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 shore up 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, and 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 European Union 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 (TEU)). These objectives are also enshrined in Article 21 of the Charter of Fundamental Rights. In addition, Article 8 TFEU gives the Union the task of 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 Union 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 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;


— In 2006, a number of former legislative acts were repealed, and replaced by Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006[1] on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). This directive defines direct and indirect discrimination, harassment and sexual harassment. It also encourages employers to take preventive measures to combat sexual harassment, reinforces the sanctions for discrimination, and provides for the establishment within the Member States of bodies responsible for promoting equal treatment between women and men. At present, Parliament is seeking the revision of the provisions on equal pay in this directive[2], and has adopted an implementation report on the basis of several studies commissioned by the European Parliamentary Research Service (EPRS);

— Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by Business Europe, the European Association of Craft, Small and Medium-Sized Enterprises (UEAPME), the European Centre of Employers and Enterprises providing Public Services (CEEP) and the European Trade Union Confederation (ETUC), and repealing Directive 96/34/EC;


— 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. This directive provides for the approximation of sanctions for trafficking in human beings across Member States and of support measures for victims, and calls upon the Member States to ‘consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation […] with the knowledge that the person is a

victim [of trafficking]’ in order to discourage demand. It also establishes the office of the European anti-trafficking coordinator;

— Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 establishing the European Protection Order with the aim of protecting a person ‘against a criminal act by another person which may endanger his [or her] life, physical or psychological integrity, dignity, personal liberty or sexual integrity’ and enabling a competent authority in another Member State to continue the protection of the person in the territory of that other Member State. This directive is complemented by Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, which ensures that civil protection measures are recognised all over the EU;


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. The most notable judgments have been:

— Defrenne II judgment of 8 April 1976 (Case 43/75): the Court 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;

— Bilkja judgment of 13 May 1986 (Case C-170/84): the Court 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 EEC 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 grounds of sex;

— Barber judgment of 17 May 1990 (Case C-262/88): the Court 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 Court 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 Court 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 Court 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. Therefore 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 Court ruled in favour of annulling the penalties imposed by Parliament on Polish far-right MEP Janusz Korwin-Mikke over a series of controversial comments he made in Parliament’s plenary session. The Court stated in its ruling that while freedom of expression constituted a fundamental right that had to be protected, under Parliament’s Rules of Procedure the institution could only penalise MEPs if their comments ‘undermine[d] its proceedings or pose[d] a serious threat to society, such as incitement to violence or racial hatred’. The Rules of Procedure were therefore amended accordingly. The Code of Appropriate Behaviour for Members of the European Parliament in Exercising their Duties was adopted by the Bureau on 2 July 2018 as an annex to the new Rules of Procedure.

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.


The maximum Union contribution for the implementation of the Justice Programme for the year 2020 is set at EUR 45 603 000, to be financed from the appropriations entered in the following lines of the general budget of the European Union for 2020:

(a) Budget line 33 03 02: EUR 8 861 000
(b) Budget line 33 03 01: EUR 33 743 000
(c) Budget line 18 06 01: EUR 2 999 000

The maximum Union contribution for the implementation of the Rights, Equality and Citizenship Programme for 2020 is set at EUR 66 713 000, to be financed from the appropriations entered in the following lines of the general budget of the Union:

(a) Budget line 33 02 01: EUR 27 960 000
(b) Budget line 33 02 02: EUR 38 753 000

A study published in autumn 2016 at the request of Parliament’s Committee on Women’s Rights and Gender Equality (FEMM) provides an overview of the EU budget spent on gender equality in selected Member States[3].

2. The European Institute for Gender Equality (EIGE)

In December 2006, Parliament and the Council established a European Institute for Gender Equality, based in Vilnius, Lithuania, with the overall objective of contributing to and boosting the promotion of gender equality, including gender mainstreaming in all EU and national policies. It also combats discrimination based on sex, and

raises awareness on gender equality by providing technical assistance to the EU institutions by collecting, analysing and disseminating data and methodological tools (see the EIGE’s online Resource and Documentation Centre: http://eige.europa.eu/content/rdc).

3. The EIGE as chair of the Justice and Home Affairs (JHA) agencies’ network

In 2018 the EIGE chaired the Justice and Home Affairs (JHA) agencies’ network. The network was established in 2006 and is made up of nine EU agencies working on a range of justice and security issues, such as migration and border management, combating drug trafficking, organised crime and human trafficking, human and fundamental rights, and gender equality. Throughout 2018, the network examined the impact of digitalisation in the agencies’ respective areas of activity, with a specific focus on the different ways in which technology is affecting young women and men. This research shows how agencies can help to mitigate risks, ensure security and security, and foster equality in Europe. The network’s 2018 final report and findings were presented at the March 2019 Women’s Rights and Gender Equality Committee meeting, and are available online (https://eige.europa.eu/publications/eu-justice-and-home-affairs-agencies-cooperation-2018-final-report).

4. The Women’s Charter and the Strategic Engagement for Gender Equality 2016-2019

On 5 March 2010, the Commission adopted the Women’s Charter with a view to improving the promotion of equality between women and men in Europe and throughout the world[4].


The Strategic Engagement focuses on the following five priority areas:

— Increasing female labour market participation and equal economic independence;
— Reducing the gender gaps in pay and pensions, and thus fighting poverty among women;
— Promoting equality between women and men in decision-making;
— Combating gender-based violence, and protecting and supporting victims;
— Promoting gender equality and women’s rights across the world.

5. Gender Action Plan 2016-2020


6. Sustainable Development Goals

On 25 September 2015 the United Nations General Assembly adopted the resolution on the post 2015 development agenda entitled ‘Transforming our world: the 2030 Agenda for Sustainable Development’. The 2030 Agenda includes 17 Sustainable Development Goals (SDGs) and 169 targets, which came into force on 1 January 2016. The SDGs are built on the Millennium Development Goals (MDGs). However, in contrast to the MDGs, which were intended for action in developing countries only, the SDGs apply to all countries. SDG 5, ‘Achieve gender equality and empower all women and girls’, contains five targets.

7. EU accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

The Council of Europe Convention on preventing and combating violence against women and domestic violence (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 international level. It establishes a comprehensive framework of legal and policy measures for preventing such violence, supporting victims and punishing perpetrators. By November 2017, it had been signed by all EU Member States, and had been ratified by 21 of them by February 2020 (Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Italy, Ireland, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia, Spain and Sweden). The Convention also provides for EU accession in its areas of competence.

In October 2015, the Commission published a roadmap on possible EU accession to the Istanbul Convention, and followed it up in March 2016 with two proposals for Council decisions, one on the European Union’s signature of the Istanbul Convention, and the other on concluding the EU’s accession to the Convention (i.e. ratification).

After debating the issue, 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 EU Commissioner for Justice, Consumers and Gender Equality, Věra Jourová, signed the Istanbul Convention on behalf of the European Union on 13 June 2017.

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The signature is the first step in the process of the EU acceding to the Convention. Accession to the Convention now requires the adoption of 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 (FREMP, interinstitutional file 2016/0063 (NLE)). Its discussions currently focus on a Code of Conduct defining how the EU and its Member States will cooperate on implementing the Convention.

The conclusion of the accession process to the Convention requires Parliament’s consent.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has played a significant role in supporting equal opportunity policies, in particular through its Committee on Women’s Rights and Gender Equality (FEMM). For equal treatment on the labour market, Parliament acts on the basis of the ordinary legislative procedure (codecision). Examples of this include:


— The revision of Directive 92/85/EEC (see above). At first reading[11] Parliament advocated a longer period of fully-paid maternity leave – 20 weeks[12]. As Parliament and the Council could not reach an agreement on the Commission proposal, the Commission has now withdrawn it, and replaced it with a roadmap for the initiative entitled ‘a new start to address the challenges of work-life balance faced by working families’[13].

In addition, Parliament contributes to overall policy development in the area of gender equality through its own-initiative reports, and by drawing the attention of other institutions to specific issues, including:

States in the field of prevention of violence against women and girls (VAWG). This resolution included a number of recommendations, and the Women’s Committee has established a special working group to follow up this resolution;

— International Women’s Day 2019 focused on women’s power in politics. The topic chosen is central to women’s rights because it relates to women’s participation in the collective governance of our societies. Over time, legislation, case law and changes to the Treaties have helped to shore up this principle and its implementation in the EU. Parliament has always been a fervent defender of gender equality, and this event highlights the importance of women’s participation in politics, particularly at the European level;

— European Parliament recommendation to the Council on the EU priorities for the 62nd session of the UN Commission on the Status of Women (CSW), calling for the empowerment of rural women and for access of women to the media and information and communications technologies, and their impact on and use as an instrument for women’s advancement[15]. A delegation from the Women’s Committee attended the UN CSW in March 2018.

Parliament is also implementing gender mainstreaming in the work of all its committees[16]. To this end, two networks on gender mainstreaming have been established, which are coordinated by the Women’s Committee. The network of Chairs and Vice-Chairs for Gender Mainstreaming brings together MEPs who support the inclusion of a gender dimension in the work of their committees. They are supported by a network of gender mainstreaming administrators in each committee secretariat. The High-Level Group on Gender Equality promotes training and awareness-raising about gender mainstreaming among Parliament staff and the political groups.

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