



PENSION INEQUALITY AND EU LAW

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Pensions and gender: what is the problem?

WHAT IS PENSION?

Objective: ensure income security in old age and protect individuals against poverty

3 pillars of pension

Statutory
(State)

Occupational
(Employer)

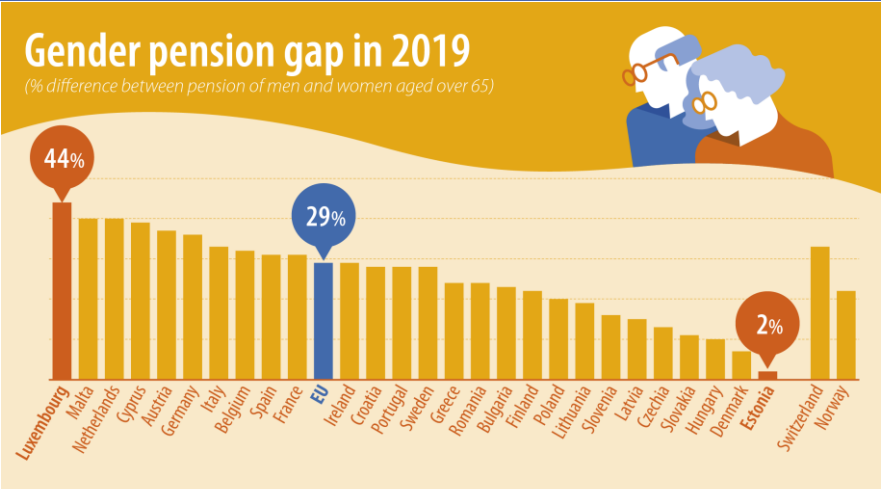
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THE GENDER PENSION GAP

Gender pension gap: the percentage by which women's average pension income is higher or lower compared with men.

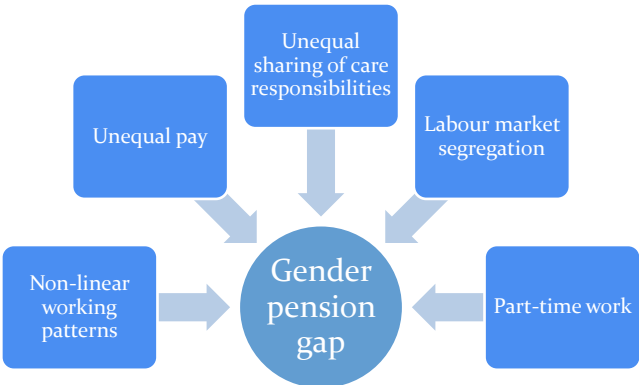
- Average EU gender pay gap (hourly wage): 13% (2020)
- Gender overall earnings gap: 36.7% (2018)
- Average EU gender pension gap: 29% (2020)

THE GENDER PENSION GAP IN THE EU



ec.europa.eu/eurostat

WHY DO WOMEN EARN LESS PENSIONS THAN MEN?



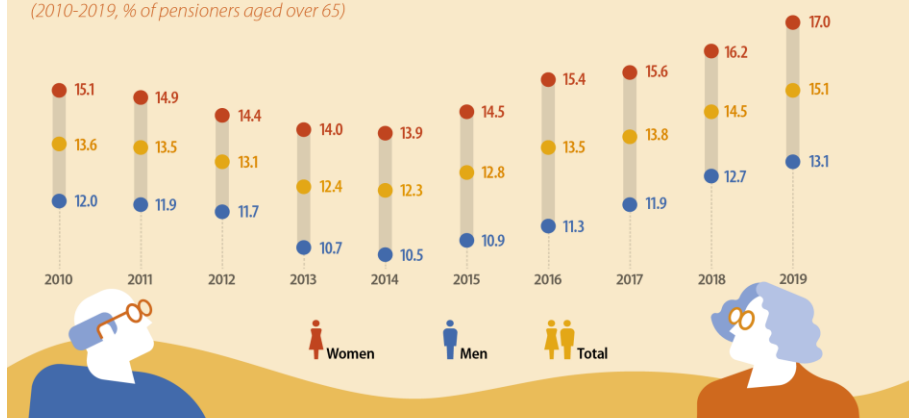
WHAT ARE THE CONSEQUENCES OF THE GENDER PENSION GAP?

- ✘ Reduced income security for women
- ✘ Reduced economic independence
- ✘ Increased risk of poverty in old age

THE GENDER PENSION GAP AND POVERTY

At-risk-of-poverty rate for pensioners by sex in the EU

(2010-2019, % of pensioners aged over 65)



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WHAT WILL BE THE IMPACT OF COVID-19 ON PENSIONS?

- The gender employment gap has widened by 5% during pandemic
- Gender differences in unpaid care work have been exacerbated by the COVID-19 pandemic

PENSION INEQUALITY AND THE LAW

How can law remediate for gender inequalities in pensions?



Policies and laws have a crucial role to play in securing equal opportunities for women to acquire pension rights.

Remedies include:

- Taking into account non-contributory criteria (residence, age, health) rather than contributory requirements
- Considering time spent outside the labour market because of caring responsibilities as giving pension entitlements (ie. pension care credits)

EU LAW AND PENSION INEQUALITY

PENSION INEQUALITY AND EU LAW



15. Old age income and pensions

Workers and the self-employed in retirement have the right to a pension commensurate to their contributions and ensuring an adequate income. Women and men shall have equal opportunities to acquire pension rights.

Everyone in old age has the right to resources that ensure living in dignity.

EU LAW AND PENSION INEQUALITY

- I) EU directives on equality between men and women in social security
- II) ECJ: expanding the principle of equal treatment in pensions
- III) Pension care credits
- IV) Pension entitlements of part-time workers

I) EU DIRECTIVES ON EQUALITY BETWEEN MEN AND WOMEN IN SOCIAL SECURITY

Council Directive 1979/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security (**Statutory Social Security Directive**)

Council Directive 1986/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes (**Occupational Social Security Directive**) (repealed)



Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (**the Recast Directive**)

I) EU DIRECTIVES ON EQUALITY BETWEEN MEN AND WOMEN IN SOCIAL SECURITY

- **Principle:** Men and women should be treated equally in social security: prohibition of direct and indirect discrimination on the basis of sex
- **Material scope:** scope of the schemes, conditions of accession, obligation to contribute and calculation of contributions
- **Exceptions:**
 - Benefits related to maternity
 - Lower pensionable age for women
 - Widows' benefits

II) ECJ: EXPANDING EQUAL TREATMENT IN PENSIONS

- Lower pensionable age for women is contrary to the Treaty principle of equal pay: Case C-262/88, *Barber*, 1990
- Lower pensionable age cannot constitute positive actions: Case C-46/07, *Commission v. Italy*, 2008, Case C-559/07, *Commission v. Greece*, 2009

II) ECJ: EXPANDING EQUAL TREATMENT IN PENSIONS

- NO widows' benefits: widowers should be treated the same as widows:
 - Case C-109/91, *Ten Oever*, 1993 (Occupational pension schemes)
 - Case C-337/91, *Steenhorst-Neerings v Bestuur*, 1993 (Statutory pension schemes)



III) PENSION CARE CREDITS

- Pension care credits: an important redistributive mechanism



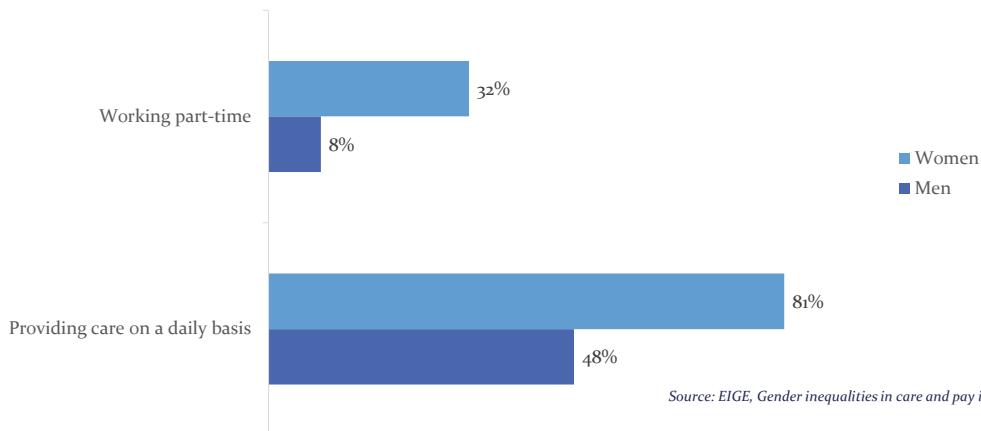
III) PENSION CARE CREDITS

- Men and women should be treated the same with regard to pension care credits:
 - Case C-366/99, *Griesmar*, 2001
 - Case C-206/00, *Mouflin*, 2001
 - Case C-450/18, *WA v INSS*, 2019

III) PENSION CARE CREDITS: *LEONE*

- Case C-173/13, *Leone*, 2014: pension care credit granted available to men are women are indirectly discriminatory against men ?

IV) PENSION ENTITLEMENTS FOR PART-TIME WORKERS



IV) PENSION ENTITLEMENTS FOR PART-TIME WORKERS

- European Court of Justice: Case 170/86, *Bilka*, 1986: if women constitute the majority of part-time workers, excluding them from occupational pensions schemes amounts to indirect sex discrimination
- Discrimination of part-time workers can be justified if:
 - it relies on **objective grounds**, is **necessary** and **proportionate** (occupational social security) *Bilka*, 1986
 - it relies on **aims of social policy** (statutory social security) Case 171/88, *Rinner-Kühn*, 1989

IV) PENSION ENTITLEMENTS FOR PART-TIME WORKERS

- **Council Directive 97/81/EC, Framework Agreement on part-time work:** equal treatment between full-time and part-time workers in relation to pay, working conditions and occupational pensions and but excludes statutory social security from its scope
- *Pro rata temporis* principle: wherever it is justified, the principle of *pro rata temporis* should apply, that is the rights of part-time workers should be calculated in proportion to the amount of time worked.
- Case C-385/11, *Elbal Moreno*, 2012
- Case C-161/18, *Villar Láiz*, 2019

OTHER EU INITIATIVES FOR GREATER PENSION EQUALITY

- Initiatives for work-life balance:
 - Directive 2019/1158/EU on work-life balance for parents and carers
 - European Care Strategy 2022
- The Open Method of Coordination (OMC)
- Council Recommendation 2019/C 387/01 on access to social protection for workers and the self-employed

WAYS FORWARD



Promote pension care credits



Positive actions in relation to pensions?



Moving beyond equal treatment

REFERENCES AND FURTHER READING

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THANK YOU!

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