



ERA Seminar Gender Equality Law

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- 4 months for each working parent

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Gender equality in the Treaties

Article 2 TEU: *Equality between women and men as a common value of all Member States*

Article 3 TEU: *the EU shall promote equality between women and men*

Legal basis for legislation:

- **Article 157 TFEU**

- **Article 19 TFEU** (e.g. Directive 2004/113 on access to goods to services)



Article 157 TFEU

(1) Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

(2) For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

(3) The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.



CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Article 23: Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

Article 33: Family and professional life

To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Field of application: (...) *the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. (Article 51)*



DIRECTIVE 2006/54/EC

on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation

Simplifies, modernises and updates EU law with respect to the equal treatment of men and women in a recast version taking into account developments in the case law of the CJEU.

(Directives 75/117/EEC, 76/207/EEC, 86/378/EEC and 97/80/EC were repealed on 15 August 2009)



DIRECTIVE 2006/54/EC

Scope (Art. 1)

- a) access to employment, including promotion, and to vocational training;***
- b) working conditions, including pay;***
- c) occupational social security schemes.***

(Also applies to pensions schemes of public servants if the benefits are paid by the employer to the worker by reason of the latter's employment)



Equal pay (Art. 4)

For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.



Equal treatment as regards access to employment

There shall be no direct or indirect discrimination on grounds of sex in the public or private sectors, including public bodies, e.g.:

- Vocational training
- Employment and working conditions, including conditions regarding dismissals
- Membership of an organisation of workers or employers



Directive 2004/113/EC

implementing the principle of equal treatment between men and women in the access to and supply of goods and services

Purpose (Art. 1)

To lay down a framework for combating discrimination based on sex in access to and supply of goods and services, with a view to putting into effect in the Member States the principle of equal treatment between men and women.



Scope of Directive 2004/113/EC

Applies to :

- all persons who provide goods and services, which are available to the public irrespective of the person concerned as regards both the public and private sectors

Does not apply to:

- the content of media and advertising nor to 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



Directive 2010/41/EU Self-employment

Purpose (Art. 1)

putting into effect the principle of equal treatment between men and women engaged in an activity in a self-employed capacity, or contributing to the pursuit of such an activity

The Directive applies where no other provisions are applicable (cf. 79/7/EEC, 2004/113/EC and 2006/54/EC).



Directive 2010/41/EU

Scope (Art. 2)

(a) self-employed workers

(b) the spouses or life partners of self-employed workers, not being employees or business partners, where they habitually, under the conditions laid down by national law, participate in the activities of the self-employed worker and perform the same tasks or ancillary tasks.



Directive 2010/41/EU

Principle of equal treatment (Art. 4)

The principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex in the public or private sectors, either directly or indirectly, for instance in relation to the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity.



Directive 2010/41/EU

Establishment of a company (Art. 6)

The principle of equal treatment states in this field that the conditions for spouses or life partners establishing a company must not be more restrictive than for other persons.

Life partners: Member States are not obligated to recognise life partnerships. However, in so far as the life partnership is recognised by national law, this shall fall within the scope of the Directive.



Directive 2010/41/EU

Social protection (Art. 7)

Where a system for social protection for self-employed workers exists in a Member State... spouses and life partners must be able to benefit from a social protection in accordance with national law.

The Member States may decide whether the social protection is implemented on a mandatory or voluntary basis.



Directive 2010/41/EU

Maternity benefits (Art. 8)

Female self-employed workers and female spouses and life partners may be granted a sufficient maternity allowance enabling interruptions in their occupational activity owing to pregnancy or motherhood for at least 14 weeks.

Female self-employed workers and female spouses and life partners shall have access to any existing services supplying temporary replacements or to any existing national social services. The Member States may provide that access to those services as an alternative to or a part of the allowance.



Common provisions of anti-discrimination directives

The Directives 2006/54/EC, 2004/113/EC and 2010/41/EU share common provisions with the other anti-discrimination Directives:

- * *Definitions*
- * *Burden of proof*
- * *Legal protection and damages/compensation*
- * *Bodies for the promotion of equal treatment*
- * *Victimisation*
- * *Social dialogue and dialogue with NGOs*
- * *Positive and specific measures*



Directive 92/85/EEC

Purpose (Art. 1)

To implement measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or who are breastfeeding.



Directive 92/85/EEC

Obligation of the employer to assess any risks to the safety or health and any possible effect on the pregnancy or breastfeeding of workers (Art. 4).

Obligation to adjust the working conditions if there is a risk to safety or health (Art. 5).

If an adjustment is not feasible, either a move to another job or, if this is not feasible, leave shall be considered.



Directive 92/85/EEC

- Night work (Art. 7)

No night work shall be performed during the pregnancy and for a period following childbirth

- Maternity leave (Art. 8)

At least 14 weeks.

- Time off for ante-natal examinations (Art. 9)

Ante-natal examinations during the pregnancy must be attended without loss of pay if these take place during working hours

- Prohibition of dismissal (Art. 10)

Women must not be dismissed for reasons connected with their pregnancy from the beginning of their pregnancy until the end of the maternity leave



Directive 2010/18/EU – Parental leave

This agreement applies to all workers, men and women, regardless of the nature of their employment relationship (open-ended, fixed-term, part-time).

*Leave shall be granted for at least a period of **four months** and, to promote equal opportunities and equal treatment between men and women, should, in principle, be provided on a **non-transferable basis**. To encourage a more equal take-up of leave by both parents, at least one of the four months shall be provided on a non-transferable basis.*

*Men and women workers shall have an **individual right** to parental leave on the grounds of the birth or adoption of a child to take care of that child until a given age up to eight years.*



Directive 2010/18/EU

Return to work and non-discrimination

*At the end of parental leave, workers shall have the **right to return to the same job or**, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship.*

*MS shall take the necessary measures to **protect workers against less favourable treatment or dismissal** on the grounds of an application for, or the taking of, parental leave.*

*When returning from parental leave, employees may request **changes to their working hours and/or patterns** for a set period of time. Employers shall consider and respond to such requests, taking into account both employers' and workers' needs.*

*This agreement applies **to all workers, men and women**, who have an employment contract or an employment relationship.*



Proposed legislation and initiatives

- 1) **Women on company boards**
- 2) **Proposal for an "Equal Treatment Directive"**
- 3) **Istanbul Convention**
- 4) **Work-Life Balance Initiative**



Women on company boards

- Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures.
- The proposal seeks to promote gender equality in economic decision-making and to fully exploit the existing talent pool of candidates for more equal gender representation on company boards.
- The proposed Directive will lead to breaking down the barriers that women face when aiming for board positions and to improved corporate governance, as well as enhanced company performance.



Proposal for a Directive

on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

- Proposal of 2008, currently being discussed by the Council
- Prohibits discrimination on grounds of disability, age, religion & belief and sexual orientation **outside employment:**
 - Social protection (social security, health care)
 - Social advantages
 - Education
 - Access to goods & services, including housing
- Also intends to establish **equality bodies** in order to promote compliance with the principle of non-discrimination on the covered grounds



Istanbul Convention

- In March 2016 the European Commission proposed the ratification by the European Union of the Istanbul Convention of the Council of Europe.
- The Istanbul Convention is a comprehensive international agreement to combat violence against women and domestic violence.
- The 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.



Work-Life Balance Initiative (I)

- New start to address the challenges of work-life balance faced by working families.
- Aimed at adapting the current EU legal and policy framework to today's labour market to allow for parents with children or those with dependent relatives to better balance caring and professional responsibilities and encourage a more equitable use of work-life balance policies between women and men, and to strengthen gender equality in the labour market.



Work-Life Balance Initiative (II)

- The Commission therefore envisages a mix of legislative and non-legislative actions.
- The Commission intends to propose draft legislation by the end of the year 2016 in the areas highlighted in the Roadmap on Work-Life Balance in August 2015
 - The areas covered are in particular maternity, paternity, parental and carers' leave and flexible working arrangements for parents and people with caring responsibilities.