Reconciliation of Work and Family Life
ERA, Trier, 14 February 2012

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Outline

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Introduction (I)

• Lisbon Strategy
• Employment rate (EU 27, 2009)
  – Women: 58.6%; Men: 70.7%
  – Gap: 12.1
• Full-time equivalent employment rate
  – Women: 50.1%; Men: 68.5%
  – Gap: 18.4

Source: European Commission *Employment in Europe 2010*
Introduction (II)

- Part-time employment (EU 27)
  - Women: 31.5%; Men: 8.3%
- Women spend on average 17.7 hours a week more than men on domestic and family chores and do 7.4 hours a week less paid work than men

Source: European Commission *Report on Equality between Men and Women 2009* and *Employment in Europe 2010*
Introduction (III)

– Lack of institutions, such as childcare facilities

– Barcelona targets: 33% children under three and 90% between three and school age. In 2007: 30% average

– Conflict between school hours, school holidays etc. and hours of employment

Sources: European Commission Report on Equality between Men and Women 2010
EU Legislation (1)
Gender equality

• Equal pay for men and women (Art. 157 TFEU, Directive 75/117, now “recast” 2006/54))
• Access to employment, conditions of employment, dismissal (76/207 & 2002/73; now “recast” 2006/54 )
• Social security (79/7)
• Occupational social security schemes (86/378 & 96/97; now “recast” 2006/54)
• Self-employment (86/613, to be repealed by 2010/41)
• Access to goods and services (2004/113)
• “Recast” Directive (repeals Directives 75/117; 76/207 & 2002/73; 86/378 & 96/97 & 97/80)
EU Legislation (II)

- Pregnant workers (92/85)
- Parental leave (94/36, to be repealed by 2010/18)
- Charter of Fundamental Rights, Title III on Equality (Articles 20-26), Reconciliation (Art. 33), Article 6 TEU
- Recommendations, “soft” law
Pregnancy, childbirth, breastfeeding and maternity leave

(92/85)(I)

• 14 weeks maternity leave (minimum: Boyle, C-411/96)

• Protection from dismissal (Brown, C-394/97; Melgar, C-438/99; Tele Danmark; C-109/00; Paquay, C-460/06; Danosa, C-232/09)

• Rights linked to employment contract must be assured (Boyle, C-411/96; Alabaster, C-147/02; Gassmayr, C/194-08; Mayer, C-356/03)

• Adequate pay or benefit (ceiling possible): (Gassmayr, C/194-08; Parviainen, C-471/08)
Pregnancy, childbirth, breastfeeding and maternity leave (II)

- **Commission draft:**
  - 18 weeks maternity leave, of which 6 weeks after the birth
  - Preparations for dismissal prohibited during maternity leave
  - 100% pay or ceiling equal to sick pay
  - Request to change working hours or patterns

- **European Parliament:**
  - 20 weeks, pay on principle 100% pay
  - Many major amendments

- No agreement yet on this proposal
Parental leave and *force majeure* (96/34, repealed by 2012/18) (I)

- Individual right, four months (birth or adoption) up to the age of eight years
- If maternity leave overlaps with parental leave: right to delay parental leave (*Commission/Luxembourg, C-519/03*)
- Twins: Parental leave not granted per child, but MS must introduce measures that take account of this specific situation (*Chatzi, C-149/10*)
- Essentially non-transferable. At least one month non-transferable. This month is lost if only one parent takes parental leave.
- All types of contract: part-time, fixed-term, temporary
- Full-time, part-time, time credit etc.
Parental leave and *force majeure* (96/34, repealed by 2012/18) (II)

- After return, same or equivalent job
- Protection against unfavourable treatment and dismissal
- Entitlements are maintained (*Gómez-Limón*, C- 537/07; *Meerts*, C-116/08; *Land Tirol*, C-486/08)
- Request to rearrange working hours and patterns
- *Force majeure*: absence due to urgent family reasons in the event of illness or accident
The self-employed (86/613 repealed by 2010/41)

- Maternity leave: allowance enabling a break of at least 14 weeks
- Pay at least equal to sick pay but with possible ceiling
- Possibly with temporary replacement
- Concepts, implementation etc.
Direct and indirect discrimination

- Hofmann (184/83): biological protection and protection for the special relationship between a woman and her child

- Gerster (C-1/95) and Hill (C-243/95): “Community policy [...] is to encourage and, if possible, adapt working conditions to family responsibilities. Protection of women within family life and in the course of their professional activities is, in the same way as for men, a principle which is widely regarded in the legal systems of the Member States as being the natural corollary of the equality between men and women, and which is recognised by Community law.”

- ECJ Thibault (C-136/95): substantive equality
Direct discrimination

Defined as: “where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation”

- No comparison required if the less favourable treatment is linked to pregnancy (Dekker)
- Protection from dismissal for absences due to the pregnancy: Brown (C-394/96)
- Fixed-term contracts: Tele Danmark, C-109/00 and Melgar, C-438/99
- Possibly direct discrimination if not about a worker who is pregnant in the sense of 92/85: Mayr (C-506/07)
- Any less favourable treatment related to pregnancy falls under the prohibition to discriminate (Art. 2(2)(c) recast); (Sass, C-284/02 and Herrero, C-294/04)
- Roca Alvarez (C-104/09): right of the father to take leave
- Non-renewal of contract linked to pregnancy: Melgar, C-438/99
- Limited exceptions: Abrahamsson, C-407/98; Commission/France (312/88); Griesmar (C-366/99); Roca Alvarez, (C-104/09)
Indirect discrimination

Defined as: “where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary”

- Examples: part-time work, imposition of flexible working hours, overtime

- *Bilka (170/84); Danfoss (109/88); Lewen (C-333/97)*

- Problems with comparisons: *Helmig (C-399/92); Gruber (C-249/97); Österreichischer Gewerkschaftsbund (C-220/02); Goméz-Limon (C- 537/07)*
A few conclusions

• Important role of the ECJ with regard to direct discrimination
• Problems with comparisons and limitations of the concept of indirect discrimination
• More equitable gender distribution of domestic chores and family responsibilities still a long way off
• Different legal foundations in the Treaty make an integrated approach difficult
• Life cycle based policies?
Thank you!