Gender Equality: Judicial Framework and Protection at the EU Level

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Abstract

Gender equality is a very important issue related to EU social policy. So far, many directives have been adopted in the EU under three main approaches: equal treatment, positive action and gender mainstreaming. Looking at gender equality in the labour market, the paper points out that EU gender equality law needs to be enforced. The European Court of Justice is especially called upon to play a stronger and crucial role in the effective enforcement of gender equality standards in the Member States. The paper is divided into three main parts: the first one is an overview about gender equality at the EU level; the second part describes the three main approaches on gender equality issues in the EU; the third part analyzes the implementation of the gender equality law in the labour market by drawing some conclusions about how to enforce the equality gender principle within the EU.

Keywords: gender equality, labour market, social inclusion, justice

1. Introduction

Equality between women and men has been a fundamental principle of the European Union since its inception. It is a political objective, but also an economic one, as it is crucial in helping the EU achieve its goal of smart, sustainable and inclusive growth.

The term “EU gender equality” refers to all the relevant Treaty provisions, legislation and the case law of the European Court of Justice (ECJ) in relation to gender equality.

The principle of gender equality comes back to the XIX century feminist movements aiming at the liberation of women from their subordination to men.

Gender equality is a fundamental principle of the modern democracy and, most importantly, a human right. “Equality” extends beyond the limited concept of non-discrimination.

It is not only concerned with the denial of equality, but also includes the active promotion of equal rights. Moreover, gender equality is not exclusively a tool for the emancipation of women. Because the position of women has historically been inferior to that of men, equality has in the contemporary societies aimed at improving the situation of women. The concept of gender equality does, however, include also the promotion of men’s rights.

The idea of gender equality has greatly evolved since the establishment of the European Community. Achieving equality between women and men in various fields such as the economy, decision-making as well as social, cultural and civic life has become one of the key tasks of the EU.

Today, equality takes part to the EU’s wider strategy for economic growth, formulated in 2000 in Lisbon and revamped in the 2020 EU Strategy.

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Equality in the field of employment is of the great importance, since it is linked to the EU’s internal market project.

In the Treaty establishing the European Economic Community (EEC) adopted in 1957, only one single provision (Article 119 EEC Treaty, after the entry into force of the Treaty of Amsterdam in 1999, Article 141 EC Treaty and now Article 157 TFEU) was included to combat gender discrimination, namely the principle of equal pay between men and women for equal work. The background to this provision was purely economic; the Member States, in particular France, wanted to eliminate distortions in competition between undertakings established in different Member States.

Later on, the ECJ ruled that the economic aim is secondary to the social aim. It also held that the principle of equal pay is an expression of a fundamental human right. The ECJ has played a very important role in the field of equal treatment between men and women, in ensuring that individuals can effectively invoke and enforce their right to gender equality. Similarly, it has delivered important judgments interpreting EU equality legislation and relevant Treaty Articles. While in the late 1950s there was only this Article on equal pay, since then a whole plethora of directives, which prohibit discrimination on the grounds of sex in particular, have been adopted.

Especially with the entry into force of the Treaty of Amsterdam in 1999, the promotion of equality between men and women throughout the European Community became one of the essential tasks of the Community. It stipulated that both the Community and the Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities. The Lisbon Treaty emphasises even further the importance of the principles of non-discrimination and equality as fundamental principles of EU law.

Furthermore, since 1999 the EU has had the competence to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, and age or sexual orientation.

The next important moment in the development of EU gender equality law was the adoption of the Charter of Fundamental Rights of the European Union. This Charter, inter alia, prohibits discrimination on any ground, including sex; it recognizes the right to gender equality in all areas, thus not only in employment, and the possibility of positive action for its promotion. Furthermore, it also defines rights related to family protection and gender equality.

The European Strategy for equality between women and men for the period 2010-2015 confronts the challenges and obstacles to gender equality and reflects the Commission’s commitment to continue and step up its activities in this field. The Strategy reaffirms the dual approach of gender mainstreaming and the adoption of specific measures in the priority areas identified: equal economic independence; equal pay for equal work and work of equal value; equality in decision-making; dignity, integrity and an end to gender based violence; gender equality in external actions. It emphasizes the importance of the partnership with the Member States, as in many areas the centre of gravity for action lies at their level.

In the European Pact for Gender Equality adopted in March 2011 at the European Council, the Heads of State and Government reaffirmed the close link between the Commission’s Strategy for equality between women and men from 2010 to 2015 and Europe 2020 Strategy for smart, sustainable and inclusive growth. They called on the Member States to take steps to bridge the gap between men and women in the fields of employment and social protection, including the gender pay gap, promoting a better balance between work and private life for women and men throughout their lives and combating all forms of violence against women. They also encouraged Member States to take action to mainstream the gender perspective in all public activities.

Finally, Treaties, directives and regulations are important for the further development of EU gender equality law, because they serve as a basis for the adoption of future legislation and other EU gender equality

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4 S. Burri and S. Prechal, EU Gender Equality Law, EC 2014.
measures. Furthermore, it is also important what especially Treaties say in terms of values, tasks and general obligations, since they often guide the ECJ in the interpretation of the existing Treaty provisions and EU legislation.

2. The Main Approaches to Gender Equality at the EU Level

In the course of the years, the EU has adopted three main approaches for improving the situation of women in the society: equal treatment, positive action and gender mainstreaming.

- **The EEC Equal Treatment**

  has been mainly concerned with the creation of a common market by removing barriers on the mobility of goods and labour, capital and services. As we wrote in the previous paragraph, gender equality issue did not find much space in the initial framework of the EEC. By the way, the principle of equal pay for equal work was included in the Treaty of Rome. Later on a series of directives have been adopted to clarify the principle, mainly based on “non-discrimination” (equal treatment model for combating inequalities). The concepts of direct and indirect discrimination have notably developed by the ECJ. The anti-discrimination directives which have been adopted since 2000 contain similar definitions of direct and indirect discrimination.

  Direct discrimination occurs

  “… where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation”5.

  Direct discrimination occurs, in other words, when two conditions are satisfied: the cause of inequality is sex (causa), and the treatment received by a person is less favourable than that received by a comparably situated member of the opposite sex (harm)6.

  Indirect discrimination is defined as follows:

  “(…) 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”7.

  The development of the concept of indirect discrimination has meant that a step has been taken towards a more substantive approach to equality, because it focuses on the effect of a rule or a practice and takes into account everyday social realities. Substantive equality requires that further steps are taken in order to realise true, genuine equality in social conditions. Arguably, this may sometimes require positive action, the topic of the next paragraph.

- **Positive Action**

  In the early 1970s, Member States widely recognised the need for a more comprehensive model on gender equality than the simple non-discrimination approach. They stressed the need for “positive” intervention. In contrast to the equal treatment approach, in the positive action model “the emphasis shifts from equality of access to creating conditions more likely to result in equality of outcome”8. Positive action includes any form of action, which is designed to promote and benefit a disadvantaged group.

5 Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.


7 Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

The positive action approach consists of a number of techniques, such as special training and educational opportunities. These are not invasive techniques and are closer to the goal of substantive equality: the unequal situation will be corrected, yet without placing individuals outside of the protected groups in a worse situation. However, there are few problems in the application of the positive action approach. The first problem is that the use of its mechanisms is only possible if the legal framework allows for it. As regards national and EC law, it indeed seems that the still predominant equal treatment approach has constrained the positive action model from being widely applied.

The second problem is that the level and scope of actions taken in various Member States is uneven. In other words, the scope and application of one of EU’s main principles vary throughout the Member States. Third, positive actions take various shapes of “soft” as well as “hard” measures. This makes the approach unclear.

3. Gender Mainstreaming

This approach was introduced by the Amsterdam Treaty in 1999. It is a very important technical tool in helping to develop and transfer the idea of gender equality to different policy fields.

However, the status of gender mainstreaming in the EU is not clear. Some consider it as one of the tools of the positive action approach, while others recognize it as a third, distinct approach. In the broad sense, the gender mainstreaming approach is a holistic and long-term strategy for achieving gender equality by “engendering” the policy-making process. Instead of creating a separate policy for gender equality, the gender perspective is introduced from the beginning horizontally into all other policies, programmes and procedures.

Gender mainstreaming measures are per se “softer” and more general than the “hard” provisions of antidiscrimination.

Some fear that in the long term, this approach is going to water down the already relatively weak concepts in present equality law. On the other hand, because gender mainstreaming identifies problems on gender equality in various policies, it can then be followed by more decisive measures, measures that will address the negative effects of such policies.

4. Gender Equality in the Labour Policy

Despite a general trend towards more equality in society and on the labour market, progress in eliminating gender inequalities remains slow. Economic independence is a prerequisite for enabling both women and men to exercise control over their lives. It requires creating the opportunity for the full participation of women and men in the labour market all along the lifecycle as well as a more equal share of unpaid work.

In 2013 in the European Union, the employment rate of men was 75%, while for women it stood at 63%, thus 12 percentage points less. This gender gap is even more important when we consider the full-time equivalent employment rate. Moreover, in Europe 8% of men worked on a part-time basis, the average for

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women being 32%\textsuperscript{14}. The different levels and types of women’s involvement in paid work are strongly connected to the allocation of family chores and responsibilities between women and men. Women tend to adjust their labour supply when they have children or other care burdens, by taking leaves, requesting part-time arrangements or even withdrawing fully from the labour market.

Men, by contrast, increase rather than reduce their labour market participation when their families grow. Women still spend 26 hours a week in unpaid work (such as household tasks, caring for dependents, etc.), against nine hours for men\textsuperscript{15}. Such gaps are problematic not only in terms of reaching equality between women and men, but also in economic and social terms. Since women are increasingly qualified, even surpassing men in educational achievements, their underutilization in the labour market results in a waste of human capital.

To successfully promote the labour force participation of women, especially women with children, the right incentives need to be created in order to allow women to enter, re-enter and remain in the labour market. Hence, the role of men in achieving gender equality is of utmost importance as their necessary contribution in the private sphere should complement women’s involvement in the labour market. In this area, the right incentives also need to be created in order to reach a more balanced share of family and domestic responsibilities.

The policies for the labour market are therefore relevant for gender equality. It was indeed the first target of gender equality law in European legislation. Currently in the EU, there are many directives, ECJ’s judgments and “soft law” measures that concern gender issues in the labour market. The covered issues include, for example, equal pay, access to employment, equal treatment, parental leave and working conditions among the others.

Employment has a big impact on the daily life of men and women\textsuperscript{16}. For this reason, in order to assure the equal treatment of men and women, employment must be a priority in the reform agenda. The labour market is largely divided in respect to gender. In other words, it is easy to find typically feminized sectors such as public administration, education and health care.

Moreover, women tend to occupy lower and medium level posts, whereas there are only few women hired on the highest managerial levels of employment in e.g. political and economic sectors. This situation may be a result of the inability to reconcile the professional and private lives, and of an unequal division of home and family duties.

In 2006, the New Equal Treatment Directive, adopted by the European Parliament and the Council, simplified and updated existing Community law on the equal treatment of women and men at work. This Directive brought together, in a single text, “the main provisions existing in [the field of gender equality] as well as certain developments arising out of the case law of the Court of Justice”\textsuperscript{17}. The purpose of this directive was to simplify the abundant legislation on the equal treatment of men and women, and to facilitate a better regulation of the matter.

\textsuperscript{16} Historically, women have been more affected by unemployment than men. In 2000, the unemployment rate for women in the EU-28 was around 10 %, while the rate for men was below 8 %. By the end of 2002, this gender gap had narrowed to around 1.5 percentage points and between 2002 and mid-2007 this gap remained more or less constant. Since the first quarter of 2008, when they were at their lowest levels of 6.3 % and 7.4 % respectively, the male and female unemployment rates in the EU-28 converged, and by the second quarter of 2009 the male unemployment rate was higher. The decline of the men’s rate during 2010 and the first half of 2011 and the corresponding stability in the women’s rate over the same period brought the male rate below the female one once again. Since then the two rates have risen at the same pace until mid-2013, when they reached their highest value, both at 10.9 %. In the second half of 2013 both the male and the female rates declined, reaching respectively 10.6 % and 10.8 % at the end of the year (source EUROSTAT).
\textsuperscript{17} Directive on Gender Equality, Preamble para. 1.
The New Equal Treatment Directive plays an important role in the development of gender equality in access to employment. It covers all types of employment contracts, including those on atypical work, which is very important for women.

In the following part the paper will tackle some of the more relevant issues related to the gender equality within the labour market as such as those included in the New Equal Treatment Directive: equal pay, equal treatment to employment and to social security, pregnant workers and parental leave working conditions.

5. Equal Pay

The principle of equal pay greatly influences the progress on the implementation of gender equality in employment. One of the means to facilitate the mentioned Lisbon criterion of women’s participation in labour is to ensure that employees of both genders receive the same pay.

The principle of equality between the sexes is clearly established by the treaty of Lisbon. Article 8 of the Treaty on the functioning of the EU declares that in all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women. Article 157 of the TFEU stipulates that each Member State shall ensure the application of the principle that men and women should receive equal pay for equal work. This principle means: (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement; and (b) that pay for work at time rates shall be the same for the same job. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment should 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.

The Directive on the application of the principle of equal pay for men and women – the so-called First Equal Pay Directive – was adopted in 1975 (75/117). This Directive has now been repealed by the New Equal Treatment Directive which stipulates:

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.

In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.

The principle of equal pay applies to equal work and work of equal value and also, a fortiori, to work of higher value. The ECJ adopted this view stating that otherwise the employer would easily be able to circumvent the principle of equal pay by assigning additional or more onerous duties to workers of a particular sex, who could then be paid a lower wage. The prohibition on direct and indirect sex discrimination explicitly applies to pay in the private and public sectors, including public bodies (see Article 14(1)(c) of Directive 2006/54).

However, there still is a pay gap between men and women. Female workers tend to earn 15 % less then their male colleagues and this gap is decreasing at a much slower pace than the gender employment gap18.

Equal Treatment to Employment and In Social Security

Equal pay was only one battle won in the war against discrimination against women, which was based on historical and cultural causes and was reinforced in practice by the education system, inadequate vocational guidance and the demanding role imposed on women as wives and mothers.

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18 Communication (2006) 92, final, on A Roadmap for equality between women and men.
The New Equal Treatment Directive ensures equal access to employment by prohibiting both direct and indirect sex discrimination in the public and private sector.

However, some exceptions to equal treatment are permitted, providing that the principle of proportionality is respected, that the aim is legitimate and that the exceptions are justified by reasons of a particular nature, or that the context of the work is such that the work can be carried out by one sex only. However, women are not in an equal position with men. Women have worse access to employment because, e.g., they are socially obliged to perform duties not related to their jobs. Therefore, a woman trying to access employment should not be compared to a man. The attempt of the Court to compare men and women as individuals is therefore not adequate. From this perspective, it seems that the best solution is to treat gender equality as a collective right that protects women as a disadvantaged group in the substantive equality meaning. This would give more leeway for Member States’ pro-female regulation, including more decisive positive action. Positive action has been framed in EU law as an exception to the principle of equal treatment, instead of as an integral part thereof.

So if only the ECJ relaxed its case law, the Member States could start introducing measures such as quotas in employment. It is for the ECJ to adapt its reasoning to social needs and to fully follow the substantive model of equality that otherwise equality between men and women in the procedure of selecting employees remains a fiction.

Looking at equal treatment in social security, the EU social security coordination law links distinctive national social security systems. It is a mechanism designed to abolish the obstacles for EU citizens when they are moving to another Member State. They should not lose their social security entitlements only due to the movement between the Member States. In this case the Member States are still free to shape the substance of their social security law, including the eligibility conditions for various benefits, the scope (level and duration) of benefits, which might be distinctive for women and men. Therefore, from the gender equality perspective, the EU legal instruments obliging the Member States to progressively implement the principle of equal treatment of women and men in social protection are even more important. They provide a standard harmonisation of national social security systems (where deviations for the better or worse are as a rule not allowed). There is no migration criterion. Persons do not have to move between the Member States in order to be entitled to equal treatment in social protection. European legislation ensures respect for the principle of equal treatment for men and women in matters of social security. This Directive applies to: statutory social security schemes which provide protection against sickness, invalidity, accidents at work and occupational diseases, unemployment and risks related to old age; social assistance which supplements or replaces the basic schemes. It does not apply to survivors’ benefits and family benefits schemes.

The principle of equal opportunity means, among other things, that there should be no discrimination based on sex especially as regards: the scope and the conditions governing the right to any work regime; the calculation of contributions; the calculation of benefits and the conditions governing the duration and preservation of pension rights. Two Directives concern, indeed, the implementation of the principle of equal treatment for men and women in matters of social security [Directive 79/7] and in occupational social security schemes [Directive 86/378 repealed by Directive 2006/54]. According to the ECJ, the provisions concerning social security do not apply to women who have never been employed, those who do not look for a job and those who have voluntarily stopped working.

**The Pregnant Workers Directive and the Parental Leave**

The pregnant workers directive was adopted in 1992 and is closely linked to the principle of equal treatment between men and women in employment. Article 8 of this Directive stipulates, for example, that Member States have to ensure that women enjoy a period of at least 14 weeks’ maternity leave. During this period their employment rights must be ensured; in particular, they have the right to return to the same or an

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19 The EU social security coordination law is shaped by Regulation 883/2004 on the coordination of social security systems, its implementing Regulation 987/2009.
equivalent job, with no less favourable working conditions, and to benefit from any improvement in working conditions to which they would be entitled during their absence.

They are also entitled to the payment of and/or the entitlement to an adequate allowance being maintained.

Furthermore, pregnant women enjoy health and safety protection; they cannot be obliged to carry out night work, and they are protected against dismissal from the beginning of their pregnancy until the end of the maternity leave (Article 10). The latter protection also covers dismissal because of absences due to incapacity to work caused by an illness resulting from pregnancy. The provisions of this Directive have often been interpreted jointly with the provisions of Directive 76/207 on equal treatment between men and women in employment. According to the ECJ, discrimination on grounds of pregnancy amounts to direct discrimination.

As far as parental leave, the reconciliation of family/private life with work is, according to the ECJ, ‘a natural corollary to gender equality’ and a means for achieving gender equality not only in law but also in the reality of everyday life. Therefore, although not adopted as a specific gender equality directive, the Parental Leave Directive plays an important role in the gender equality discourse.

The Parental Leave Directive 2010/18 implements the revised Framework Agreement on parental leave agreed by the European social partners in June 2009.62 The Framework Agreement lays down minimum requirements designed to facilitate the reconciliation of parental and professional responsibilities for working parents. Member States are free to adopt more favourable measures.

Workers who take parental leave have the right to return to the same or equivalent job at the end of the parental leave and they must be protected against less favourable treatment and dismissal. Matters regarding social security are for consideration and determination by Member States and/or social partners. The same is true regarding income in relation to parental leave. In practice, parental leave is still taken much more often by mothers than by fathers. However, Member States are not obliged to introduce (partially) paid parental leave, which would provide a strong incentive for both parents to take such leave.

In conclusion, the gender balance of sexes in labour market is affected by structural economic change, in particular the growing role of services, the new technologies and the new flexibilities of work contracts that public and private enterprises are seeking. This is especially relevant to homeworking and teleworking, which offer significant opportunities for women, but under certain conditions. Positive and sustained action is needed to maximise the opportunities and reduce the dangers. For example, a Resolution of the Council and of the representatives of the Member States on equal participation by women in an employment-intensive economic growth strategy aims at improving the flexibility of working hours, promoting a high level of skills among women and encouraging self-employment and the creation of businesses by women. A Council Recommendation aims to promote the balanced participation of women and men at all levels of the decision-making process in the political, economic, social and cultural life. An EU programme coordinates, supports and finances the implementation of horizontal activities in the fields covered by the European framework strategy on gender equality, whilst also complementing the EU action programme on combating discrimination in general [Decision 2001/51 last amended by Decision 1554/2005, see section 6.4.1]. Another action programme assists organisations working to promote equality between men and women, notably the European women's lobby [Decision 848/2004 last amended by Decision 1554/2005].

6. How to Improve EU Gender Equality Policy?

There are at least four actions driven by institutional actors, who can play a role in enforcing EU gender equality law:

a) Enforcing gender equality standards in the Member States by EU institutions (EC Commission and Court of justice)
The brief overview presented above illustrates that a great deal of progress has been made in the area of EU gender equality law since 1957. Both the EU legislator and the ECJ have greatly contributed, often in a delicate interplay, to this process. Tribute should also be paid to individuals who have brought cases before their national courts, cases that ended up in the ECJ in Luxembourg. This has enabled the ECJ to deliver its judgments. The case law of the ECJ especially has, from time to time, been the driving force for EU gender equality standards, in particular in the area of introducing new concepts or other revolutionary novelties, especially in the enforcement of EU equality law. It has played a crucial role in the effective enforcement of gender equality standards in the Member States.

The progressive realisation of the equal treatment of women and men is certainly not only an achievement of the EU. Other international instruments, for instance, have no doubt also contributed to the adoption of equality legislation at the national level and the eradication of gender discrimination. It is, however, the mandatory character of EU law and the mechanisms of judicial protection in the EU that have provided a crucial impetus to gender equality law in the Member States and the EEA countries. It is generally believed that Article 157 TFEU and the gender equality directives, as interpreted by the ECJ, have been vital to the effective application of gender equality in the Member States. It is often because of the compelling obligation of EU law that the national legislator has introduced a number of national measures aimed at the effective implementation of the principle of gender equality.

The European Commission has an important task in the enforcement of EU gender equality law as well. The Commission monitors and analyses whether the Member States generally fulfil their obligations regarding the implementation of Treaty provisions and directives. More specific inquiries are also initiated by the Commission into the activities of a particular Member State. Sometimes, these inquiries derive from complaints by individuals or organisations to the Commission. These complaints can be submitted to the services of the Commission rather easily.

The European Commission can start an infringement procedure if it considers that a Member State has failed to fulfil a certain obligation. The Commission first sends a reasoned opinion on the matter after giving the State in question the opportunity to submit its observations. If the Member State does not comply with the opinion within the period laid down by the Commission, the Commission may bring the matter before the ECJ. If the ECJ considers that the Member State has failed to fulfil an obligation and the Member State does not take the necessary measures to comply with the judgment of the ECJ in good time, it might even be subjected to penalties.

b) Empowering gender equality by the national courts

As we have seen above, complying with equal pay was apparently not easy for the Member States in the early stages. Similarly, the transposition of directives is sometimes too late or is otherwise not in accordance with EU law. However, due to the supremacy of EU law, equal pay provisions of the Treaties (TEU and TFEU) and directives prevail in the case of a conflict between national and EU law. Furthermore, quite a few provisions have direct effect, which means that they can be relied upon in litigation before national courts and applied by these national courts in any proceedings. Furthermore, the ECJ has also decided that the national courts have the duty to interpret their national law in conformity with the directive at issue, i.e. doing everything possible to achieve, through the interpretation of national law, the result which the directive aims at. Under certain conditions, a Member State may also be held liable for damage suffered by individuals due to the fact that a directive has not been transposed in time or has been done so incorrectly into national law.

c) Improving access to justice by equality bodies

The directives on equal treatment between men and women adopted since 2002 oblige the Member States to designate equality bodies. The tasks of these bodies are the promotion, analysis, monitoring and support of equal treatment. They may form part of agencies with responsibilities at the national level for defending human rights or safeguarding individual rights. These bodies have the competence to provide
independent assistance to victims of discrimination, to conduct independent surveys concerning discrimination and to publish independent reports and make recommendations.

In addition, a number of extra-judicial or alternative dispute settlement mechanisms (ADR) are available in the EU Member States and in the EFTA/EEA countries\(^\text{20}\). These include the typical methods falling short of litigation, such as negotiation, mediation, conciliation and arbitration, which could provide complainants with the advantages of a swifter and cheaper access to justice, providing a cheap and expeditious alternative to court dispute resolutions. ADR schemes aim to settle disputes in an amicable way, and are more flexible than ordinary court procedures. Ombudsmen and equality bodies may also provide an alternative to the general courts. Associations, organisations or other legal entities can also play a significant role in the defence of rights on behalf of or in support of the complainant. Whilst in some countries equality bodies have legal standing and can bring a case to court, in others, they can only provide assistance to the claimant, or provide observations to the court.

d) Fostering social dialogue

Member States also have the obligation to promote social dialogue between the social partners and dialogue with non-governmental organisations or dialogue with stakeholders with a view to fostering equal treatment. The promotion of social dialogue might include the monitoring of practices at the workplace, in access to employment, vocational training and promotion, as well as the monitoring of collective agreements, codes of conduct, research or exchange of experience and good practice. The New Equal Treatment Directive further stipulates:

“Where consistent with national traditions and practice, Member States shall encourage the social partners, without prejudice to their autonomy, to promote equality between men and women, and flexible working arrangements, with the aim of facilitating the reconciliation of work and private life, (...) and to conclude, at the appropriate level, agreements laying down anti-discrimination rules (...). Some directives also require Member States to encourage employers to promote equal treatment in a planned and systematic way and to provide, at appropriate regular intervals, employees and/or their representatives with appropriate information on equal treatment”.

Such information may include an overview of the proportion of men and women at different levels of the organisation, their pay and pay differentials, and possible measures to improve the situation in cooperation with employees’ representatives.

To conclude, the principle of gender equality has successfully become a part of the top agenda of the European Union. Unfortunately, the developments have not reached a happy-ending yet. There still are not enough incentives nor favourable interpretations to complement a formal equality approach. The situation has clearly not followed the rapid developments of anti-discrimination law in race, religion, and other sectors.

Discrimination of women may take place in all parts of life. For this reason, European law on gender equality cannot be restricted to the labour market, only. The legislator must make the most out of the potential of directives and regulations, and broaden the scope of gender equality law to fields such as media, education and taxation. The most recent tool – gender mainstreaming – has considerably improved the situation in the mentioned fields.

While EU law promotes gender equality in many ways, there are also certain limitations, mainly as a consequence of the principles of “conferred powers”, “subsidiarity” and “proportionality”. Yet, what this paper has set out to establish is an overview of the EU gender equality judicial framework and protection, by sketching out some potential directions for improving the living standards in our more and more complex society.

## References

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