

“equal pay for work of equal value”: past, present and future



■ Article 119 Treaty of Rome:

- “Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work...”
 - rationale behind the provision
 - transitional period to 1961, then 1964
 - subsequent (lack of) development
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■ 1975: “Equal Pay Directive

– “Article 1: The principle of equal pay for men and women ... means, for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex ...”

■ 1976 *Defrenne* (no.3)

Direct horizontal effect of Article 119 recognised by the Court



Vroege
1994

Bilka Kaufhaus 1985

Enderby 1993

later major
decisions of the
Court

Rummler 1987

Barber 1990

Murphy 1988

Danfoss 1990

Rinner-Kuhn 1989



the limits of equal pay

- *Lawrence 2002*
- *Allonby 2004: a mixed blessing?*



the pay gap

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- 2007 Communication from the Commission on tackling the pay gap
 - 15% gross hourly gender pay gap across EU
 - pay gap varies inversely with the proportion of women in the workforce
 - worse in private sector
 - increases with
 - size of undertaking
 - age
 - level of educational attainment
 - length of service

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- women and men often segregated occupationally and industrially
 - traditionally female work often undervalued
 - women are often more constrained in terms of ability to travel and work long hours
 - discrimination in the context of pay is rational: why pay more?

the legal position

- equal pay for work of equal value
- comparators largely *intra* employer - some scope for cross-employer comparisons where a single source controls pay: *Lawrence, Allonby*
 - ¿Can employers evade equal value claims by delegating responsibility for pay determination?: *Robertson v DED* (UK)
- At least some equal pay claims possible in the absence of a comparator: *Allonby*



■ Impact of changes to the equal treatment directive?

- Art 2: (a) 'direct discrimination': where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation;
- Art 14: no direct or indirect discrimination on grounds of sex in the public or private sectors ... in relation to ... (c) employment and working conditions, including dismissals, as well as pay as provided for in Article 141 of the Treaty.

future directions?



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- broader scope for comparison?
 - hypothetical comparators?
 - shift towards a collective approach?
 - greater emphasis on overall pay structures
 - and pay-related practices of general application

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- measures to tackle segregation
 - more positive action?
 - rebalancing parental and caring responsibilities?
 - reducing working hours?