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International Level (I)

United Nations:

- Convention on the Elimination of all Forms of Discrimination Against Women (1979) (CEDAW)
  - Arts 1 y 2: discrimination concept and duties of state parties
  - Art 4: measures to promote gender equality are not discriminatory
  - Art 5: maternity as a social function → common responsibility of women/men in the upbringing/development of their children
  - Role of social/cultural patterns
- Optional protocol (1999) → Competence of the Committee on the Elimination of Discrimination against Women → Communications (claims on violations of rights)

International Labour Organisation (ILO):

- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Workers with Family Responsibilities Convention, 1981 (No. 156)
- Maternity Protection Convention, 2000 (No. 183)

International Level (IV)

Council of Europe (I):

  - Art 14:
    "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, […]" → Ancillary right (should be invoked with another ECHR right)
  - Protocol No. 12 (2000):
    Art 1: ‘The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex […]’ (para 1) and ‘[n]o one shall be discriminated against by any public authority ’ (para 2) → Broader right
  - Art 8(1):
    "Everyone has the right to respect for his private and family life, his home and his correspondence."
    → Autonomous rights
    → Potential causes of interference: Art 8(2)
International level (V)

Council of Europe (II): Revised European Social Charter (1996):

**Discrimination:**
- Art 20: Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

**Work-family life balance:**
- Art 16: Right of the family to social, legal and economic protection
- Art 27: Take measures to protect the “right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers”

**Maternity protection:**
- Art 8: Right of employed women to protection of maternity

→Collective complaints system (Additional Protocol, 1995)

International Level (VI)

Council of Europe (III):
- Rec (2002)5 on the protection of women against violence
- Convention on preventing and combating violence against women and domestic violence (2011) (‘Istanbul Convention’)
  - Ratified by some Member States of the EU
  - The EU signed it in 2017 (but has not ratified it yet)
  - Ratification is a priority for the European Commission → Gender Equality Strategy 2020-2025
  - EU Parliament has an Opinion from the CJEU in 2019 (Opinion 1/19 – pending)

**Key features:**
- Art 2: Aim
  - Eliminate discrimination against women & promote substantive equality

Broad concept of “violence” → almost any form of violence covered:
- Physical, sexual, psychological or economic harm or suffering (Art 3)
- Domestic violence, sexual harassment, rape, forced marriage (Preamble)
- Forced abortion & forced sterilisation (Art 39)
- Threats of such acts, coercion or arbitrary deprivation of liberty (Art 3)
EU – Treaties & Charter (I)

• Treaties:
  ✓ Art 3(3) TEU → equality between men & women = foundational value
  ✓ Art 8 TFEU → ‘mainstreaming’
    ← Promoting gender equality through transversal actions/policies
  ✓ Art 19 TFEU → the EU has powers to enact legislation/take other measures to address discrimination
    ← Legislation: Unanimity at Council + Parliament approval
    ← Lack of direct effect
    ← Directives 2000/43/EC, 2000/78/EC, 2004/113/EC
  ✓ Art 157(1) TFEU
    ← Principle of equal pay between men & women
    ← Direct effect: vertical & horizontal (→ Case 43/75 Defrenne No. 2)
    ← Directive 2006/54/EC
  ✓ Art 157(4) TFEU
    ← Allows positive action to encourage/promote equal pay

EU – Treaties & Charter (II)

• EU Charter of Fundamental Rights:
  ✓ Art 21(1) → Prohibition of discrimination based on sex (& other grounds):
    “Any discrimination based on any ground such as sex […] shall be prohibited”
  ✓ Art 23 → Equality between men and women:
    “Equality between men and women must be ensured in all areas, including employment, work and pay.
    The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex”

Note:
Art 51(1): The Charter is addressed to EU institutions/bodies and to MS when they are implementing EU law
Art 51(2): The Charter does not create/modify the powers/tasks of the EU
EU – Treaties & Charter (III)

How can the Charter be used?  ➔ Example:

**Case C-236/09, Test-Achats:**

- Dir 2004/113/EC, Art 5(2) ➔ equal treatment exception:
  Differences based on sex to calculate insurance premiums
  (based on actuarial factors)
- Breach of Arts 21 & 23 of the EU Charter of Fundamental Rights?
- CJEU:
  - Yes ➔ breach of the equal treatment principle (Arts 21, 23 Charter)
  - Void from 21 December 2012

EU – Secondary Legislation (I)

**Employment:**

- **Equal treatment:**
  Dir 2006/54/EC - Workers
  Dir 2010/41/EU – Self-employed

- **Equal pay & Gender Pay Gap:**
  Art 157 TFEU
  Dir 2006/54/EC – Art 4
  Rec 2014/124/EU – Transparency

- **Atypical work:**
  Dir 1997/81/EC – Part-time work
  Dir 1999/70/EC – Fixed-term work
  Dir 2008/104/EC – Agency workers

- **Work – family life balance:**
  Dir 92/85/EEC – Pregnancy
  Dir 2003/88/EC – Working time
  Dir 2010/18/EU – Parental leave
  Dir 2019/1158/EU – Work-life balance

- **Company boards:**
  Proposal COM/2012/0614: Non-executive directors of listed companies
EU – Secondary Legislation (II)

• Other areas:

Access to goods and services:
Dir 2004/113/EC – Equal treatment in the access to/supply of goods & services

Violence against women:
Reg 606/2013/EU – Mutual recognition: protection measures in civil matters
Dir 2012/29/EU – Protection of victims of crime
Dir 2011/99/EU – European protection order

Social security:
Dir 79/7/EEC – Equal treatment in protection against sickness, invalidity, old age, accidents at work/occupational diseases, unemployment, social assistance
Dir 2006/54/EC – Art 5 – Prohibition of discrimination on grounds of sex in occupational social security schemes

Employment field (I)

Scope:
• Directive 2006/54/EC – Equality in Employment ‘Recast’
  
  Art 1:
  ✓ Access to employment
  ✓ Promotion
  ✓ Vocational training
  ✓ Working conditions (including pay)
  ✓ Occupational social security schemes

• Directive 2010/41/EU – ‘Self-employed’

  Art 2:
  ✓ Self-employed → all persons pursuing a gainful activity for their own account
  ✓ Spouses/partners of self-employed workers who, not being employees/business partners, habitually participate in the activities of the self-employed worker (same tasks or ancillary tasks)
Employment (II)

Directives 2006/54 & 2010/41 – Common features:

• Prohibition of:
  ✓ Direct discrimination:
    – Claimant treated less favourably on grounds of sex → comparison
    – Present, past or future situations
  ✓ Indirect discrimination:
    – Apparently neutral provision, criterion or practice
    – Puts persons of one sex at a particular disadvantage compared with persons of the other sex → comparison
    – Can be objectively justified
  ✓ Harassment and sexual harassment
  ✓ Retaliation

• Allows positive action

• Equality bodies

Employment (III)

Directives 2006/54 & 2010/41 – Distinctive features:

• Directive 2006/54/EC:
  ✓ Art 15 – Return from maternity leave
  ✓ Art 16 – Protection against dismissal in MS which recognise a right to paternity & adoption leave
  ✓ Art 19 – Shift (?) of the burden of proof

• Directive 2010/41/EU:
  ✓ Art 4(1) – Prohibition of discrimination in relation to the establishment, equipment or extension of a business
  ✓ Art 8 – Maternity allowance (min. 14 weeks) for female self-employed workers (& spouses/partners of self-employed workers)
**Employment (IV)**

**Equal Pay ≠ Gender Pay Gap**

- **Equal pay for equal work** → Dir 2006/54/EC
- **Gender Pay Gap** → Rec 2014/124/EU
  - EU Action Plan 2017-2019: Tackling the gender pay gap
  - Consultation on Pay Transparency: OPEN until 28 May 2020
  - Plan to release a Proposal for a Directive (4th quarter of 2020) → Roadmap

**Work – family life balance**

- **Directive 92/85/EEC** – Pregnancy, maternity & breastfeeding:
  - Workers who are pregnant, have recently given birth or are breastfeeding (Arts 1 y 2)
  - Protection of safety and health at work
  - Includes:
    - Prohibition of dismissal (Art 10)
    - Adequate payment/allowance (Art 11(2))

  - Minimum periods of daily rest, weekly rest and annual leave
  - Night work, shift work and patterns of work

- **NEW: Directive 2019/1158/EU** – Work-life balance
  - **Personal scope:** (Art. 2) – “all workers...”
  - **Material scope:** (Art. 1)
    - Paternity leave, parental leave and carers’ leave
    - Flexible working
Atypical work (I):

Scope of application:

• **Directive 1997/81/EC** – part-time work
  - Clause 2:
    ✓ Part-time workers (according to national law)
    ✓ Possibility to exclude part-time workers who work on a casual basis

• **Directive 1999/70/EC** – fixed-term work
  - Clause 2:
    ✓ Fixed-term workers
    ✓ MS can exclude:
      – Initial vocational training relationships and apprenticeship schemes
      – Publicly-supported training, integration and retraining contracts

• **Directive 2008/104/EC** – agency workers
  - Art 1:
    ✓ Workers with a contract with a temporary-work agency **AND**
    ✓ Who are assigned to user undertakings to work temporarily under their supervision and direction

*NEW: Directive 2019/1152/EU on transparent and predictable working conditions*

Atypical work (II):

→ Women tend to be more affected

**Equal treatment principle:**

**Directive 1997/81/EC**, Clause 4 → As regards full-time workers

**Directive 1999/70/EC**, Clause 4 → As regards permanent workers

**Directive 2008/104/EC**, Art 5 → As regards workers who have been directly recruited by the user undertaking to occupy the same job

**But:** Directives 97/81/EC y 1999/70/EC:

← Allow discriminatory treatment **if objectively justified**
Goods & Services

Directive 2004/113/EC

• Scope:
  ✓ Goods and services available to the public
  ✓ Public and private sector
  ✓ Excludes transactions in the private and family sphere
    → Eg: buying a 2nd hand bike from the neighbour

• Prohibition of:
  ✓ Direct/indirect discrimination
  ✓ Harassment, retaliation, instructions to discriminate

• Allows positive action

• ‘Shift’ (?) of the burden of proof

• Equality bodies

Final comments

• International Treaties (UN, ILO):
  • Both positive and negative obligations
  • Tools for their effective enforcement:
    ✓ Periodic reports’ system
    ✓ Complaints’ system: CEDAW
      ↦ Committee on the Elimination of Violence Against Women

• Council of Europe:
  • Tools for their effective enforcement:
    ✓ ECHR: European Court of Human Rights ↗ individual complaints
    ✓ Revised European Social Charter: European Committee of Social Rights ↗
      collective complaints

• European Union:
  • Direct effect: Art 157 TFUE
  • Transposition of Directives into national law
  • Lack of transposition ↗ Direct or indirect effect