

Answer to the public consultation from the European Commission on the Evaluation of the provisions in the Directive 2006/54/EC implementing the Treaty principle on 'equal pay'

Context

The gender pay gap is the result of many complex factors including vertical and horizontal occupational segregation, direct pay discrimination but is mainly linked to what is called the “motherhood penalty”. In a society where unpaid care work (household work, caring for children, disabled, elderly and frail) isn’t valued, the motherhood penalty refers to the pay gap (care gap) between mothers and childless women.

The fact that mothers suffer a wage penalty raises major concerns that go beyond those highlighted by gender inequality. This ultimately questions the capacity of societies to manage a sustainable balance between their economic aim of active female participation in paid work and the social aims of providing a fair distribution of income to support the reproduction and rearing of children.¹

Moreover, the absence of a definition of the concept of work of equal value, including clear evaluation criteria for the comparison of different functions, constitutes a major obstacle for victims of wage discrimination seeking legal action. The inclusion in European Union legislation, enforceable in national legislation, of such a definition and criteria for classification and evaluation of functions could help victims of wage discrimination to bring an action before the national courts.

In Chapter I, this paper will present a short state of play of the gender pay gap in the European Union. In Chapter II, it will explore the underlying cause of the gender pay gap, which arises from the unequal distribution of unpaid care work. In Chapter III, we will present a summary of the Belgian current situation on equal pay, and finally make some recommendations in Chapter IV.

¹ D.Grimshaw and J. Rubery, *The motherhood pay gap: a review of the issues, theory and international evidence*, International Labour Office, Working paper 1/2015, p.1.



Chapter I. State of play of the gender pay gap

Section 1. In the European Union

As highlighted in a study from the European Institute for Gender Equality (EIGE), “women’s unequal pay does not just hurt women but is a cost for the whole society”, and “there is a strong link between the gender pay gap and child poverty, skills shortages and a cost to the economy because of the underuse of women’s skills”.²

However, despite various political initiatives and a subsequent amount of legislation adopted at national, European and international level, equal pay isn’t a reality in Europe yet. Unfortunately, it has been noticed that almost no progress towards closing the gender pay gap has been made in recent years. Pay inequality has barely changed since 2010, and has actually got worse in a some countries, including the UK, Poland, Portugal and Bulgaria.

Even if statistics do not always show the same numbers because of the variety of the elements taken into consideration, all results show a persisting gender pay gap. This year, an average woman needed to work until the 27th of February 2019 in order to earn as much as what a man had earned on average in the year up to 31 December 2018. This illustrates that the principle of equal pay for equal work or for work of equal value has not been reached yet. As we can see on the figure below from Eurostat, the gender pay gap among the Member States varies from 5,2 % in Romania to 25.3 % in Estonia. Women in Belgium are paid 6,1 % less per hour than men.



² EIGE, *Economic Benefits of Gender Equality in the European Union. How closing the gender gaps in labour market activity and pay leads to economic growth*, 2017, p. 4.



Somes clarifications have to be made in relation to these numbers.

Indeed, percentages on the gender pay gap don't consider volunteer work, own-use production work (of products and services) and other work activities (including unpaid care work). Yet, according to the 19th International Conference of Labour Statisticians from the International Labour Office, work is not only paid work but has a broader definition which includes all that categories of work.³ It seems inaccurate to not include in some way in the statistics this unpaid work which has a high economic value. Furthermore, seeing that it's in large majority women who deal with that unpaid work, they suffer a double discrimination.

The gender pay gap can be described as the difference in average wages between men and women. It formally refers to the "unadjusted gender pay gap". Indeed, the above figures do not take into account the characteristics relating to individuals (e.g. number of children, type of occupation) and occupations (e.g. place of employment). Some of these characteristics however, may themselves be factors responsible of gender discrimination (such as occupational and industrial segregation). Thus, when isolated, these factors reveal the discriminatory elements of the gender pay-gap.⁴

The Gender Equality Index proposed by the European Institute for Gender Equality (EIGE) measures the performances of EU countries. The data focuses on 6 core domains: work, knowledge, power, money, time use, health. The last report of 2017 showed that the inequality of power has improved the most. But on the other hand, the inequality of time use (i.e. the time which women and men commit to daily family activities and free time) lags behind: it has even regressed. The time use domain measuring gender inequalities in allocation of time spent doing care and domestic work. The first sub-domain, concerned with care activities, measures gender gaps in involvement of women and men in caring for and educating their children or grandchildren, older and disabled people, as well as their involvement in cooking and housework.

Gender inequalities in time use for housework and caring of dependent family members (children, the elderly and people with disabilities) and social activities (leisure activities and volunteering) are persistent and growing. Improved gender equality in the sharing of time between women and men occurred in only eight Member States. The most equal division of caring responsibilities and social activities between women and men is in Sweden, the Netherlands and Denmark; the overall score increased the most in Latvia, the Czech Republic

³ ILO, *Report II: Statistics of work, employment and labour underutilization, 19th International Conference of Labour Statisticians*, Geneva, 2013, p. 14.

⁴ M. del MONTE, *European Added Value Assessment (EAVA 4/2013) on the application of the principle of equal pay for men and women for equal work of equal value*, Brussels, European Union, 2013, p. 7.



and Spain. The most unequal time sharing between women and men is observed in Slovakia, Greece and Bulgaria and the biggest decrease in scores took place in Slovakia, Belgium and Bulgaria. With 65.7 points, the domain of time has a lower score than in 2005; in 12 Member States gender gaps in time use worsened.

Only every third man in the EU engages daily in cooking and housework, compared to nearly eight in 10 women. Time spent on domestic and care work has a major impact on women’s employment opportunities, economic independence and capacity to participate in leisure activities. Almost every second working woman spends 1 hour or more on caring and educating children or grandchildren, the elderly and people with disabilities, in comparison with around one third of working men and young women. The burden of unpaid care work is especially heavy among non-EU born women and young women. Time use in care and domestic activities is the most gender equal in Sweden, Latvia and Denmark, and the least in Greece, Croatia and Bulgaria.

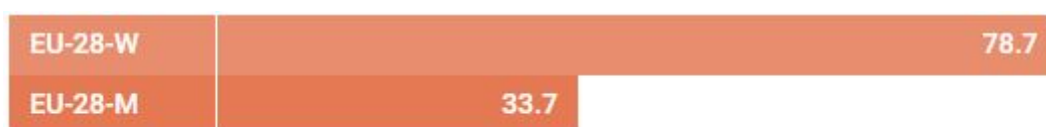
In the EU, men work an average of 39 paid hours per week and women work 33. On the other hand, women take the lion’s share when it comes to unpaid family care work: working women devote 22 hours per week to unpaid care work while men do less than 10. The gender gap should consider all women and not only the paid workers would consequently convey the huge discrimination suffered by women.

People caring for and educating their children or grandchildren, elderly or people with disabilities, every day in EU (%):



Source: Eurofound, EQLS, 2016. EIGE's calculation with microdata.

People doing cooking and/or housework, every day in EU (%):



Source: Eurofound, EQLS, 2016. EIGE's calculation with microdata.



Section 2. In Belgium

The most recent Belgian statistics (from 2014) show that women are paid 7,6% less per hour than men. The gender pay gap based on annual salary is even higher (20,6%) and most importantly it does not decrease, on the contrary, it remains high in recent years. This highlights the unequal distribution of care tasks in our society, with the consequence that women work part-time more often than men. It also refers to the stereotyped expectations of the labour market as well as segregation. Moreover, many professions exercised by women are only offered as part-time jobs, for example in distribution or cleaning. We can see that the unequal distribution of working time is not gender-neutral.⁵

Tableau 1 : Écart salarial sur base des salaires horaires et annuels bruts moyens (2009-2014)

	2010	2011	2012	2013	2014
Écart salarial en salaires horaires	9,8%	9,7%	8,6%	8,0%	7,6%
Écart salarial en salaires annuels	22,8%	22,0%	21,8%	20,9%	20,6%

Sources : Bureau fédéral du Plan et DGSIE, Enquête sur la Structure et la Répartition des Salaires

For 49% of women working part-time, the combination of work and private life is the main reason for their work arrangements. For men, this reason is invoked in only 23% of cases.⁶

Chapter II. Root causes: the pay gap is care-based

As revealed in the 2017 European Parliament resolution, the gender pay gap is caused in particular “by discrimination and segregation resulting in the over-representation of women in sectors where pay is lower than in sectors dominated mainly by men”, but other factors such as “career breaks or entering into involuntary part-time work to combine work and family responsibilities, stereotypes, undervaluing of women’s work, and differences in levels of education and professional experience” also contribute to this gap.⁷ The undervaluation of women’s skills and competences as the professions and jobs in which women predominate was already raised in the 2012 European Parliament resolution.⁸

⁵ IEFH, *L'écart salarial entre les femmes et les hommes en Belgique*, Rapport 2017, p. 8.

⁶ *Ibid.*, p. 32.

⁷ European Parliament resolution of 14 June 2017 on the need for an EU strategy to end and prevent the gender pension gap (2016/2061(INI)), point AH.

⁸ European Parliament resolution of 24 May 2012 with recommendations to the Commission on application of the principle of equal pay for male and female workers for equal work or work of equal value (2011/2285(INI)), point I.



All these factors have to be taken into consideration when examining the root causes of the gender pay-gap. However, the fact that women take charge of important unpaid tasks, such as household work and caring for children or relatives on a far larger scale than men, has been not sufficiently considered in the analysis of the gender pay gap and when proposing measures to tackle it. In the labour market this is reflected by the fact that more than 1 in 3 women reduce their paid hours to part-time, while only 1 in 10 men do the same. Women also tend to spend longer periods off the labour market more often than men. Consequently, these career interruptions and adaptations of the time spent at work influence the hourly pay, and also impact future earnings and pensions.⁹

This is the translation of the motherhood penalty suffered by women with children. The gender wage inequality isn't only a pay gap between men and women but also between mothers and fathers. Indeed, while mothers are prejudiced in their earnings by their motherhood, fathers' earnings, by contrast, are unaffected by childbirth. Paradoxically, studies suggest that fathers enjoy a wage premium compared to men without children.”¹⁰

A study lead by the International Labour Organization shows that it is an “evidence that there is a very strong division of labour market experience among men and women following parenthood, with important policy implications”¹¹. It is also demonstrated by several studies that “motherhood pay penalties vary significantly with the number of children, their age and (mostly in less developed countries) their gender”, and concerning their age “the presence of younger children has a larger negative effect on mothers' earnings than older children and, after a certain age, it is often the case that children no longer exert an observable negative effect on mothers' pay”.¹²

The very relevant Olsen and Walby's (2004) study about the gender pay gap in UK “places the greatest emphasis on the systemic disadvantage and indirect discrimination experienced by women, particularly mothers”. Following that analysis, “36% of the gender pay gap can be explained by the gender differences in lifetime working patterns”. Another analysis by Olsen et al (2010) found that “years of part-time working and years of family care have the most negative impact on hourly wage rates”. A third study (Meulders et al 2011) found that “across

⁹ The gender pay gap in the European Union (2018), https://ec.europa.eu/info/sites/info/files/aid_development_cooperation_fundamental_rights/equalpayday-eu-factsheets-2018_en.pdf, accessed on 09 March 2019.

¹⁰ ILO, *The motherhood pay gap: A review of the issues, theory and international evidence*, Geneva, 2015, p. 1.

¹¹ *Ibid.*, p. 5.

¹² *Ibid.*, p. 15.



the EU between 14% and 27% of the gender pay gap is accounted for by parental leave breaks”.¹³

Unpaid family care work is indispensable. Someone must respond to the material, educational and emotional needs of the members of a family, not only children but also people affected by a handicap, illness or old age. This work is mainly undertaken by women, notably mothers. This results in time poverty, limiting women’s ability to participate fully in economic life.

The main solutions proposed to the State Members in the 2014 Pay Transparency Recommendation essentially aim to tackle the consequences of the gender pay gap and forget to tackle its root causes. The enforcement of pay transparency measures, the uniformization of gender-neutral job evaluation and classification systems across the EU, and the implementation of the existing standards to protect victims of pay discrimination based on gender are actions that aim to make the gender pay gap visible, to facilitate the calculation of that gap and help victims of wage difference to access to justice, but won’t remove the gender pay gap once and for all. These measures are useful, however aren’t the priority.

The EU institutions already took notice of the existence of the root causes, it’s now time to act upon the drivers of change. We strongly believe that measures bridging the gender pay gap are an investment rather than a cost, as “what we pay today will generate returns for the economy as a whole in the medium and long term by reducing the inefficiencies associated with inequality”.¹⁴

Chapter III. The implementation of the “equal pay” principle in Belgium

Section 1. Regulation in force

Belgium adopted a legislation in 2012 to tackle the gender pay gap (hereafter “the Gender Act”), which contains enforceable rules on equal pay for equal work or for work of equal value. The main points of this legislation are the improvement of pay transparency, the encouragement of social dialogue, the development of gender-neutral classifications, the respect of private life and the limitation of the administrative work (especially for small enterprises).

¹³ M. del MONTE, *European Added Value Assessment (EAVA 4/2013) on the application of the principle of equal pay for men and women for equal work of equal value*, Brussels, European Union, 2013, p. I-11.

¹⁴ *Ibid.*, p. 7.



Section 2. Equality body and trade unions

In Belgium, wages are largely determined collectively. The wage formation is highly centralised and is set by collective labour agreements. It is left to the equality body (hereafter “The Belgian Institute for Equality of Men and Women”) to provide guidance in this respect. The Belgian equality body thus issued a methodological instrument, a ‘Gender-neutral checklist for job assessment and classification,’ which was given legal recognition in the sense that when a joint sector committee adopts a job classification system, the latter must now be submitted to a department of the federal Ministry of Employment for an assessment of its gender neutrality, the mentioned checklist being one element to be taken into consideration for that purpose.¹⁵

The equality body has a further-reaching competence to hear and decide on gender discrimination complaints.¹⁶ It is involved in judicial enforcement, as it is available for assisting victims of pay discrimination when bringing case to court. The Belgian Institute for the Equality of Men and Women has *locus standi* for actions before the Council of State, if the source of the alleged discrimination lies in a decision by an administrative authority. If the source of the discrimination lies in a legislative instrument, the claim must be brought before the Constitutional Court. In criminal proceedings related to labour law, the Institute can intervene in order to claim damages.¹⁷

The link between the equality body and the public service seems to be somewhat tighter in Belgium than in other countries of the European Union. The Institute has a hybrid purpose. On the one hand, it serves as an administrative body to implement federal policy on gender equality. On the other hand, it oversees promoting gender equality through all useful means.¹⁸

Section 3. Pay transparency measures

For the pay gap to be negotiated, it is necessary to make it visible, improving its transparency. This concern to make the pay gap visible and to make it a subject of negotiations constitutes the common thread of the measures put in place for the three levels of negotiation in Belgium: the inter-professional, the sectoral level, and the company level.¹⁹

This does not preclude however a certain margin of individual bargaining, which generally benefits men more than women. This is mainly the case in the private sector where the

¹⁵ European network of legal experts in gender equality and non-discrimination, *Pay transparency in the EU: A legal analysis of the situation in the EU Member States, Iceland, Liechtenstein and Norway*, April 2017, p. 45.

¹⁶ European Commission, *Evaluation Report of the 2014 Pay Transparency Recommendation*, November 2017

¹⁷ European network of legal experts in gender equality and non-discrimination, *op. cit.*, p. 83.

¹⁸ *Ibid.*, p. 79.

¹⁹ <http://www.emploi.belgique.be/defaultTab.aspx?id=8486>, accessed on the 20th of March 2019.



margin for individually negotiating one's salary is much wider than in the public sector. Function classifications and collective bargaining scales are often out of date and do not constitute a guarantee against discrimination. Regularly, the functions performed more often by men are better paid than those more frequently performed by women.²⁰

The profits of companies contribute significantly to explain that employees with the same characteristics in terms of training, education and experience on the labour market benefit from different remuneration. In fact, the sharing of productivity gains resulting from business negotiations is not evenly distributed: it benefits the highest wages more. This sharing of productivity gains at the firm level contributes to gender pay inequalities. Indeed, women work on average in companies that generate less profit.²¹

Section 4. Judicial enforcement

1. Burden of proof

The burden of proof lies on the employer, but the shift in the burden of proof requires the victim to first establish facts that support the presumption of discrimination. Only then will the employer be required to prove the absence of discrimination.

The question of remuneration is very important here because the documents relating to it can allow the victim of discrimination to win a case in a trial. Moreover, if one is not informed about the wages of his/her colleagues there is no way he/she firstly realize that the right to equal pay for equal work is not respected and secondly seek redress. Transparency is therefore crucial to enforce the right to equal pay for equal work or work of equal value.²²

2. Victims compensation and employer's penalties

Pay discrimination on the ground of sex is a misdemeanour/criminal offence and is therefore subject to criminal sanctions. Practices of discrimination in employment relations are penal offences under the Belgian Gender Act. The perpetrator of various breaches of that Act is liable to a term of imprisonment of between one month up to one year and/or a fine of 400 up to 8000 Euros. The dissuasive character of that sanctions varies depending on the size and profits of the companies.

3. Protection against victimisation

Belgian laws protect the employee who has lodged a reasoned complaint with the labour inspectorate or who has taken legal action. Indeed, workers enjoy protection against

²⁰ https://igvm-iefh.belgium.be/fr/activites/emploi/ecart_salarial/causes, accessed on 20th of March 2019.

²¹ A. DEMAGOS, *L'écart salarial entre hommes et femmes. Effectivité potentielle de la loi du 22 avril 2012*, Bruxelles, Larcier 2015, p.22.

²² *Ibid.*, p.93.



dismissal. The employer can not terminate their employment relationship or unilaterally change the working conditions of the worker.

Protection against victimisation is applicable during twelve months after the complaint was filed, or until the end of a three-month period following the delivery of a final judgment in the case

When an employee has been dismissed by way of retaliation, the sanction is often that the dismissal, or any other disadvantageous treatment by the employer, is null and void. Consequently, the employee concerned is reinstated in his/her job and/or all other disadvantageous treatment is eliminated. If reinstatement is not possible, fixed damages equal to six months' gross remuneration are due.²³

Section 5. Evaluation of the Belgian measures on equal pay

There has been an increased public debate in Belgium about pay transparency when the Gender-Equality Act was adopted in 2012. A very popular preventive campaign is the 'equal pay day' initiative set up in Belgium. However, at present time that debate has decreased.

Wages are largely determined collectively. The wage formation is highly centralized and is set by collective labour agreements. The empowerment of the Belgian equality body and trade unions has played a very effective role in ensuring pay transparency. Social dialogue and the inclusion of social partners around the question of equal pay has proven to be a powerful tool in the enforcement of the principle of equal pay for equal work or work of equal value.

More transparency is needed in individual wage bargaining. Indeed, individual wage bargaining often contributes to the pay gap. It is therefore recommended to develop greater transparency in the possibilities for negotiations and to raise awareness of their implementation. Clear information should also be used to address individual wage bargaining more openly to both employees and employers.²⁴

Moreover, the lack of transparency on workers' pay makes it impossible to reveal gender bias and gender discrimination in the pay structures of a firm or sector, and to allow workers, employers or social partners to take the necessary measures to ensure the implementation of the principle of equal pay. More specifically, the fact that an employee does not have enough information on salary levels in an organization prevents her from challenging the perception

²³ The enforcement of the principle of equal pay for equal work or work of equal value - A legal analysis of the situation in the EU Member States, Iceland, Liechtenstein and Norway (July 2017) – Directorate-General for Justice and Consumers, p. 71.

²⁴ http://www.brudoc.be/opac_css/doc_num.php?explnum_id=704, accessed on 20th of March 2019.



of a lower salary than that of an employee. This is therefore a significant obstacle to the burden of proof.

Chapter IV. Recommendations

Section 1. Work-life balance and unpaid family care work

The principle of equal pay is included in the treaties since more than 60 years and this is not evolving fast enough. We have to find a new way to approach this issue as this is not improving. Population in Europe is ageing so the need of care will only increase and the care gap as well. Women carers will not be able to remain in the workforce if Member states do not support them in their caring activities by creating more, qualitative, accessible and affordable childcare facilities, support of informal carers (respite care, training etc), work-life balance policies etc.

Section 2. Definition of work of equal value

There is a lack of clarity of the notion of “work of equal value” at EU-level, which leads to vagueness of the law. The ECJ case-law is trying to define this notion but its definition is too broad. We suggest to include a definition of “work of equal value” with precise criteria Member States should consider to classify the different jobs. Annex 1 of the Commission staff working document 2013/0512 about Gender Neutral Job Evaluation and Classification Systems²⁵ could be the standard framework to be used by Member States to compare jobs. This is crucial to determinate if there is a gender pay gap and calculate it in a coherent way across Member States.

Section 3. Inclusion of other categories of work in statistics

All statistics seem to only include the working population (employed, unemployed or self employed). What about the persons beyond the labour market who would like to perform paid work but can't due to their caring responsibilities? They also should appear in the statistics in some way.

The way the gender pay gap is currently measured is incomplete and ambiguous as it doesn't take into account in some way the unpaid care work and it considers what all men and women in the labour market earn. However, considering the vertical and horizontal segregation women will always earn less if they are trapped in low pay occupations and low

²⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2013:0512:FIN>, accessed on the 20th March 2019.



level jobs because they can't combine their work and private lives. We believe that statistics should be made taking into the differences in pay between women with caring responsibilities and women without those responsibilities.

Section 4. Pay transparency

Transparency is unavoidable to enforce the right to equal pay for equal work. Indeed, if one is not informed about the wages of his/her colleagues there is no way he/she firstly realizes that the right to equal pay for equal work is not respected and secondly seek legal redress. The question of remuneration is very important here because the documents relating to it can allow the victim of discrimination to win a case in a trial.²⁶

Section 5. The role of equality bodies and trade unions

Given that the empowerment of the Belgian equality body and trade unions have played an effective role in promoting equal pay and particularly pay transparency in Belgium, we place emphasis on the importance to give them broad flexibility and competences.

These are our recommendations to tackle the gender pay gap:

1. Address the unequal distribution of care-work as one of the major causes of the gender pay gap. A focus should therefore be given to the responsibility of Member states to support women in their caring activities by investing in more qualitative, accessible and affordable childcare and long-term care facilities, support of informal carers (respite care, training etc), etc.
2. Adopt work-life balance policies and extend paid leave and make it more flexible to enable parents, notably fathers, to spend more time with their children without jeopardising their careers
3. Adopt legislation such as the revision the Directive on maternity leave in order to extend it from 14 to 18 weeks and adequately paid, promote the elimination of gender stereotypes and discrimination.
4. Promote flexible working conditions for women and men: the Right to request flexible working arrangements (such as telework, reduction of working hours, flexible schedules etc)
5. As part of the EU Semester process include in the country specific recommendations measures to tackle the gender pay gap and fight gender stereotypes

²⁶ A. DEMAGOS, *L'écart salarial entre hommes et femmes. Effectivité potentielle de la loi du 22 avril 2012*, Bruxelles, Larcier 2015, p.93.



6. Promote more fair and equitable tax systems notably by eliminating the second earner status which is a disincentive for women to join the labour market.
7. Promote family-friendly companies and the use of work-life balance voluntary schemes to improve wellbeing
8. Support women/men returning to the labour market after a career break due to caring responsibilities, by validating their informal skills acquired working at home and giving them access to training in order to maintain their pay level and seniority.
9. Recommend Member states to compensate for a set period the time spent in caring by those who have temporarily withdrawn from the labour market by including “care credits” in the calculation of pension rights.
10. Clarify the notion of “equal work”, “work of equal value” and “indirect discrimination”.
11. Encourage social partners to take the pay gap into account in their collective bargaining
12. Entitle employees to request information on pay levels.
13. Harmonize minimum sanctions in case of breach of the principle of equal pay
14. Harmonize minimum standards on compensation which would put the victim in the position in which she would have been if the principle of equal pay had been respected
15. Strengthen the enforcement role of equality bodies by ensuring that equality bodies can actually and fully play their role, guaranteeing their independence, effectiveness, and competences.
16. Conduct accurate national Time-Use Surveys to measure unpaid family care work and its distribution between men and women in order to calculate its contribution to the economy

Conclusion

Closing the gender pay gap by 2030 is possible if the adequate legislative and non legislative measures are adopted.

During the European Commission Annual Colloquium on Fundamental Rights “Women’s Rights in Turbulent Times” in 2017, participants agreed that “it should be possible to close the gender pay gap by 2030”. They highlighted that “shifting the balance of responsibility” and “starting to share the care” were the main keys to achieve this goal.²⁷

We also support that these two suggestions and the elimination of gender stereotypes and discrimination are crucial to achieve this goal.

²⁷ European Commission, *Conclusions of the 2017 Annual Colloquium on Fundamental Rights: Women’s Rights in Turbulent Times*, p.5.



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