



The History of EU Gender Equality Law and Recent Directives

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CURRENT REFLECTIONS ON EU
GENDER EQUALITY LAW - ERA – Trier - 4-12-2023

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Outline

A) The History of EU Equality Law

B) Recent Directives

- 1) **Work-Life Balance Directive 2019/1158**
– adopted 2019, DDL for transposition 8/2022
- 2) **Dir. 2022/2381 Gender Balance on Company Boards**
– proposed in 2012, adopted in 2022
- 3) **Pay Transparency Directive 2023/970**
– proposed in 2021, adopted in 2023
- 4) Proposals for **Directives on Standards for Equality Bodies**
– proposed in Dec 2022, negotiation ongoing

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A – The History of the EU Equality Law

1) **1957** – the original EEC Treaty

Article 119

MS must ensure principle equal pay for men & women for equal work

by 1962



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2) the **1970's**

– adoption of directives on sex equality in salaries (75), in employment (76) and social security (79)

– 4/1976 - ECJ case *Defrenne II*: princ. equal pay > direct effect !



Mme Gabrielle Defrenne



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3) The **2000's** (after Amsterdam Treaty 1999 – new art.13/19)

2000/2009 – EU **Charter of Fundamental Rights**

Directive 2000/43 on discrimination on **racial or ethnic origin**

- applies to employment, self-employment, social security, healthcare, education and access to goods and services

Directive 2000/78 – prohibits discrimination

based on religion, age, disability and sexual orientation

- applies to employment and vocational training only

2002/2006 - Update of sex equality directive in employment

2004 - New Directive on sex equality in access to goods and services

2008 Proposal for horizontal Directive - on disc. beyond employment

- on religion, age, disability and sexual orientation / ... still pending

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General remarks on the evolution

- *Development parallel to EU evolution*
+ *competences on social, human rights, migration*
- *Virtuous circle EU Court - legislator (normally)*
 - *exs. indirect discrimination, rule burden of proof*
- *Continuous search for effectiveness*

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1) The Work-Life Balance Directive



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Content

Facilitates the reconciliation of work & family life for parents and carers to achieve equality of men and women at work

Provides for the right :

- 1)** to paid **paternity leave** of 10 working days, for fathers,
- 2)** of each parent to paid parental leave of 2 months (with a further 2 months of leave that is not required to be paid and may be transferred to the other parent) and non-transferable;
- 3)** to a **carers' leave** of five working days, per year, per worker;
- 4)** of parents & carers to request **flexible working arrangements**.

» improvement of the previous Dir. 2010/18 on parental leave (only right of each worker to 4 months of parental leave, unpaid).

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State of play of Transposition

Deadlines - 2/8/2022 - general transposition deadline
- 2/8/2024 - additional deadline - pay of last 2 weeks parental leave

Implementation meetings with COM & MSs – Dec 2019 + May 2021

Non-communication infringements

- Sept 2022 - Letters of Formal Notice to 19 Member States for lack of communication of complete transposition
- April 2023 – Reasoned Opinions to 11 Member States
- Nov 2023 – Referral to Court of Belgium, Spain and Ireland

Non-conformity infringements (laws' content) assessment

- in preparation

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2) Directive 2022/2381 on improving gender balance among directors of listed companies



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A- Companies concerned:

- EU companies listed on EU stock exchanges
Except SMEs
- Estimated 5000 companies
- Privately and publicly owned

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B- Content of obligations

- **40% target** for non-executive directors (or 33%-both types of directors) of the underrepresented sex
 - To be reached by June 2026
- **Obligation to ensure transparency of selection process** of board directors' - based on comparative analysis of qualifications of candidates
 - applies only if a company is below those targets
- The Directive does **not impose a quota**
The selection of candidates is based on qualifications & merit
 - a preference rule applies only in case of equally qualified candidates
- **Penalties** for infringement of Directive obligations' must be "effective, proportionate and dissuasive"

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C – Implementation - state of play

- Directive was published in December 2022
- Transposition DDL - end December 2024 (expires Dec 2038)
- Same DDL applies to invoke the suspension clause
 - i.e. under certain conditions, MS can suspend the application of the obligation to ensure a transparent selection procedure
- 21 November 2023 - Implementation workshop w/ Member States (including EFTA and Social partners)

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The Pay Transparency Directive 2023/970



“Directive on strengthening the application of the principle of equal pay between men and women through pay transparency and enforcement mechanisms”

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Equality Quiz

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2 - What is the EU « Gender Gap » ?

A - 12,7%

B - 29 %

C - 36%



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Answer : All are correct

A) 12,7% - Gender Pay Gap

≠ pay per hour men/women - EU average 2021

B) 29% - Gender Pension Gap in 2019

C) 36,7% - Overall earnings gap

all women and men in working age - 2018

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The Pay Transparency Directive 2023/970



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Background

Equal Pay Principle enshrined in the Treaties since 1957

- Art 157 TFEU (Ex 119 EC Treaty)
- & in Directive 2006/54/EC
- and by 2014 Pay Transparency Recommendation

Main obstacles in practice :

- Lack of pay transparency
(if you are aware of discrimination,
you can defend your right to equal pay)
- Legal clarity of concepts: pay, work of equal value
- Access to justice and procedural obstacles for redress
(lengthy, costly, lack of information)

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Content – 1) More Transparency

At Worker level Prior to employment & During employment

At Employer level

- **Pay reporting**

information about pay gaps in the organisation (employers with at least 100 workers)

- **Joint pay assessment**

if 3 conditions are fulfilled:

- gender pay gap of at least 5% in any workers' category,
- employer cannot justify the gap by objective and gender-neutral factors,
- the employer does not address the pay gap within 6 months.

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2) Better enforcement

- Victims' **representation** (legal standing of equality bodies)
- Strengthened **shift of burden of proof**
- Strengthened and new **remedies** (compensation and injunction orders)
- Minimum standards on **limitation periods**
- Support to carry **legal costs**
- **Sanctions** to include fines (to be set by Member States)
- Involvement of **social partners**

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State of play

- May 2023 – formal adoption and publication
- Implementation **workshops** with Member States planned twice a year in 2024 and 2025.
- June 2026 – DDL for transposition - 3 years
- Updates of 2013 Guidelines on job evaluation and classification systems
- Call for projects under CERV-2024-GE – available to support the implementation of the provisions of the Directive

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4) Proposals for Directives on Standards for equality bodies



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Timeline



2000 - 2010

Adoption of the
Equality
Directives
2000/43/EC,
2004/113/EC,
2006/54/EC,
2010/41/EU

- Independent assistance to victims
- Independent surveys and reports

2018

Recommendation
on Standards for
equality bodies

- Mandate
- Independence
- Resources
- Powers
- Tasks

7 December 2022

Adoption of two
Directives'
proposals on
standards for
equality bodies

2023

Negotiation

- Different adoption procedures
- General approaches in Council in June 2023
- EP position on 23/11
- First trialogue 28/11/2023

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CONCLUSION ...

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In spite of all the developments and all efforts ...

**A LOT
REMAINS TO BE DONE !**

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Thank you !

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