these neighbour sectors for reference.

^v The analysis relies largely on the information obtained from the interviews with worker's representatives and employees, and less from HR managers. We conducted a reduced number of interviews with HR managers and these were less informative of the factors shaping the GPG. Managers appeared concerned about denying the existence of the GPG in their companies and conversations often revolved around the definition of the GPG or the defence of the employer's discretionary capacities.

^{vi} The CA establishes nine professional groups (0-8), the eight being the highest.