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Justice

EU Gender Equality law

Chapter 19 – SOCIAL POLICY AND EMPLOYMENT

DG Justice and Consumers



"These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union."

Outline

- **Treaties and EU Charter**
- **1 - Directive 2006/54 on Employment**
- **2 - Directive 2010/41 on Self-employment**
- **3 - Directive 92/85 on Pregnant Workers**
- **4 - Directive 2010/18 on Parental leave**
- **5 - Directive 79/7 on Social security (statutory)**



Gender equality in the Treaties

- **Article 2 TEU:** equality between women and men is a fundamental value of the EU common to all EU MS.
- **Article 3 TEU:** the EU shall promote equality between women and men.

Legal basis for legislation:

- **Article 157 TFEU** - Principle of **equal pay for men and women**
- **Article 19 TFEU** (Dir. 2004/113 on access to goods and services)



EU Charter of Fundamental Rights

Article 23: Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

Article 33: Family and professional life

To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the rights to paid maternity leave and to parental leave following the birth or adoption of a child.

Scope of the Charter: addressed to institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity, and to the Member States only when they are implementing EU law (Art. 51 TFEU).



1- Directive 2006/54 (Recast) sex equality in employment

Prohibits direct and indirect discrimination based on sex, in the public or private sectors, concerning :

- conditions for **access** to employment
- **working conditions** (including pay and dismissal)
- **promotion** and **vocational training**
- membership of, and involvement in, an organisation of workers or employers
- **occupational social security schemes**
(usually private pensions schemes, or for specific civil servants)



Directive 2006/54

Equal pay (Art. 4)

- For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.
- where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and drawn up as to exclude any sex discrimination.

2 - Directive 2010/41 on self-employed

Scope (Art. 2)

- (a) self-employed workers;
- (b) the spouses of self-employed workers or the life partners of self-employed workers where they habitually participate in the activities of the self-employed worker.

Life partners: Member States are not obliged to recognise 'life partners' but where 'life partners' are already recognised under national law, they should be covered.



Directive 2010/41

- Prohibits direct or indirect discrimination based on sex when **establishing, equipping or extending a business**, or any other form of self-employed activity.
- Where a national social protection system exists for self-employed workers, **the spouses or life partners who participate in the activities of the self-employed worker have the right to social protection in their own name.**
- Self-employed women, and female spouses or life partners who contribute to the activity of self-employed workers shall be entitled to a **maternity allowance for at least 14 weeks**. This allowance shall be sufficient to enable them to interrupt their activities if they wish to do so.



Common provisions

Directives 2006/54, 2010/41 (and 2004/113)

For a wide protection against discrimination

- * A wide scope of protection
- * Definitions of direct and indirect discrimination and harassment

For an effective protection

- * sharing of the burden of proof, rights of associations
- * Right to defence of rights and effective sanctions
- * Protection against victimisation

3 - Directive 92/85/EEC on pregnant workers and maternity leave

- **Aim** : improve safety & health at work of pregnant workers and workers who have recently given birth or who are breastfeeding.
- **Maternity leave of 14 weeks**, minimum
- Obligation of employers to **assess the safety of the workplace** (Art. 4) and **adapt working conditions** if there is a risk to safety or health (Art. 5).

Directive 92/85/EEC

- **Night work (Art. 7)**

Women can't be obliged to perform night work during their pregnancy and for a period following childbirth.

- **Ante-natal examinations (Art. 9)**

Right to take leave from work without loss of pay.

- **Protection against discriminatory dismissal**

Women can't be dismissed for reasons related to their condition from the beginning of their pregnancy to the end of maternity leave.

4 - Directive 2010/18 on parental leave

- Applies to all workers, men and women, irrespective of their type of employment contract (open-ended, fixed-term, part-time or temporary).
- **Each worker** are entitled to **parental leave on the birth or adoption of a child** - taken until the child has reached an age determined by national law and/or collective agreements, up to the age of eight.
- Minimum **four months** of Parental leave – one month is non-transferable to the other parent.



Directive 2010/18/EU

- After taking parental leave, workers have right to **return to the same job** – or an equivalent job consistent with their employment relationship.
- Workers shall be protected **against less favourable treatment** or **dismissal** on the grounds of an application for, or the taking of, parental leave.
- **Temporary changes to work schedules** – employees returning from parental leave have the right to request changes to their working hours for a limited period.



5 - Directive 79/7/EEC on social security

The Directive applies to:

- **the working population, persons seeking employment and retired or invalided workers and self-employed persons;**
- **statutory social security schemes** providing protection against sickness, invalidity, old age accidents at work and occupational diseases, and unemployment;
- **social assistance** which supplements or replaces the basic schemes.



Directive 79/7/EEC

Prohibits direct and indirect discrimination on grounds of sex, as regards:

- the scope of the schemes and the conditions of access thereto;
- the obligation to contribute and the calculation of contributions;
- the calculation of benefits and the conditions governing the duration and retention of entitlement to benefit.

Directive 79/7/EEC

Exceptions (Art. 7)

- survivors' benefits and family benefits schemes;
- the determination of different pensionable ages for men and women in old age pensions and retirement pensions;
- advantages related to the fact that the worker had brought up children and may have interrupted employment for that purpose.



Directive 2004/113/EC

access to and supply of goods and services

Applies to (Art. 3):

- all people and organisations (both public and private sector) that make goods and services available to the public;
- goods and services offered outside the area of private and family life.

Does not affect (Art. 3):

- the content of media and advertising nor to education;
- the individual's freedom to choose a contractual partner as long as an individual's choice of contractual partner is not based on that person's sex.



The new Work-Life Balance Directive

Paternity Leave



10 working days, paid as sick leave

Parental Leave



2 months paid « at adequate level » (of 4)

The new Work-Life Balance Directive II

Carers' Leave



5 days / year / worker not paid

Flexible Working Arrangements



**right to request
employer must justify refusal**

Article 157 TFEU

- § 1 Principle of **equal pay for men and women** for equal work or work of equal value.
- § 2 Definition of "pay": the ordinary basic **wage** or salary and **any other consideration, whether in cash or in kind**, which the worker receives **directly or indirectly**, in respect of his **employment** from **his employer**.
- § 3 Legal basis for the **adoption of legislation**



Positive action

Article 157(4) TFEU

With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.



Positive action

Cumulative conditions developed by the case law of the Court:

- there are fewer women than men in the relevant post;
- the female candidate is equally qualified as the male competitor in terms of suitability, competence and professional performance;
- the application of each male candidate is subject of an objective assessment which will take account of all criteria specific to the individual candidates;
- the priority is not automatic and unconditional, but may be overridden if reasons specific to an individual male candidate tilt the balance in his favour.

