




# EU equality law and recent developments

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## Plan

*Introduction*

*Basics of EU equality law*

*EU gender equality law developments and plans*



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# Gender Equality - a Political Priority

## Striving for a Union of Equality

The Gender Equality Strategy 2020-2025

March 2020  
#UnionOfEquality



*"Gender equality is a core principle of the European Union, but it is not yet a reality. In business, politics and society as a whole, we can only reach our full potential if we use all of our talent and diversity. Using only half of the population, half of the ideas or half of the energy is not good enough."*

President Ursula von der Leyen

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- Gender equality at work is far from being a reality
- This is true for all Member States of the EU

### Currently



Women in the EU earn on average **16%** less than men per hour



Only **67%** of women in the EU are employed, compared to **78%** of men



On average, women's pensions are **30.1%** lower than men's pensions



**75%** of unpaid care and domestic work is done by women

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**33% of women** in the EU have experienced **physical and/or sexual violence**



**22% of women** in the EU have experienced **violence by an intimate partner**



**55% of women** in the EU have been sexually harassed and women are more likely to experience **online sexual harassment** than men



## EU Treaties

*Article 2 TEU: The Union is founded on the values such as the respect for human dignity and human rights. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.*

*Article 3 TEU: The EU shall combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.*

### **Legal basis for EU legislation:**

*Article 19 TFEU – "sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation" (unanimity)*

*Article 157 (3) TFEU – "equal opportunities and equal treatment of men and women in matters of employment and occupation" (qualified majority)*



## The anti-discrimination Directives

- ✓ *Racial Equality Directive 2000/43 – race / ethnic origin*
- ✓ *Employment Equality Directive 2000/78 – religion, disability, age and sexual orientation*

*Prohibit direct and indirect discrimination, as well as harassment*



## The anti-discrimination Directives: Scope of application

### Material scope

*The field of employment and occupation*

- ✓ *Access to employment + promotion*
- ✓ *Working conditions (incl. pay and dismissal)*
- ✓ *Vocational training*
- ✓ *Membership of organisations*

*Race Equality Directive also covers*

- ✓ *Education*
- ✓ *Social protection and healthcare*
- ✓ *Social advantages*
- ✓ *Goods and services, incl. housing*



## Equal Treatment Directive Proposal

*Submitted in 2008.*

*If adopted, would close gaps in relation to: social protection, education, goods and services which are available to the public.*

*Prohibiting discrimination on the grounds of*

- religion/belief*
- sexual orientation*
- disability*
- age*

*Legal basis (TFEU 19) requires unanimity...*



## Gender equality Directives

- *Social security (statutory): Directive 79/7/EEC*
- *Employment: Directive 2006/54/EC*
- *Access to goods and services: Directive 2004/113/EC*
- *Self-employment: Directive 2010/41/EU*
- *Pregnant Workers: Directive 92/85/EEC*
- *Parental leave: Directive 2010/18/EU (to be replaced by Work-Life Balance directive 2019/1158)*



## Gender equality Directives: Social Security Directive 79/7/EEC

- **Personal scope: it applies to working population** – including self-employed workers, persons seeking employment, retired or invalid workers and workers whose activity is interrupted by illness, accident or involuntary unemployment ;
- **Material scope: statutory social security schemes** which provide protection against sickness, invalidity, accidents at work and occupational diseases, unemployment and risks related to old age;
- **social assistance** which supplements or replaces the basic schemes.

### **Does not cover:**

- survivors' benefits and family benefits schemes, occupational schemes
- Derogations (pensionable age, ...)**

**Case C-318/13 ("X") - the CJEU has ruled that the use of gender-specific actuarial factors is discriminatory.**



## Gender equality directives: Directive 92/85/EEC on maternity

**Purpose:** to improve the safety and health at work of pregnant workers and workers who have recently given birth or who are breastfeeding.

- Employers have to **assess the safety of the workplace** and to **adapt working conditions** if there is a risk to safety or health.
- **Night work**- Women must not be obliged to perform night work during their pregnancy and for a period following childbirth.
- **Maternity leave** -at least 14 weeks.
- **Ante-natal examinations** - the right to take leave from work without loss of pay.
- **Protection against discriminatory dismissal**



## Gender equality directives: Employment-Directive 2006/54/EC (‘Recast directive’)

### Scope:

- Access to employment, including promotion and dismissals,
- working conditions, including pay
- vocational training and participation in workers organisations
  
- Occupational social security schemes (i.e.: pensions schemes for civil servants)



## Gender equality directives: Paternal Leave Directive: 2010/18/EU

*(to be replaced by WLB directive)*

- Applies **to all workers, men and women**, irrespective of their type of employment contract (open-ended, fixed-term, part-time or temporary).
- Workers are entitled to **parental leave on the birth or adoption of a child**.
- Parental leave - for **a period of at least of 4 months**.
- **at least one month is not transferable to another parent**.
- Right to **return to the same job**.
- Protection **against less favourable treatment or dismissal** on the grounds of an application for, or the taking of, parental leave.
- **Temporary changes to work schedules**



## Gender equality directives: Access to goods and services Directive 2004/113/EC

*Applies to (Art. 3):*

- *all people and organisations (both public and private sector) that make **goods and services available to the public**;*
- *goods and services offered **outside the area of private and family life**.*

*Does not affect (Art. 3):*

- *the content of **media and advertising** nor **education**;*
- *the **individual's freedom to choose a contractual partner** as long as an individual's choice of contractual partner is not based on that person's sex.*



## Gender equality Directives: Self-employment: Directive 2010/41/EU

- *No discrimination based on sex when **establishing, equipping or extending a business**, or any other form of self-employed activity.*
- *Where a national social protection system exists for self-employed workers, the spouses or life partners who participate in the activities of the self-employed worker have **the right to social protection in their own name**.*
- *Self-employed women and female spouses or life partners who contribute to the activity of self-employed workers are entitled to a **maternity allowance for at least 14 weeks**.*

*Life partners: Member States are not obliged to recognise 'life partners' but where 'life partners' are already recognised under national law, they should be covered.*





## The 2019 Work-life balance directive

### Objective

- **To improve the situation of women in the labour market [Article 153(1)(i) TFEU]**
- **Through better and more equally shared WLB measures**

### Main novelties

- **Specific focus on fathers' rights and effective incentives for fathers to take leave**
- **Life-cycle approach**



## Work-life balance directive

- **Personal scope: workers**
  - *As defined by national law*
  - *Taking into account the case law of the CJEU*
- **Material scope**
  - *Paternity leave (new)*
  - *Parental leave (strengthened)*
  - *Carers' leave (new)*
  - *Right to request flexible working arrangements (strengthened)*



## Work-life balance directive

### Paternity Leave



*New right at EU level  
10 working days  
Compensated at sick pay level*



## Work-life balance directive

### Parental Leave



- *4 months (as before)*
- *2 months non-transferable between parents (was only 1 month)*
- *2 months compensated at an adequate level*
- *Right to request flexible uptake*



## Work-life balance directive

### Carers' Leave



*New right at EU level  
5 working days/year/worker  
Possible alternative design  
No compensation*



## Work-life balance directive

### Flexible Working Arrangements



*For parents of children up to 8  
and carers (before only after  
parental leave)*

*Right to request:*

- **Reduction of working hours**
- **Flexible working schedules**
- **Remote working**

*Employers must consider the  
request and justify any refusal*



## Work-life balance directive LEGAL PROTECTION



*For those who request or take leave and flexible working arrangements*

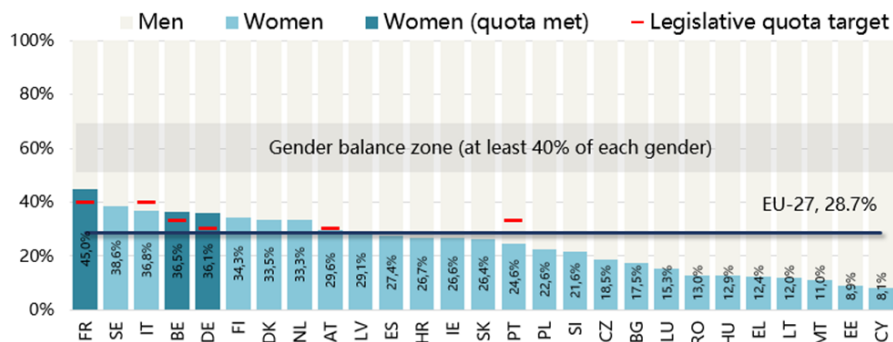
- **Protection against dismissal**
- **Protection against discrimination**

*Job and previous rights maintained*

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## 'Glass ceiling' in corporate boards



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## Proposal for a Women on Boards-Directive

 *Not gender quota!*



*Binding rules on a transparent selection process – for large EU listed companies - if 40% target for under-represented gender is not attained*

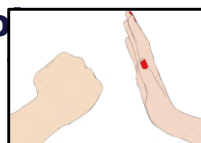
*Selection of candidates is based on qualifications and merit and a preference rule only in case of equal qualification*

*High degree of flexibility for Member States and companies*

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## Combating gender-based violence protecting and supporting



### **Istanbul Convention:**

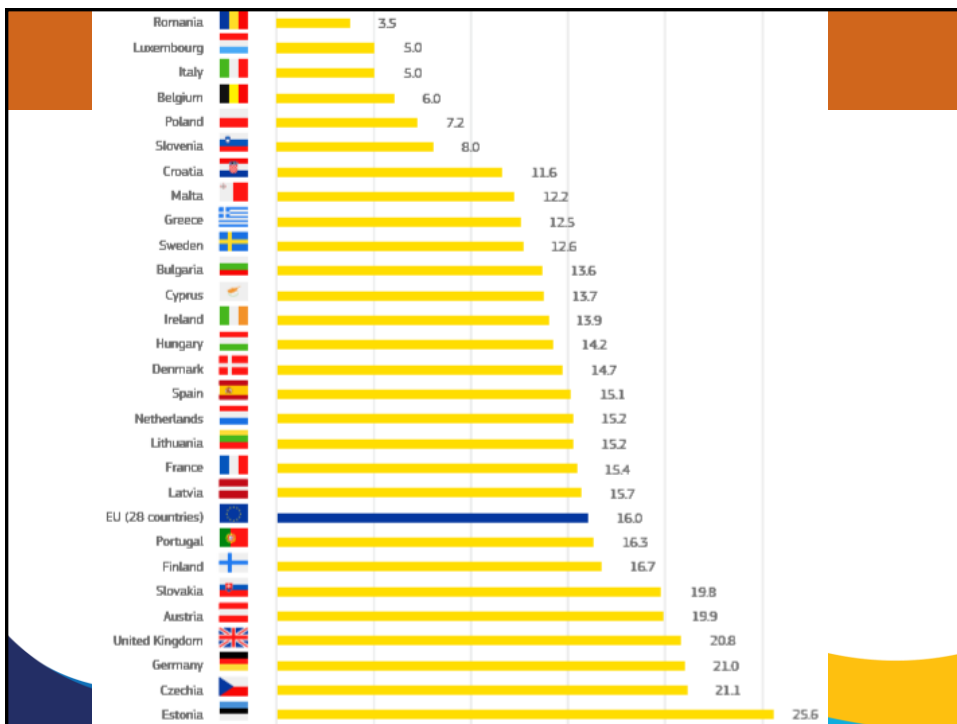
- *In 2016, the European Commission proposed the ratification by the European Union of the Istanbul Convention of the Council of Europe*
- *Istanbul Convention = a comprehensive international agreement to combat violence against women and domestic violence*
- *Parties to the Convention must improve protection for victims of violence and ensure the criminal prosecution of offenders, in particular with respect to criminal prosecutions in cases of violence against women, including all forms of violence*

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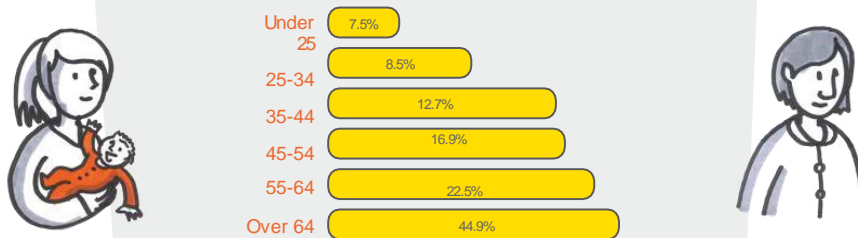
# Tackling the gender pay gap

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## The older you are, the bigger the gap

For example: the gender pay gap in Spain by



## Pay transparency initiative

- *What is the GPG?*
  - *The gender pay gap is the difference between men's and women's pay (based on hourly earnings across the economy)*
  - *The pay gap goes far beyond the single issue of remuneration for equal work or work of equal value*
  - *It is a consequence of ongoing discrimination and inequalities in the labour market*
- *Variety of root causes of the GPG (Horizontal and vertical LM segregation, Prevailing stereotypes, fueled by inadequate work-life balance measures, Pay discrimination, allowed by a lack of transparency...)*
- *The forthcoming initiative is a part of the holistic approach addressing different root causes of gender pay gap (GPG)*



## Pay transparency initiative

*Discrimination and bias in pay setting and job evaluation systems remain a hidden phenomenon.*

*Workers, often women, are often not aware that they may be the victim of pay discrimination, simply because the information necessary to allow them to assess their situation is not available to them.*

*The lack of transparency leads to the difficulty to establish facts from which discrimination can be presumed - it complicates the shift of burden of proof to the employer.*

*Other issues: Procedural obstacles, inadequate compensations and sanctions and victims support (fear of victimisation)...*

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## Pay transparency initiative

*It is a follow-up of the 2014 Recommendation on pay transparency which called Member States to implement:*

- *Right to request information on pay*
- *Company reporting*
- *Pay audits*

*Pay transparency legislative initiative will aim to:*

- *ensure more **transparency** on pay setting and job evaluation within companies,*
- *enhance legal certainty concerning the **application of key concepts** such as '**pay**' and '**work of equal value**' and*
- *step up **enforcement** mechanisms*

*It will be complemented with policy measures*

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## Conclusions

- *Gender equality is far from being a reality in the EU*
- *The EU is taking action to address current inequalities*
  - *New Directive on work-life balance*
  - *2012 Gender balance directive – to wrap-up the negotiations*
  - *Istanbul Convention ratification*
  - *Upcoming Initiative on pay transparency*
- *New legislation and better enforcement of the existing one*
- ...



## Thank you!

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