



ERA Seminar Gender Equality Law

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Fabian LUETZ, Legal Officer
DG JUST, Unit D.2 (Gender Equality)



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- **Maternity leave (14 weeks)**
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- **4 months for each working parent**

7) *Social Security: Directive 79/7/EEC*



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) **Istanbul Convention**
- 3) **Gender Pay Gap Action Plan**
- 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.**



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.



Gender Pay Gap Action plan

- **Action plan of the EU 2017-2019** to tackle the gender pay gap from all possible angles
- Adopted on 20 November 2017: COM(2017) 678
- **Combating the gender pay remains a priority for the EU in order to achieve gender equality**



The Work-Life balance initiative:

- A key deliverable of the Social Pillar
- Follows the withdrawal by the Commission of the 2008 proposal to amend the Maternity Leave Directive

« The Commission will present a broader initiative which will continue to promote the objectives of the previous proposal and provide minimum protection. The new initiative will take account of the developments in society over the past decade and use the best mix of available policy tools to deliver results as effectively as possible. »

- **Commission Press Release, 01.07.2015**



Current EU legal framework on family-related leaves...

- Maternity Leave Directive (92/85/EEC)
- Parental Leave Directive (2010/18/EU)
- + Directive on Gender Equality in Employment (2006/54)



Current EU legal framework on flexible working arrangements (FWA) ...

Parental Leave Directive (2010/18/EU)

- ▶ Right to request reduced and flexible working hours upon return from leave

Part-Time Work Directive (97/81/EC)

- ▶ Right to request change from part-time to full-time and vice-versa



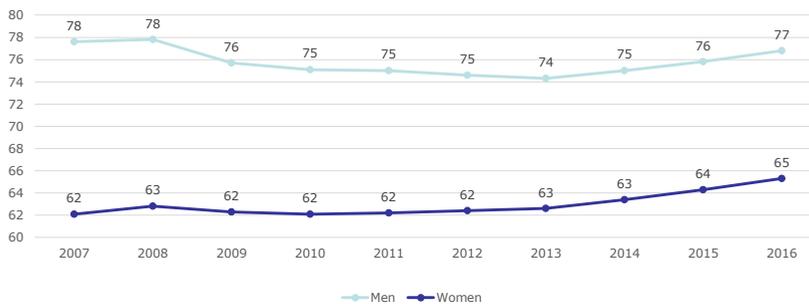
Work-life balance for parents and carers

What is the Problem ?

Women's underrepresentation in the labour market and the unequal sharing of caring responsibilities

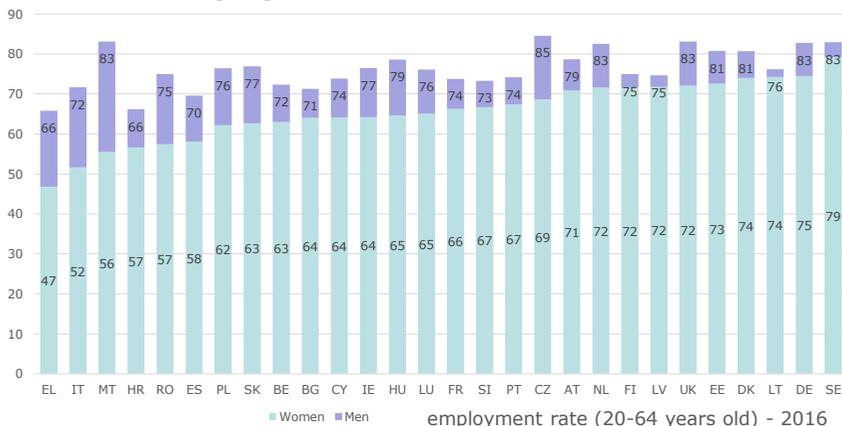
Employment rates improved in the last three years, but the gender gap did not change much (12 pps)

Women and men's employment rates in EU28 (20-64 years old)



Source: Eurostat

Womens employment rate is lower than men - in all MS



Source: Eurostat

What are the main causes?

- **Unequal share of care responsibilities** men / women: children and dependant relatives
- **Shortage of childcare services**, notably for children under 3 and long-term care services for other dependants
- **Financial disincentives** in tax-benefit systems for second earners



Objectives of the initiative

1. **Increase female participation in the labour market** and reduce the gender gap, including pay and pension gaps
2. **Give workers a real choice** when balancing their professional and caring responsibilities by modernising the current legal and policy framework
3. **Address shortcomings** in care services facilities and the tax/economic disincentives to work for second earners.





Proposal for a Directive

The legal basis for EU action

- Article 153(1)(i) TFEU foresees that :
"(W)ith a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in following fields: (...)
*(i) **equality between men and women with regard to labour market opportunities and treatment at work;**"*

- Article 153(2)(i) TFEU provides :
"To this end the European Parliament and the Council (...)
*b) **may adopt** (...) by means of **directives**, minimum requirements for gradual implementation"*



The initiative

1) A proposal for a directive

2) A communication with non-legislative measures



1) The Directive

Strengthening existing and creating new rights to improve the current EU legal framework:

- Paternity leave (new)
- Parental leave (strengthened)
- Carers' leave (new)
- Flexible working arrangements (strengthened)



Repeal Directive 2010/18

- Commission uses its power of initiative provided for by the Treaty and proposes new legislation
- Commission proposes to repeal Directive 2010/18
- All entitlements in Directive 2010/18 maintained in proposal for new Directive



1) The Directive

Paternity Leave



- 10 working days,
- compensated at sick pay level

Parental Leave



- 4 months (as before)
- non-transferable between parents (before only 1 month non-transferable)
- compensated at sick pay level
- until child is 12
- flexible uptake

Carers' Leave



- 5 working days/year/worker

- to take care of sick or dependent relative

- compensated at least at sick pay level

Flexible Working Arrangements



- For parents of children up to 12 or carers

- Right to request to employer:

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

- Employers must consider the request and justify any refusal

For those who request or take leaves and flexible working arrangements

Employment protection

- Protection against dismissal
- Prohibition of discrimination

+ Job and previous rights maintained

WHAT WILL THE COMMISSION'S PROPOSAL IMPROVE?

	CURRENT EU LAW	IMPACT OF THE PROPOSAL
Paternity Leave 	No minimum standards for paternity leave at EU-level.	All working fathers will be able to take at least 10 working days of paternity leave around the time of birth of the child. Paternity leave will be compensated at least at the level of sick pay.
Parental Leave 	At least 4 months per parent, out of which one month is non-transferable between parents. Parents can take leave until their child is 8 years old. No minimum rules on allowance/ payment.	At least 4 months per parent that cannot be transferred between parents. Parents can take leave in flexible forms (full-time, part-time, in a piecemeal way). Parents can take leave until their child is 12 years old. Parental leave will be compensated at least at the level of sick pay.
Carers' Leave 	No minimum standards for carers at EU-level (except "force majeure" allowing to take short time off for imperative and unexpected family reasons.) No minimum standards at EU level on the length of the leave nor compensation	All workers will have the right to 5 days of carers' leave per year to take care of seriously ill or dependent relatives. Carers' leave will be compensated at least at the level of sick pay
Flexible Working Arrangements 	Right to request reduced and flexible working hours upon return from parental leave Right to request part-time work for all workers	All working parents of children up to 12 and carers with dependent relatives will have the right to request the following flexible working arrangements: <ol style="list-style-type: none"> 1. Reduced working hours 2. Flexible working hours 3. Flexibility on the place of work

Repeal Directive 2010/18

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2) Non-legislative measures

3 POLICY AREAS

1. Gender-balanced leaves and FWA
2. Improving access to, and affordability and quality of care services
3. Addressing economic disincentives for second earners

A COMBINATION OF TOOLS TO SUPPORT MEMBER STATES

- Support enforcement of current legislation (dismissal protection)
- Better EU-level data, monitoring and guidance (European Semester), and benchmarks
- Encourage sharing of good practices
- Promote social investment through funding (EaSI, ESIF, EFSI)





Thank you for your attention !