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## EQUALITY BETWEEN MEN AND WOMEN

Equality between women and men is one of the objectives of the European Union. Over time, legislation, case law and changes to the Treaties have helped consolidate this principle and its implementation in the EU. The European Parliament has always been a fervent defender of the principle of equality between men and women.

### LEGAL BASIS

The principle that men and women should receive equal pay for equal work has been enshrined in the European Treaties since 1957 (today: Article 157 of the Treaty on the Functioning of the European Union (TFEU)). Article 153 TFEU allows the EU to act in the wider area of equal opportunities and equal treatment in employment matters and, within this framework, Article 157 TFEU authorises positive action to empower women. In addition, Article 19 TFEU provides for the adoption of legislation to combat all forms of discrimination, including on the basis of sex. Legislation against trafficking in human beings, in particular women and children, has been adopted on the basis of Articles 79 and 83 TFEU. The Rights, Equality and Citizenship Programme finances, among others, measures contributing to the eradication of violence against women, based on Article 168 TFEU.

### OBJECTIVES

The EU is founded on a set of values, including equality, and therefore promotes equality between men and women (Articles 2 and 3(3) of the Treaty on European Union). These objectives are also enshrined in Article 21 of the EU Charter of Fundamental Rights. In addition, Article 8 TFEU tasks the EU with eliminating inequalities and promoting equality between men and women in all of its activities (this concept is also known as ‘gender mainstreaming’). In Declaration No 19, annexed to the Final Act of the intergovernmental conference which adopted the Treaty of Lisbon, the EU and the Member States made a commitment ‘to combat all kinds of domestic violence [...], to prevent and punish these criminal acts and to support and protect the victims’.

### ACHIEVEMENTS

#### A. Main legislation

EU legislation, mostly adopted by the ordinary legislative procedure, includes:



- [Council Directive 79/7/EEC](#) of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security;
- [Council Directive 92/85/EEC](#) of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding;
- [Council Directive 97/81/EC](#) of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC;
- [Council Directive 2000/43/EC](#) of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the Racial Equality Directive), which prohibits discrimination on the grounds of racial or ethnic origin in a broad range of fields, including employment, social protection and social advantages, education, and goods and services available to the public, such as housing;
- [Council Directive 2000/78/EC](#) of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;
- [Council Directive 2004/113/EC](#) of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services;
- [Directive 2006/54/EC](#) of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation;
- [Council Directive 2010/18/EU](#) of 8 March 2010 implementing the revised Framework Agreement on parental leave and repealing Directive 96/34/EC;
- [Directive 2010/41/EU](#) of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC;
- [Directive 2011/36/EU](#) of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA;
- [Directive 2011/99/EU](#) of the European Parliament and of the Council of 13 December 2011 establishing the European protection order;
- [Directive 2012/29/EU](#) of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA;
- [Directive \(EU\) 2019/1158](#) of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU;



- [Directive \(EU\) 2022/2381](#) of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures;
- [Directive \(EU\) 2023/970](#) of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.

**B. Progress through case-law of the Court of Justice of the European Union (CJEU)**

The CJEU has played an important role in promoting equality between men and women. There have been a number of notable judgments in this regard.

- [Defrenne II judgment of 8 April 1976 \(Case 43/75\)](#): the CJEU recognised the direct effect of the principle of equal pay for men and women and ruled that the principle not only applied to the action of public authorities but also extended to all agreements which are intended to collectively regulate paid labour;
- [Bilka judgment of 13 May 1986 \(Case C-170/84\)](#): the CJEU ruled that a measure excluding part-time employees from an occupational pension scheme constituted 'indirect discrimination', and was therefore contrary to former Article 119 of the European Economic Community Treaty if it affected a far greater number of women than men, unless it could be shown that the exclusion was based on objectively justified factors unrelated to any discrimination on the grounds of sex;
- [Barber judgment of 17 May 1990 \(Case C-262/88\)](#): the CJEU decided that all forms of occupational pension constituted pay for the purposes of former Article 119 and that the principle of equal treatment therefore applied to them. The CJEU ruled that men should be able to exercise their pension rights or survivor's pension rights at the same age as their female colleagues;
- [Marschall judgment of 11 November 1997 \(Case C-409/95\)](#): the CJEU declared that a national rule which required that priority be given to the promotion of female candidates in cases where there were fewer women than men in a sector ('positive discrimination') was not precluded by Community legislation, provided that the advantage was not automatic and that male applicants were guaranteed consideration and not excluded a priori from applying;
- [Test Achats judgment of 1 March 2011 \(Case C-236/09\)](#): the CJEU declared Article 5(2) of Council Directive 2004/113/EC invalid on the grounds that it was contrary to the principle of equal treatment between men and women in the access to and supply of goods and services. The same system of actuarial calculation has to be applied for men and women to determine premiums and benefits for the purposes of insurance;
- [Korwin-Mikke judgment of 31 May 2018 \(Cases T-770/16 and T-352/17\)](#): the CJEU ruled in favour of annulling the penalties imposed by Parliament on Polish far-right MEP Janusz Korwin-Mikke;
- [Violeta Villar Láiz judgment of 8 May 2019 \(C-161/18\)](#): the CJEU found that the Spanish legislation on the calculation of retirement pensions for part-time workers



is contrary to EU law if it is found to be particularly disadvantageous to female workers;

- [Praxair judgment of 8 May 2019 \(C-486/18\)](#): the CJEU declared that the calculation of compensation payments for the dismissal and redeployment of an employee who is on part-time parental leave must be carried out on the basis of the full-time salary. Conflicting national law results in indirect discrimination on the grounds of sex;
- [Safeway judgment of 7 October 2019 \(C-171/18\)](#): the CJEU ruled on the equalisation of retirement pension benefits under an occupational pension scheme;
- [Ortiz Mesonero judgment of 18 September 2019 \(C-366/18\)](#): a father is refused permission to work fixed shifts in order to better care for his children. The CJEU ruled that the directives do not apply here and that they do not contain a provision which would require Member States, in the context of a request for parental leave, to grant an employee the right to work for a fixed working time when their usual pattern of work is shift work with variable hours;
- [Hakelbracht judgment of 20 June 2019 \(C-404/18\)](#): the CJEU ruled that when a person who purports to be discriminated against based on their gender launches a complaint, employees other than the person discriminated against based on their gender should be protected as they may be disadvantaged by their employer for the support they have formally or informally given to the victim of the alleged discrimination;
- [Tesco Stores judgment of 3 June 2021 \(C-624/19\)](#): in the judgment, the CJEU first recalled its judgment in Praxair MRC (C-486/18), in which the prohibition of discrimination between male and female workers also applies to collective and individual agreements aiming at regulating pay, as well as its other settled case law allowing courts to appreciate other gender pay-based differences in treatment based on the litigious rule. The CJEU concluded that Article 157 TFEU must be interpreted as having direct horizontal effect in proceedings between individuals in which failure to observe the principle of equal pay for male and female workers for 'work of equal value' occurs;
- [CJEU Opinion 1/19 of 6 October 2021](#) concerning the EU's accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). The CJEU's opinion clarifies the modalities of EU accession to the Istanbul Convention and its legal basis.

### C. Latest developments

Below is an overview of the most recent action taken by the EU in the field of equality between men and women.

On 21 March 2023, Members of the Committee on Women's Rights and Gender Equality had an exchange of views with Commissioner for Equality Helena Dalli as part of the structured dialogue between Parliament and the Commission. They covered gender equality topics pertaining to the Commissioner's remit, including an update on



legislative initiatives that had recently been adopted by the Commission and those yet to be adopted.

During the second hour of the meeting, Commissioner Dalli focused on the proposal for a directive on strengthening the role and independence of equality bodies, which was adopted by the Commission in December 2022.

Meanwhile, on 12 April 2023, the Commission presented the [progress report](#) on the implementation of the 2020-2025 LGBTIQ equality strategy. The Commission has implemented over 90 measures under this strategy, ranging from communication campaigns to mainstreaming LGBTIQ equality into legislation and dedicated funding. In addition, the report mentions the recent infringement procedure against Hungary for its 'anti-LGBT propaganda' law, which was passed in 2021. The law prohibits the 'promotion' of homosexuality and trans identity among minors.

Commissioner Dalli highlighted three legislative proposals central to the defence of LGBTIQ rights in the EU:

- The first is the introduction of binding standards for equality bodies and the extension of their mandate to sexual orientation discrimination, especially in the field of employment;
- The second requires the Member States to work towards achieving the unanimity required to expand the list of EU crimes to include hate speech and hate crimes (Article 83 TFEU). This would allow the Commission to propose legislation criminalising, among other things, crimes motivated by the sexual orientation of the victim;
- The third is a European parenthood certificate, for which Commissioner Dalli stressed the importance of paving the way. The recognition of parenthood is particularly relevant for families with same-sex parents. The case of 'baby Sara' has been highlighted in the media. Bulgarian authorities have refused to issue a birth certificate to the child, as the country does not recognise the parenthood of both mothers, as established in Spain. In 2021, the CJEU ruled that Bulgaria must issue a passport to the child.

### *The Istanbul Convention*

The Istanbul Convention is the first instrument in Europe to set legally binding standards specifically to prevent gender-based violence, protect victims of violence and punish perpetrators. Following the EU's signing of the Convention in June 2017, Parliament's consent is required for the EU's accession to it.

On 21 February 2023, the Council requested Parliament's consent to adopt the two decisions on the ratification of the Convention (for further information, please see below).

### *Equality bodies*

On 8 December 2022, a [proposal for a directive on standards for equality bodies](#) was presented by the Commission.

It proposes a set of binding rules to strengthen the role and independence of equality bodies. The aim of the proposal is to establish standards for equality bodies in the field





of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, and equal treatment between women and men in matters of social security and in the access to and supply of goods and services.

### *Pay Transparency Directive*

The Commission [proposal for a directive on pay transparency](#), adopted on 4 March 2021, introduces measures to ensure that women and men in the EU receive equal pay for equal work.

On 30 March 2023, Parliament approved the Pay Transparency Directive. The new rules will provide for more transparency and effective enforcement of the equal pay principle between women and men and improve access to justice for victims of pay discrimination.

It will require vacancy notices and job titles to be gender neutral and recruitment processes to be led in a non-discriminatory manner.

The directive stipulates, among other things, that if pay reporting shows a gender pay gap of at least 5%, employers will have to conduct a joint pay assessment in cooperation with their workers' representatives. Member States will have to put in place effective, proportionate and dissuasive penalties, such as fines, for employers infringing these rules. Any worker who has suffered harm as a result of an infringement will have the right to claim compensation. For the first time, intersectional discrimination and the rights of non-binary persons have been included in the scope of the new rules.

## **THE EU'S 2021-2027 MULTIANNUAL FINANCIAL FRAMEWORK**

After Parliament gave its consent, on 17 December 2020 the Council adopted the regulation laying down the EU's 2021-2027 multiannual financial framework (MFF). The new [MFF](#) gives greater priority to gender mainstreaming in the EU budget.

Together with the NextGenerationEU recovery instrument worth EUR 750 billion, the MFF will allow the EU to provide an unprecedented EUR 1.8 trillion over the coming years to support recovery from the COVID-19 pandemic and to fund the EU's long-term priorities across different policy areas. The next long-term budget will cover seven spending areas. It will provide the framework for the funding of almost 40 EU spending programmes in the next seven-year period. NextGenerationEU also pays specific attention to gender equality. In particular, national recovery and resilience plans should set out how the investments and reforms financed by the Recovery and Resilience Facility are expected to contribute to promoting gender equality and equal opportunities for all.

In April 2021, the Council and Parliament adopted the two programmes, which constitute the EU justice, rights and values fund as part of the MFF for 2021-2027. The programmes will help to further promote, strengthen and protect justice, rights and EU values. The 2021-2027 Citizens, Equality, Rights and Values Programme (CERV) specifically covers the allocation of funds to civil society organisations working to promote gender equality and combating violence against women and girls in the



EU. CERV will have an overall budget of a maximum EUR 1.55 billion (a budget of EUR 641.7 million, with an additional allocation of a maximum of EUR 912 million). The Justice Programme will have a budget of EUR 305 million.

## **EU ACCESSION TO THE ISTANBUL CONVENTION**

The Istanbul Convention, which came into force in 2014, is the first legally binding international instrument on preventing and combating violence against women and girls at an international level. It establishes a comprehensive framework of legal and policy measures for preventing such violence, supporting victims and punishing perpetrators.

The Council decided that the draft decision on the signature of the Convention should be divided into two separate decisions, one covering judicial cooperation in criminal matters and the other on asylum and non-refoulement. These two Council decisions were adopted in May 2017, and then the Commissioner for Justice, Consumers and Gender Equality signed the Istanbul Convention on behalf of the EU on 13 June 2017.

The signature is the first step in the process of the EU acceding to the Convention, which now requires the adoption of the Council decisions to conclude the process. In Council, legislative proposals in this field are discussed in the Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons. Its discussions have focused on a code of conduct defining how the EU and its Member States will cooperate on implementing the Convention.

In its resolution of 4 April 2019, Parliament sought an opinion from the CJEU on the compatibility of the proposals for the EU's accession to the Istanbul Convention with the Treaties and on the procedure for that accession. The CJEU's decision was that 'the Treaties do not prohibit the Council from waiting, before adopting the decision concluding the Istanbul Convention on behalf of the European Union, for the 'common accord' of the Member States'. It also concluded that 'the act concluding that convention may be divided into two separate decisions where an objective need to do so is established'.

On 21 February 2023, the Council decided to proceed with its request for Parliament's consent for EU accession to the Istanbul Convention. The Council is requesting that Parliament give its consent to two draft Council decisions on the conclusion of the above-mentioned Convention, as follows:

1. [Council decision](#) on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to institutions and public administration of the Union;
2. [Council decision](#) on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement.



# THE MOST RECENT ACTIONS OF PARLIAMENT AND THE COMMITTEE ON WOMEN'S RIGHTS AND GENDER EQUALITY

## *Legislative reports*

In July 2023, Parliament agreed on its common position regarding a [report](#) prepared by the Committee on Women's Rights and Gender Equality (FEMM) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE) on the [proposal](#) for a [directive on combating violence against women and domestic violence](#). Parliament's common position included a consent-based definition of rape, tougher rules on cyber violence and better support for victims. However, the Council opened a [legal battle](#) of competences, which has delayed all attempts to agree on the directive. On 23 November 2023, in a [debate](#) to mark the [international day for the elimination of violence against women](#), MEPs strongly urged Member States to work with Parliament to reach a deal on robust rules to combat violence against women that include a [definition of rape based on a lack of consent](#).

The FEMM Committee also published a [report](#) on the [proposal](#) for a [directive](#) amending the [Anti-trafficking Directive](#) to strengthen the EU rules preventing and combating trafficking in human beings and protecting its victims. The report focuses on enhancing support and protection for victims.

The FEMM Committee published a [report](#) on the [proposal](#) for a [directive to strengthen the application of the principle of equal pay](#) for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms. The committee also published a [report](#) on the [proposal](#) for a [directive on standards for equality bodies](#) in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation. Both reports stress the need for an intersectional perspective to address the multiple dimensions of discrimination.

## *Non-legislative reports*

The non-legislative reports include reports on gender mainstreaming in Parliament ([annual report 2020](#)), on [women's poverty in Europe](#), on the [EU Gender Action Plan III](#), on a [common European action on care](#), on [ensuring European transportation works for women](#), on [sexual harassment in the EU and MeToo evaluation](#), on reaching [women's economic independence](#) through entrepreneurship and self-employment, a [report](#) on the regulation of prostitution in the EU and a [report](#) on intersectional discrimination in the EU.

## *Legislative opinions*

The FEMM Committee gave its [opinion](#) to the LIBE Committee on the proposal for a [directive](#) amending Directive [2013/34/EU](#), Directive [2004/109/EC](#), Directive [2006/43/EC](#) and Regulation (EU) No [537/2014](#), as regards corporate sustainability reporting. The FEMM Committee stressed the importance of ensuring that social sustainability and gender equality are adequately incorporated into the directive.

The FEMM Committee gave its [opinion](#) to the Committee on Industry, Research and Energy on the proposal for a [directive on energy efficiency](#) and stressed the importance





of considering the unequal and gendered effects of climate change and climate-related policies.

The FEMM Committee gave its [opinion](#) to the LIBE Committee on the [proposal](#) for a [regulation laying down rules to prevent and combat child sexual abuse](#). The Rapporteur highlighted that child sexual abuse is to a large extent an expression of gender-based violence. Therefore, combating the online aspects of this crime has to take into consideration gender-specific approaches. The Rapporteur suggested awareness-raising campaigns tailored specifically by age and gender. She also emphasised the need to provide specialised responses and support to victims and survivors with an integrated gender perspective. In addition, the Rapporteur would like to strengthen overall data collection disaggregated by age and gender, and proposed close collaboration on research and statistics between the EU Centre and the European Institute for Gender Equality.

The FEMM Committee gave its [opinion](#) to the Committee on Legal Affairs on the [proposal](#) for a Council [regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood](#). The FEMM Committee highlighted that the regulation must be used without prejudice and that the concept of ‘public policy’ must be interpreted restrictively if it is to justify a derogation from a fundamental freedom.

The FEMM Committee gave its [opinion](#) to the LIBE Committee regarding the [extension of the list of EU crimes to hate speech and hate crime](#). Central to the Committee’s concerns is the prevalence of hate- and gender-based violence, seen as an obstacle to achieving genuine gender equality in the EU. Gender-based hate speech and crimes disproportionately affect women, girls and the LGBTIQ+ community and exacerbate societal gender inequalities. The opinion stresses the need for a unified EU response to counter hate speech and hate crimes, emphasising the need for clear definitions, robust legislation, better data collection and strategies to address online and offline violence.

#### *Non-legislative opinions*

Besides multiple opinions in budgetary affairs, the FEMM Committee also gave its opinion in many other areas:

- [Opinion](#) on the implementation of the common security and defence policy – annual report 2022;
- [Opinion](#) on a long-term vision for the EU’s rural areas – towards stronger, connected, resilient and prosperous rural areas by 2040;
- [Opinion](#) on the EU strategy for sustainable and circular textiles;
- [Opinion](#) to the Committee on Employment and Social Affairs on reducing inequalities and promoting social inclusion in times of crisis for children and their families;
- [Opinion](#) to the Committee on Foreign Affairs regarding human rights and democracy in the world and the European Union’s policy on the matter – annual report 2023.

#### *Missions*



Since the beginning of 2022, there have been eight missions of the FEMM Committee and six reports for these missions are available. In 2022, the FEMM Committee sent MEPs on a virtual mission to the 66th session of the UN Commission on the Status of Women in New York, USA, from 14 to 25 March 2022 ([Mission Report](#) 30.5.2022). In May, a delegation was sent to The Hague, The Netherlands from 23 to 25 May 2022 ([Mission Report](#) 20.6.2022). From 20 to 22 September 2022, a delegation visited Ethiopia ([Mission Report](#) 21.4.2023). In Warsaw, Poland, MEPs went on a mission in November 2022, to hold meetings on women's rights, as well as sexual and reproductive health and rights ([Mission Report](#) 16.11.2022).

In 2023, the FEMM Committee sent MEPs to New York and Washington to take part in the 67th session of the UN Commission on the Status of Women from 6 to 10 March ([Mission Report](#) 22.5.2023). In May, a delegation was sent to Copenhagen, Denmark from 15 to 17 May 2022, to discuss 'women's entrepreneurship and to hold meetings with representatives of the public and private sector and NGOs' ([Mission Report](#) 12.9.2023).

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12/2023

