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, 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;


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;

— Bilka 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. 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.

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 COVID-19 pandemic has amplified current gender-based violence against women, confirming long-standing research findings that the risk of domestic violence tends to increase in times of crisis. Lockdown measures were implemented to keep people safe at home. However, home turned out not to be safe for everyone, and lockdown measures played a demonstrable role in the significant increase in reports of domestic violence.

On 5 March 2020, the Commission adopted its Gender Equality Strategy 2020-2025. It sets out an ambitious framework for the next five years on how to advance gender equality in Europe and beyond. The strategy is based on a vision for a Europe where women and men, girls and boys, in all their diversity, are free from violence and stereotypes and have the opportunity to thrive and to lead.

As one of Strategy’s first deliverables, the Commission proposed binding pay transparency measures, in March 2021. It submitted a 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. In March 2021, the Commission adopted an Action Plan to implement the European Pillar of Social Rights, which puts gender equality at its core and establishes,
ambitious targets for women’s participation in the labour market and the provision of early childhood education and care, among other objectives. Adequate minimum wages can also help reduce the gender pay gap, since more women than men earn the minimum wage. To this end, in October 2020 the Commission submitted a proposal for an EU Directive to ensure that the workers in the Union are protected by adequate minimum wages. The proposal is currently being discussed in the FEMM and EMPL committees.

The Commission is also currently working on a new legislative initiative to combat gender-based violence. A public consultation on the initiative was launched in February 2021. In parallel, EU accession to the Council of Europe Istanbul Convention remains a key priority for the Commission. In 2020, the Commission adopted the first ever EU victims’ rights strategy, further stepping up its fight against gender-based violence.

**THE EU’S MULTIANNUAL FINANCIAL FRAMEWORK (MFF) FOR 2021-2027**

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

Together with the Next Generation EU recovery instrument worth EUR 750 billion, it 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 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, Council and Parliament adopted the two programmes which constitute the EU justice, rights and values fund as part of the EU financial framework for 2021-2027. The programmes will help to further promote, strengthen and protect justice, rights and EU values. The Citizens, Equality, Rights and Values Programme 2021-2027 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. The Rights and Values Programme 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 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.

The Council of the European Union 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 signed the Istanbul Convention on behalf of the European Union on 13 June 2017.

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). 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 Court of Justice on the compatibility with the Treaties of the proposals for the accession by the European Union to the Council of Europe Convention and on the procedure for that accession. The Court’s decision is expected towards the end of 2021.

The Commission maintained its commitment to EU accession to the Istanbul Convention in its 2021 work programme, while working on a new legislative proposal to combat gender-based violence, due to be proposed by the end of 2021. 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 recent 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 (COM(2021)0093).
The FEMM Committee and EMPL Committees are currently discussing this proposal for a directive. In addition, Parliament contributes to overall policy development in the area of gender equality through its own-initiative reports, workshops, hearings, and by drawing the attention of other institutions to specific issues, including:

FEMM Members adopted a report entitled ‘Promoting gender equality in science, technology, engineering and mathematics (STEM) education and careers’ in April 2021. They also discussed an own-initiative report on ‘Equality between women and men in the European Union in 2018-2020’, and organised a public hearing under the title ‘Empowering EU supports for women entrepreneurs and investors, including through MFF 2021-2027’. Similarly, the Committee organised a workshop on ‘the role of education in preventing violence against women’.

On 3 March 2021, a webinar was organised under the title ‘International Women’s Day - Women’s leadership in the fight against COVID-19’, which focused on scientists and carers. An inter-parliamentary committee meeting was also organised entitled ‘We are strong: Women leading the fight against COVID-19’ on 4 March 2020. On 8 March 2021, US Vice-President Kamala Harris and New Zealand Prime Minister Jacinda Ardern took part in Parliament’s plenary session as part of its celebration of International Woman’s Day.

Parliament is also implementing gender mainstreaming in the work of all its committees[2]. 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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