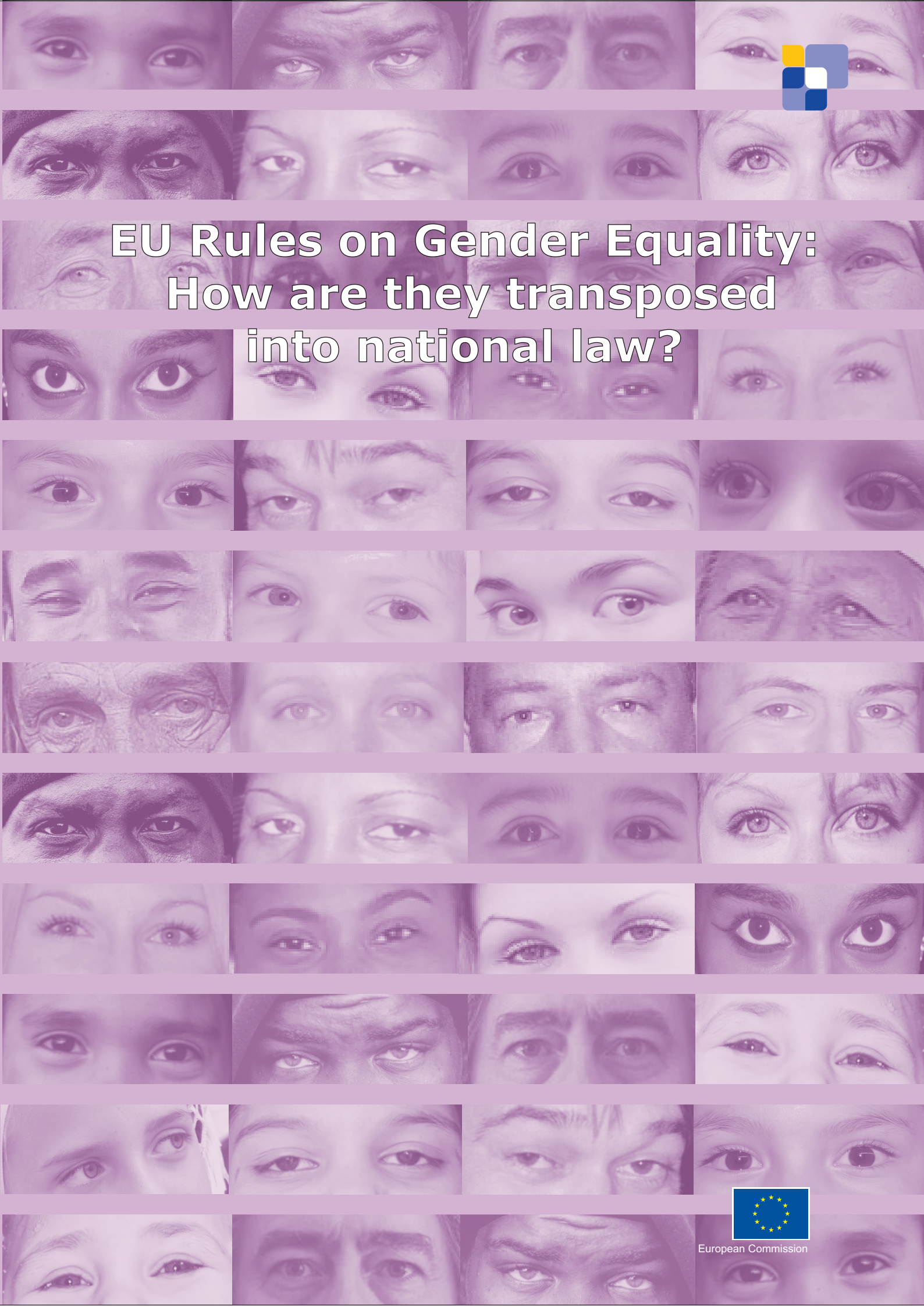

EU Rules on Gender Equality: How are they transposed into national law?

European Commission

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European Commission

Directorate-General for Employment, Social Affairs and Equal Opportunities
Unit G.2

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Table of Contents

EU Rules on Gender Equality: How are they transposed into national law?

Annexes

EU Rules on Gender Equality: How are they transposed into national law?

Sacha Prechal and Susanne Burri*

1. Introduction

The development of EU gender equality law and its transposition in the Member States and the EEA countries (in addition to the 27 EU Member States, also Iceland, Liechtenstein and Norway) has been a step-by-step process, starting, at least for the 'oldest' EU Member States, in the early sixties.

In 1957, the Treaty establishing the European Economic Community, which was the origin of the current EU, contained only one single provision (Article 119 EEC Treaty, now Article 141 EC Treaty) on gender discrimination, namely the principle of equal pay between men and women for equal work. Since then, however, a whole plethora of directives – a specific form of *binding* EU legislation – which prohibit discrimination on the grounds of sex in particular, have been adopted: the Directive on equal pay for men and women (75/117), the Directive on equal treatment of men and women in employment (76/207, amended by Directive 2002/73), the Directive on equal treatment of men and women in statutory schemes of social security (79/7), the Directive on equal treatment of men and women in occupational social security schemes (86/378, amended by Directive 96/97), the Directive on equal treatment of men and women engaged in an activity, including agriculture, in a self-employed capacity (86/613), the Pregnant Workers' Directive (92/85), the Parental Leave Directive (96/34), the Directive on equal treatment of men and women in the access to and the supply of goods and services (2004/113) and, finally, the so-called Recast Directive (2006/54).[1] Recasting of this large number of directives is aimed at clarification and bringing together in a single text the main provisions of the other existing sex equality directives. For a part also some case law of the European Court of Justice (ECJ) is incorporated. 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.

Finally, it is important to note that the promotion of equality between men and women throughout the European Union is one of the essential tasks of the EU (Article 2 EC) and that, according to Article 3(2) EC, the EU shall aim to eliminate inequalities, and to promote equality between men and women in all the activities listed in Article 3 EC. This obligation of gender mainstreaming means that both the EU 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.[2] Although these provisions do not create enforceable rights for individuals as such, they are important for the interpretation of EU law and they impose obligations upon both the EU and the Member States.

At the national level, the Treaty Articles and, in particular, the directives must be implemented. This means, to start with, a transposition of the legal provisions into national law. This was partly done by amending relevant national legislation, like the Labour Code, acts relating to employment and social security legislation. The respective states also introduced specific gender-equality acts. In more recent

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1 The full – official – name of the respective directives and their publication are included in Annex I.

2 See also Article 29 of the Recast Directive (2006/54).

times, the equal treatment of women and men has been incorporated into general anti-discrimination acts which also relate to other grounds, such as race, disability or sexual orientation (e.g. **Bulgaria**, **Hungary**, **Slovakia**, **Sweden** and a Bill proposed in **the United Kingdom**). In some countries, for instance **Greece**, **Germany**, **Portugal** and **Spain**, certain provisions in their Constitution also play an important role in guaranteeing equality between women and men.

The purpose of the present publication is to provide a brief and general overview of the main features of EU gender equality law and its transposition in the 27 Member States of the European Union, as well as in the EEA countries of Iceland, Liechtenstein and Norway to which most of the EU equality law applies.[3] The thematic sections correspond more or less with the various directives indicated above. Yet, there are certain features which all the directives have in common, namely a number of central concepts and matters relating to compliance and the enforcement of the rules in practice. These issues are discussed in Section 2 and Section 10 respectively.

2. Central concepts of EU gender discrimination law

The central concepts of EU gender equality law are laid down in the respective directives[4] and are often the subject of further interpretation by the ECJ. The following five concepts must be briefly discussed:

- *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.'
  As a rule, direct discrimination is prohibited, unless a specific written exception applies, such as that the sex of the person concerned is a determining factor for the job, for example a male character in a film has to be a man.
- *Indirect discrimination* occurs '(…) 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.'
  Indirect discrimination is very much concerned with the effects of a certain treatment and takes into account everyday social realities. For instance, less favourable treatment of part-time workers will often amount to indirect discrimination against women as long as women are mainly employed on part-time terms. Unlike in the case of direct discrimination, the possibilities for justification are much broader.
- The concept of *positive action* is defined in EU law as follows: 'With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or prevent or compensate for disadvantages in professional careers.' Like indirect discrimination, positive action also takes into account everyday social realities but is goes much further, in the sense that it may require further steps to be taken in order to realise true, genuine equality in social conditions.
  The measures permitted as positive action provisions aim at eliminating or counteracting the detrimental effects on women in employment or in seeking employment which arise from existing attitudes, behaviour and structures based on the idea of a traditional division of roles in society between men and women. Similarly, they should help to fight stereotypes. As an example of positive action the following can be mentioned: the preferential treatment of female employees in

[3] For a more detailed discussion of EU gender equality law and its implementation at the national level see the more extensive publication *EU Gender Equality Law*, published by the Office for Official Publications of the European Communities in 2008, in electronic form available at: http://ec.europa.eu/social/main.jsp?catId=641&langId=en, accessed 28 August 2009 and *Gender Equality Law in 30 European Countries*, available at the same website. Both publications are aimed at a broad – but not necessarily legal – public and explain the most important issues of the EU gender equality *acquis* and its implementation.

[4] The definitions given here are from the Recast Directive 2006/54.

the allocation of nursery places when the number of places, due to financial constraints, is rather limited or – even more far-reaching and controversial – female quotas in recruitment and promotion.

- *Instruction to discriminate* on grounds of a person's sex is in EU law equated with discrimination. Thus, where an agency is requested by an employer to supply workers of one sex only, both the employer and the agency would be liable and would have to justify such sex discrimination.
- Both *harassment on grounds of a person's sex* and *sexual harassment* are equated with sex discrimination and are explicitly prohibited. They cannot be justified.
  Harassment occurs '(…) where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment.'
  Sexual harassment occurs '(…) where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.' Both concepts include the violation of a person's dignity and the creation of an intimidating, hostile, degrading, humiliating or offensive environment. The main difference is that in case of harassment on grounds of a person's sex, the person is ill-treated because he or she is a woman or a man. In the case of sexual harassment it rather involves a person being subject to unwelcome sexual advances or, for instance, that the behaviour of the perpetrator aims at obtaining sexual favours. In concrete situations the distinction between the two may be very unclear indeed.

How are these central concepts reflected in the national law of the EU Member States and the EEA countries? Overall, national law has faithfully and often even literally transposed these concepts into their national legislation. Nevertheless, some striking features, differences and problems should be highlighted.

2.1. The problem of comparisons

It is for instance striking that particularly in **the United Kingdom** much emphasis is put on the *comparison*, i.e. a person who is treated less favourably should be compared to another person who is in a comparable situation. The comparator may be real or hypothetical. In many other countries discrimination, or at least a serious presumption of discrimination, is more readily accepted. It suffices to establish that a person has been put at a disadvantage for reasons of being female or male, without engaging in comparisons of the situations. In **Italy** and **the Netherlands**, contrary to **the United Kingdom**, any reference to a comparable situation is lacking. However, this does not mean that in concrete cases no comparisons are made. For instance, in equal pay cases comparisons of the work performed are often necessary.

In **the United Kingdom** the use of the words 'on the ground of' and 'less favourably' in the context of pregnancy discrimination might be regarded as requiring some kind of comparison, but the previous explicit requirement for a comparator was abandoned after a decision of the High Court that it was inconsistent with EU law and the better view is that, properly interpreted, the legislation does not require a comparator. In other states it is generally accepted that a comparison is not required in the case of pregnancy. This is also the view of the ECJ. The Court held that the refusal to appoint a woman because she was pregnant amounts to direct sex discrimination, which is prohibited. In **Estonia**, there even exists a broader definition of direct sex discrimination. It addition to less favourable treatment in connection with pregnancy and childbirth, it also relates to less favourable treatment in connection with parenting and the performance of family obligations.

2.2. Prohibition of discrimination

In relation to the *prohibition of discrimination*, in some countries specific problems arise because words other than discrimination are used. In **the Netherlands**, discrimination was defined in more neutral terms, namely 'distinction'. The European Commission criticized the use of the term 'distinction' and the fact that the definitions of direct and indirect discrimination are not similar to the definitions in the directives. Therefore, the Commission started infringement proceedings against **the Netherlands**. A new act is going to change the definition, using the term discrimination instead of distinction. In two other countries, **Latvia** and **Norway**, discrimination is also defined in terms of differential treatment. Whether this will induce the European Commission to take steps is not clear, however. **Germany** has chosen more 'disapproving' terminology than the making of a distinction, namely *Benachteiligung* (putting at a disadvantage) instead of discrimination.

In **Belgium** a somewhat complex situation exists as to the terms used. There is settled case law that considers any form of discrimination potentially justifiable, whether direct or indirect. Since the first situation – direct discrimination – can in principle not be justified under EU law, unless one of the exceptions applies, a somewhat problematic differentiation has been created between making a 'distinction', on the one hand, and discrimination on the other. Discrimination covers a distinction which cannot be justified and it applies in areas covered by EU law. In other areas, however, even the making of a direct distinction can be justified. For ordinary citizens, this indeed renders the application of gender equality law rather complex.

2.3. Indirect discrimination

The concept of *indirect discrimination* has also posed or still does pose problems. There were no proper definitions of direct and indirect discrimination in **French** law until May 2008, when a new act was adopted. However, there is still a certain reluctance on the part of French judges to use the concept of indirect discrimination. Comparable problems exist in **Greece** where indirect discrimination is almost unknown in practice. Recently, the Supreme Administrative Court has upheld mere generalizations as a justification for the application of very suspect criteria, which is at odds with ECJ case law.

Indirect discrimination has not been transposed correctly in all areas covered by the latest Recast Directive (2006/54), and this applies to **Malta**, **the United Kingdom** and, to a certain extent, also **Estonia**. **Latvia** did not transpose the concept in a satisfactory manner either. In **Denmark**, there exist two different definitions of indirect discrimination, one in the Equality Act and a slightly different one in the Equal Treatment Act and the Equal Pay Act. In the latter the definition deviates from the wording of EU law and is at risk of allowing broader justifications than EU law.

There are also bright spots, however. Recently, in **Poland**, the amended Labour Code drastically improved the definition of indirect discrimination. It now includes a reference to both existing and hypothetical situations. It also mentions not only unfavourable disproportions but also particularly disadvantageous situations. Finally, it also makes reference to 'legitimate aim' and, as regards the means to achieve this aim, to the principle of proportionality. All these elements were lacking before the amendment. Interestingly, in **Finland** the alleged victim of indirect discrimination has to prove that the effect of certain treatment amounts to a less favourable position, which is easier to prove than a particular disadvantage.

2.4. Positive action

The concept of *positive action*, although often a controversial issue, has been transposed in most of the countries. As a rule, it may apply in the various areas covered by EU law, such as employment, occupational pension schemes and access to and the provision of goods and services. The most important area for positive action has, up until now, been access to employment and working conditions. This issue is also going to be addressed briefly in Section 3.2. But now it is appropriate to make some general observations on positive action.

The provisions on positive action can be laid down in the Constitution as has been done, for instance, in **Greece**, **Malta**, **Portugal** and **Spain**. In **Spain**, positive action is allowed as a result of an interpretation of two provisions of the Constitution by the Constitutional Court. It would appear that only in **Greece** and **Portugal** are positive action measures qualified by the Constitution not as a derogation from the principle of equal treatment, but rather as a means by which to achieve equality.

In other countries the provisions are of a legislative nature. They are often contained in legislation aiming at equality of opportunity between men and women or in more general anti-discrimination legislation (e.g. **Austria**, **Denmark**, **Finland**, **Germany**, **Norway**, **Slovenia**, **Spain** and **Sweden**). In some countries, like **Lithuania**, a special law has been necessary to allow for positive action.

Positive action is often conditional, i.e. it is only allowed under certain conditions. For instance in the **Dutch** Equal Treatment Act the following conditions apply: (a) a positive measure must be aimed at diminishing or cancelling disadvantages for women, (b) the disadvantages must be linked to sex, and (c) the measure must be proportionate to the aim. There is no obligation or requirement to introduce and effectuate positive action programmes. Also in other countries, like for instance **Portugal**, the temporary basis is very important.

In principle, positive action provisions are, like in EU law, permissive in nature, i.e. it is allowed, but it is not laid down as an obligation. However, in some countries – e.g. **Austria**, **Bulgaria** and **Germany** – a positive action is framed as an obligation, at least in the public sector. In **Austria**, for instance, all ministries have to pass affirmative action plans for their respective ministries and set binding targets in order to increase women's representation. In **Germany** public institutions are under an obligation to adopt equality plans to increase women's representation. In **Italy** positive actions are promoted and supported by special funding. In the case of collective discrimination, the court can even order the adoption of a positive action plan. In **Greece** positive measures, in particular in favour of women, are an obligation for all state authorities by virtue of the Constitution.

In other countries, positive actions are much less welcome. In **Belgium**, for instance, the lawfulness of positive actions remains uncertain. In **France**, there is no reference to positive action in the Anti-Discrimination Act; there are only some provisions in the Labour Code. Positive measures can in any case not take the form of quotas. In **Latvian** law, there are no provisions on positive action at all. Furthermore, the description of the concept of positive action is problematic in **Slovakia**. In **the United Kingdom**, positive action is only allowed in a very limited number of cases. In **Romania**, positive action is provided for in the law, but is not applied or welcomed in practice.

2.5. Harassment

The definition of *harassment or sexual harassment* encountered some difficulties in national legislation. In **Estonia**, it appears that the definition of sexual harassment is stipulated more strictly in the national legislation than in the EU directives. It requires that it has to take place in a relationship of subordination or dependency and the person has to reject such conduct or tolerate it for the reason that it affects his or her access to certain benefits. Further, the concept of harassment on grounds of sex is not provided for under Estonian law. However, a draft Act to amend the Gender Equality Act, the Civil Service Act and the Labour Contracts Act is currently pending in Parliament and it intends to bring the definition of sexual harassment fully into line with EU law. The draft Act would also introduce a new concept: 'harassment based on sex', which means unwanted conduct related to the sex of a person that occurs with the purpose or effect of violating the dignity of that person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. Similarly, in **Hungary**, a somewhat narrower definition of harassment exists and there seems to be some reluctance on the part of the legislator to regulate sexual harassment. Also in **Spain** it took until 2007 before the concepts of harassment and sexual harassment were included in national law. In **Portugal** the recent revision of the Labour Code (2009) has also extended the definition of harrassment.

The recent (2008) **Polish** amendments to the Labour Code improved significantly the definitions of harassment and sexual harassment. They now reflect a clear distinction between sexual harassment and harassment based on sex. The definitions now refer to the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment. The relevant provision now also explicitly reflects the idea that discrimination includes less favourable treatment based on a person's rejection of or submission to harassment or sexual harassment. In **Finland**, the legislation goes a step further in the sense that an employer who knows that an employee has been the victim of harassment and who neglects to take measures to eliminate harassment is also considered to discriminate against the employee in question.

3. Access to work and working conditions

An important area of EU gender equality law is related to employment, in particular the access to employment, promotion in employment, access to vocational training and working conditions including conditions governing dismissal.[5]

The transposition in this area has taken the form of a general gender equality act and, very often, amendments to labour law legislation or legislation concerning civil servants. Sometimes remarkable degrees of friction may occur in this process, like in **Germany**. In that country discriminatory dismissal is not explicitly covered by the General Act on Equal Treatment, the most important piece of gender equality legislation. General labour law applies to dismissals. One of the common grounds for dismissal in case of economic difficulty is the length of employment. As women often have a shorter working record, there is a risk of indirect discrimination.

In **Denmark**, the extension of equal treatment to membership of and involvement in trade unions and employers' organisations, as EU gender equality law prescribes, took place almost at the same time as the merger of the Women Workers' Union (for other reasons) with the predominantly male General Workers' Union so that the question whether or not it was lawful to have a women-only trade union became irrelevant.

In respect of all the aspects listed above, direct and indirect discrimination are prohibited. Furthermore, EU equality law contains a number of exceptions to the principle of equal treatment.

3.1. Exceptions

The general scheme of gender equality law, at least as laid down in the directives, is that direct discrimination can in principle only be justified on the basis of the exceptions laid down in the directives themselves. This is an important difference from indirect discrimination, which might be justified for a broader range of reasons (see above, Section 2).

One of the most important exceptions concerns occupational activities for which the sex of the worker is a genuine and determining factor. Because this is an exception to a fundamental principle it has to be interpreted strictly. Thus the derogation is further tightened by the requirement that it must be appropriate and necessary for achieving the legitimate aim pursued. These requirements resulted, for instance, in the general exclusion of women from the Royal Marines (the British Royal Navy's amphibious infantry requiring a high level of physical strength and fitness) or from the German army (*Bundeswehr*) not being accepted by the ECJ.[6] Only the specific nature of the posts in question or the particular context in which the activities in question are carried out may justify an exception.

Before a major amendment to the Equal Treatment Directive by Directive 2002/73, EU gender equality law also provided for protective legislation as a special category of exceptions. Under this heading certain types of *protective legislation* could be justified, in particular as far as it was necessary to

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5 For another vital aspect of employment – pay – see Section 5.

6 ECJ 26 October 1999, Case C-273/97 *Angela Maria Sirdar* v *The Army Board and Secretary of State for Defence* [1999] ECR I-07403 (*Sirdar*) and ECJ 11 January 2000, Case C-285/98 *Tanja Kreil* v *Bundesrepublik Deutschland* [2000] ECR I-69 (*Kreil*).

protect women during pregnancy or their procreative function. The existing protective legislation concerned issues like restrictions on night work or on certain dangerous or strenuous work, such as mining, ground excavation, work in hyperbaric chambers, the lifting of heavy materials etc. While in some countries this protective legislation excluded women during pregnancy or was clearly linked to maternity or parenthood, in other countries the exclusion was more general, like in relation to the prohibition of night work. Interestingly, while a great volume of protective legislation existed in the former Central and Eastern European countries, by contrast there was very limited protective legislation in the Scandinavian countries. In particular in **Denmark**, there has always been a strong tradition of not accepting protective measures for women. When transposing the Pregnant Workers Directive, **Denmark** only adopted the very minimum of protective measures. The difference between the countries in this respect can be explained by sociological and/or historical reasons.

Some of these protective provisions have been scrutinized as to their compatibility with EU law and have been abolished, sometimes after the intervention of the ECJ.[7] In **France**, for instance, the prohibition of night work for women was not abolished until 2001.

The ECJ has made it clear that protective legislation is only allowed to meet women's specific need for protection related to pregnancy and childbirth and it cannot be used to exclude women from a certain type of employment solely on the ground that they ought to be given greater protection than men against risks which affect men and women in the same way.[8] Indeed, this does not mean that all forms of protective measures are no longer allowed. However, under the current EU gender equality law, they must fit under the 'sex of the worker as a determining factor exception' or under the provisions of the Pregnant Workers Directive, as discussed in Section 4.

The transposition of the exception where the *sex of the worker is a determining factor* for the activity at stake basically takes two different forms: either the national transposing legislation contains a 'general' exception setting out abstract criteria of general application across the employment field for cases where the sex of the worker is a determining factor for an occupational activity, or a specific list, identifying particular occupational activities where the sex of the worker is a determining factor. Obviously, a combination of both exists as well.

The usual activities listed concern singers, actors, fashion or photographic models, military personnel (usually certain units in the armed forces, such as service on submarines in the **French** navy), private security bodies, wardens in women's shelters, personal care involving physical contact, membership of religious orders or access to the priesthood. Sometimes the reservation appears to be based on the nature of the job, sometimes it is determined by the context in which the specific activity takes place. In some cases, however, an exception may seem to be specific, but in fact it may turn out to be rather wide. Some generally formulated exceptions, for instance in **the Czech Republic** and **Estonia**, give rise to concerns because the formulation is rather open, is not very transparent and does not easily lend itself to appraisal.

In **Slovakia**, the exception for religious activities appeared to extend to people working for religious organisations and therefore appeared to be going too far. Indeed, religious considerations are one of the continually recurring grounds for derogation in many countries. Even in those countries where positions in the Church have been opened to women, like the **Danish** Peoples' Church and the Evangelical Lutheran Church of **Finland**, female priests do not necessarily enjoy full equality and other religious communities still remain outside the gender equality legislation. However, in **Bulgaria**, for instance, exceptions based on these considerations cannot be *a priori* justified.

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7 E.g. Case C-158/91 *Criminal proceedings against Jean-Claude Levy* [1993] ECR I-04287 (*night work*).

8 Case C-222/84 *Marguerite Johnston* v *Chief Constable of the Royal Ulster Constabulary* [1986] ECR I-01651; Case C-285/98 *Tanja Kreil* v *Bundesrepublik Deutschland* [2000] ECR I-00069; Case C-203/03 *Commission of the European Communities* v *Republic of Austria* [2005] ECR I-00935.

3.2. Positive action once again

In some countries, *positive action* is also considered to be an exception to the principle of equal treatment. However, other countries understand positive action as an instrument to achieve real equality in everyday life. As was pointed out in Section 2, **Greece** and **Portugal** qualify positive action measures as a means to achieve equality in their Constitution.

That having been said, the fact remains that, as was already observed above (Section 2), positive action measures are not very widespread and are hardly seen as a priority neither by the legislature, the social partners, nor individual employers. Whenever positive action measures exist, they appear to be more frequent in the public sector. In a number of countries, e.g. **Austria** and **Germany**, the public sector is subject to specific provisions in this respect as well as being subject to more precise obligations to introduce positive action measures. In the alternative, where no obligations are laid down, the public sector is at least encouraged to take positive action measures.

In the private sector such measures are, on the whole, voluntary. Only in a few countries obligations exist for the private sector. In **Estonia**, for instance, the law lays down the duties of employers to promote equal treatment. These include ensuring that persons of both sexes are employed to fill vacant positions and that the number of men and women hired in different positions is as equal as possible and guarantees equal treatment with regard to promotion; working conditions must be created that are suitable for both women and men and that support the combination of work and family life.

In any case, targets and quotas for the promotion or recruitment of women are rare. Measures tending to facilitate vocational training for women are more widespread. In some countries measures aimed at reconciliation between work and family life are framed as positive action measures, for instance in **Iceland**, **Italy**, **Latvia** and **Liechtenstein**.

Finally, in some countries, like **Italy**, there exist some financial incentives for adopting positive action measures, mostly directed at the private sector and prizes or labels can also be awarded to reward good practices.

3.3. Pregnancy and maternity as an exception?

Another important exception to the principle of equal treatment or, arguably, necessary differentiation, concerns the protection of women as regards *pregnancy and maternity*. This is discussed in the next section.

4. Pregnancy and maternity protection; parental leave

4.1. Pregnancy and maternity

Discrimination for reasons of pregnancy is to be considered as direct discrimination under EU law and therefore also in the Member States. Similarly, disorders and complications related to pregnancy, which may result in incapacity to work, form part of the risks inherent in pregnancy and less favourable treatment on that ground, or perhaps even dismissal, amount to direct discrimination as well. Finally, any less favourable treatment of a woman related to pregnancy or maternity leave is included in the prohibition of discrimination.

At the same time, protection for reasons of pregnancy and maternity justifies different treatment for those women concerned. Thus, special rights, related to pregnancy and maternity, such as maternity leave, do not amount to discrimination against men. While such rights have been seen in the past as an exception to the principle of equal treatment, nowadays they are rather considered as a means to ensure the implementation of the principle of equal treatment for men and women regarding both access to employment and working conditions. In fact, they aim to accommodate the main biological difference between women and men.

In order to strengthen this protection, the Pregnant Workers Directive was adopted in 1992. The most important provisions thereof concern a period of maternity leave of at least 14 weeks, the right to

return to the same or an equivalent job and the payment of an adequate allowance during pregnancy and maternity leave. Another important provision relates to protection against dismissal from the beginning of the pregnancy until the end of the maternity leave. Apart from leave and employment protection, the Directive also provides for health and safety protection for pregnant women or women who are breastfeeding. If there is a risk to health and safety or an effect on the pregnancy or breastfeeding, as established on the basis of detailed guidelines, the employer must take necessary steps like temporarily adjusting the working conditions, moving the worker to another job or, if there is no other solution, granting the worker temporary leave. Under a recent proposal, amending the Pregnant Workers Directive, the minimum maternity leave should be 18 weeks.[9]

Pregnancy and maternity protection are often regulated in specific legislation at the national level (e.g. the Maternity Protection Act in **Austria**) and/or as a matter of working conditions under general labour law, as laid down in a Labour Code and sometimes also in specific health and safety legislation.

For reasons of clarity, in **Finland**, *pregnancy discrimination* is explicitly *defined as constituting direct discrimination*. Interestingly, also different treatment on grounds of parenthood is defined as indirect discrimination and the provisions also protect men with family responsibilities. Comparable provisions exist in **Slovenia**, where also the less favourable treatment of workers on grounds of parental leave is considered as discrimination. Similarly, **Danish** and **Greek** legislation prohibit discrimination related to pregnancy, maternity, maternity leave, parental leave, adoption leave and paternity leave. Moreover, it should be noted that before the transposition of the Equal Treatment Directive it was allowed under **Danish** law and quite usual for employers to dismiss or otherwise treat women unfavourably on grounds of pregnancy.

In **Italy**, on the other hand, an explicit mention of pregnancy and maternity discrimination as direct discrimination is lacking. The same is true for, for instance, **Lithuania**, **Sweden** and **Poland**.

In almost all national legislation there is very strong *protection against the dismissal* of a pregnant worker or a person on maternity leave. The dismissal of a pregnant worker or a worker on maternity leave is possible on the basis of a limited and exhaustive number of specific reasons, such as the bankruptcy of the enterprise. The dismissal of a pregnant worker or a woman on maternity leave is sometimes presumed to be unlawful and in some countries it is deemed to be null and void. Compensation is always provided for, on average equivalent to up to six months' salary, often combined with punitive damages. Sometimes the reinstatement of the worker is ordered.

In most states a worker *returning to work* after her maternity leave is also protected against unfavourable treatment. Workers are generally guaranteed by law to be able to return to the same job or, if this is not possible, to a similar job. However, a few countries do not provide such a guarantee or they do not do so explicitly (e.g. **Belgium**).

All the national legislation provides for at least the minimum period of *maternity leave* of 14 weeks, as set in the Pregnant Workers Directive. Many countries provide for longer periods. In **the United Kingdom** and **Ireland**, for example, all employees are entitled to 26 weeks of maternity leave and receive statutory maternity benefits. The length of maternity leave varies from country to country ranging from the somewhat extreme 410 days (i.e. approximately 58 weeks) in **Bulgaria** to 14 weeks in **Germany**. The average duration of the maternity leave in most countries is between 16-20 weeks. A number of states also provide for a mix of various forms of leave: a period of maternity leave to be taken exclusively by the woman is directly followed by a period of parental leave to be taken by either parent as they wish. This is for instance the case in **Sweden**, where the 14 weeks' maternity leave is immediately followed by parental leave until the child reaches the age of 18 months. A comparable system is envisaged in **Poland** as well. In most countries, the period of maternity leave consists of compulsory and facultative leave. Compulsory periods of leave are generally established immediately before and

[9] Proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/85/EEC 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, COM(2008) 637, available at http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=402, last accessed 19 June 2009.

immediately after confinement. In **Greece** the whole period of leave (17 weeks in the private sector, 5 months in the public sector) is compulsory. An equivalent period of maternity leave is granted in the case of adoption.[10]

In most countries, during the period of maternity leave, employees are entitled to a minimum maternity benefit. The amount of this benefit is often dependant on the length of service or on the amount of contributions to the social security scheme. However, the amount of the benefit can be increased to the equivalent of full pay, for instance on the basis of collective or other agreements, as is the case in **Denmark**, **Sweden** or **Ireland**. In some countries – e.g. **the Netherlands** and **Germany** – employees simply receive 100% of their pay. In order to make pregnancy and related leave cost-neutral for employers, in **Denmark** they are obliged to pay into a fund that in turn reimburses employers for any costs related to pregnancy, maternity, parental leave etc.

Even if the protection of pregnancy and maternity is generally very strong – at least on the legislative side – overall, there is very little litigation. Among the pregnancy and maternity cases that are brought to the national courts, the issue of dismissal is a major focus. Women are reluctant to bring cases to court for fear of victimisation and due to a lack of evidence or the belief that complaining or commencing a case will result in more harm than good. It is not rare for an employer to use tactics to induce the female employee to resign 'voluntarily'. The result is that the law in the books is very different from the law in everyday practice.

4.2. Parental leave

One of the continually recurring problems in relation to gender equality in employment is the reconciliation of family/private life with work. From this perspective, although not adopted as a specific gender equality directive, the Parental Leave Directive (96/34) plays an important role in the gender equality discourse. This Directive sets minimum standards designed to facilitate the reconciliation of work with family life. It provides, *inter alia*, for a non-transferable right to parental leave to be granted to all parents. The length of the parental leave must be at least three months and may be taken from the birth or adoption of the child until that child has reached the age of eight years. Workers who take this leave must be protected against dismissal and, at the end of the parental leave, they have the right to return to the same or equivalent job.

In most European countries, parental leave is an individual and non-transferable (i.e. non-transferable to other persons) right granted to both natural and adoptive parents. The length of the parental leave varies from country to country but all provide for the minimum of at least three months as guaranteed in the Parental Leave Directive. In the same vein, there are variations to the upper limit (of the child's age) for taking parental leave, e.g. 2½ years in **Austria**, 3 years in **France** and **Germany**, in **Greece** 4 years in the public sector, 3½ years in the private sector, 8 years in **Italy** and **Latvia**. In most countries, the leave can be taken as a whole or in parts. As a rule, parental leave is unpaid, although some, often modest, social security benefits may be provided (e.g. in **Belgium**, **Bulgaria** and after a certain period also **Estonia**). The leave is paid as a benefit by the social security system and a qualifying period of employment applies. In other countries, parental leave can also be partly paid by the employer as a result of a collective agreement (e.g. **Denmark**, **France** and **Sweden**).

Parental leave is generally taken by women although the leave is often transferable between the parents. The fact that parental leave is often not paid is probably one of the reasons why more women take this leave than men. Some countries have introduced policies to encourage fathers to take parental leave. For example, in **Italy** the length of parental leave is extended from 10 to 11 months when the father takes at least three months' leave. Another example is **Norway**, where the six weeks' – and in the near future ten weeks' – paid parental leave for the father may not be transferred to the mother. If the

[10] For an overview see the impact assessment report accompanying the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/85/EEC 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, SEC(2008) 2596, available at http://ec.europa.eu/governance/impact/cia_2008_en.htm, last accessed 19 June 2009.

father does not use this leave, it is then lost. In **Greece** the leave is not transferable in the private sector, but in the public sector it is. In **Finland**, there exists a non-transferable 'father's month' and parental allowance is provided subject to the condition that the 'other' parent takes at least two months of the 14 months' leave. In **Slovenia** there exists a rather generous paternity leave of 90 days.

Like in the case of pregnancy and maternity, dismissal connected with parental leave is strongly prohibited in most countries. Only limited justifications are accepted. Similarly, in most states, a worker returning to work after parental leave is protected against unfavourable treatment. A worker is generally guaranteed to be able to return to the same job or, if this is not possible, to a similar job. However, a few countries do not provide such a guarantee or provide less protection (e.g. **Austria**, **Belgium**, **Germany** and **Slovenia**).

Overall, the protection granted to workers taking parental leave is the same whether the worker is a natural or an adoptive parent.

Like in the case of pregnancy and maternity, parental leave rights are generally well articulated and in many instances extend further than the EU requirements. Yet, their application in practice is far from efficient and court cases are scarce. Again, the law in the books is one thing, everyday reality is another.

In the more recent Recast Directive (2006/54), the issue of the reconciliation of work, private and family life is explicitly emphasised on several occasions. Most notably, the Member States are requested to encourage the social partners to promote equality between men and women as well as providing flexible working arrangements, with the aim of facilitating the reconciliation of work and private life. Some countries have included references to reconciliation in anti-discrimination legislation. In many other countries, however, such references are lacking (e.g. in **Belgium**, **the Czech Republic**, **Denmark**, **Finland**, **France**, **Germany**, **Ireland** and **Romania**). As such, it does not mean that no attention is being paid to the reconciliation of work, private and family life as the issue is often covered by provisions outside sex discrimination legislation, such as labour law or other more specific legal instruments, such as acts regulating the adjustment of working time or some forms of full-time or part-time leave for reconciliation purposes.[11]

5. Equal pay

As was already observed above, the principle of equal pay for men and women for equal work or work of equal value, today contained in Article 141 EC Treaty, has been entrenched ever since the 1957 Treaty. In order to facilitate the implementation of the principle, a directive was adopted in 1975. Indeed both direct and indirect discrimination are prohibited. Obviously, the introduction of legal principles alone does not eradicate unequal pay between men and women. Unfortunately, still today, the difference between the remuneration of male and female employees remains one of the great concerns in the area of gender equality: women in the EU earn on average 15% less than men, and progress has been slow in closing the gender pay gap. The differences can be partly explained by other factors, such as traditions in the career choices of men and women; the fact that men, more often than women, are given overtime duties, with corresponding higher rates of pay; the gender imbalance in the sharing of family responsibilities; glass ceilings; part-time work, which is often highly feminised; job segregation etc. However, another part of the discrepancies cannot be explained except by the fact that there is pay discrimination. And it is this pay discrimination that the principle of equal pay may help to eradicate.[12]

The most salient issue in the area of equal pay is the very broad interpretation of the notion of 'pay' by the ECJ. Pay includes not only basic pay, but also, for example, overtime supplements, special

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11 For a more detailed overview see S. Burri *Legal Approaches to Some Aspects of the Reconciliation of Work, Private and Family Life in Thirty European Countries*, European Network of Legal Experts in the field of Gender Equality, European Commission 2008, available at http://ec.europa.eu/social/main.jsp?catId=641&langId=en&moreDocuments=yes, last accessed 19 June 2009.

12 On the gender pay gap see S. Prechal *Legal Aspects of the Gender Pay Gap*, Commission's Network of legal experts in the fields of employment, social affairs and equality between men and women 2007, available at http://ec.europa.eu/social/main.jsp?catId=641&langId=en&moreDocuments=yes, last accessed 19 June 2009.

bonuses paid by the employer, travel allowances, compensation for attending training courses and training facilities, termination payments in case of dismissal and occupational pensions. In particular, the extension of Article 141 to occupational pensions has been very important (cf. Section 6).

Another important feature that should be highlighted is that the Equal Pay Directive requires that the Member States ensure that provisions in collective agreements, wage scales, wage agreements and individual employment contracts which are contrary to the principle of equal pay shall be or may be declared null and void or may be amended. Moreover, it provides that where job classification schemes are used in order to determine pay, these must be based on the same criteria for both men and women and should be drawn up to exclude discrimination on the grounds of sex.

The principle of equal pay under EU law is, in general, fully reflected in the legislation of the Member States and the EEA countries. This is often the case at both Constitutional and legislative level, either as a part of general labour law or as provided for in specific anti-discrimination legislation. Both direct and indirect discrimination are explicitly covered and the requirement of 'equal pay for similar work or work of equal value' is also often covered.

5.1. What is 'pay' and what is 'equal value'?

Like at the EU level, in most countries *pay* is interpreted very broadly, not only covering salaries as such, but also including various fringe benefits. In other words, pay may include remuneration proper, in cash or in kind, but also various bonuses, tips, accommodation, marriage gratuities, redundancy and sickness payments, as well as overtime payments and other fringe benefits. An exception is **Portugal** where the national concept of remuneration is narrower than that under EU law.

Some countries, e.g. **Germany**, **the Czech Republic** and **Hungary**, have laid down some parameters for establishing the 'equal value' of the work performed. For instance, the following criteria should be taken into account: the complexity of the work, the responsibility required, the strenuousness of the work, including both physical and psychological strain, the working conditions under which the job is performed, efficiency, experience and the required skills and qualifications. Interestingly, in **Iceland** it is recognized that work may have a substantially equal value even if a different educational background is required. On the other hand, some other countries do not have any comparable provisions in their legislation (e.g. **Latvia** and **Slovenia**). No criteria are provided in **Greece** and the old unscreened job classifications are still widely applied with a considerable risk of indirect discrimination.

5.2. Role for collective agreements and for employers

An important instrument for the realisation of the equal pay principle is the review of pay scales and job evaluation schemes. However, these pay scales and job evaluation schemes have not everywhere been scrutinized in depth. Further, while in many instances direct discrimination has been abolished, it is far from certain whether the scales and schemes applied are really sex-neutral. Indirect discriminatory features are less easy to detect and deal with. Moreover, there is the particular problem that work which is mainly performed by women is still in many cases intrinsically considered to be of lower value. Such problems exist, for instance, in **Norway**, where there is a highly segregated employment market. The pay differences there are often justified by 'market value' arguments and 'historical differences'.

Other justifications for pay differences that are often put forward in many countries and which are also generally accepted are differences in education, the scarcity of labour, seniority, the quality of the work, and efficiency. Indeed, they are part and parcel of the criteria used for the establishment of 'equal value'.

In order to assist the review of pay scales and job evaluation schemes, often new and more objective criteria are needed. In some Member States there exist rules, guidelines or other tools which provide criteria for a neutral assessment of the value of the work. More efficient and gender-neutral job evaluations may also be developed by the companies themselves, often cooperating in a project. In some countries, investigations into the (indirectly) discriminatory nature of the job evaluation schemes

can also be undertaken by equality bodies or labour inspectorates. In **Belgium**, the federal government is making an effort to develop gender-neutral classification schemes.

An important instrument for achieving equal pay is *collective agreements*. As a rule they contain provisions on pay as such (they may even contain pay scales) and they often combine this with the issue of equal pay for men and women. Alternatively, pay equality is considered to be included in the more general provisions on gender equality in the collective agreement in question. The problem that may arise, however, is that pay systems consist of several different parts of remuneration. Often, collective agreements lay down the minimum or a basic salary only. The remainder of the pay component is negotiated on an individual basis or is a matter which is left to an assessment by the employer, an assessment which may be rather discretionary. In particular in this respect there is little transparency and in the majority of the countries concerned individual income is considered to be confidential. This makes it difficult to control whether discrimination occurs. However, in **Estonia** for instance, employees have the right to request explanations concerning the grounds for calculating the salary.

Since collective agreements are so important, in some countries explicit obligations are imposed on the social partners, with the minimum requirement that collective agreements must include provisions on equal pay. However, the obligations may also go further than this. In **France**, for instance, the legislation states that compulsory bargaining, which must take place in enterprises every year on the subject of remuneration, must also include a chapter dealing with equality. As part of this obligation, the social partners must establish an instrument on how to measure equality in pay and then report on the progress on a yearly basis. The law specifies that remuneration includes wages, but also other advantages, in cash or in kind. Various provisions should ensure that this negotiation really takes place.[13]

In other countries, *obligations* are rather *imposed on employers*. They may be obliged to monitor pay practices in the workplace and present annual surveys, analyses and plans of action for equal pay. It would seem that in particular obligations to prepare pay structure surveys or to produce gender-specific wage statistics for the enterprise is believed to be useful to discover any pay discrimination and is (therefore) obligatory. This is for instance the practice in **France**. In other states, for example **the United Kingdom**, there are no obligations as such, but equal pay reviews are carried out on a voluntary basis. The incentive for this is the label 'a good practice employer'.

5.3. Enforcing equal pay

Finally, effective *enforcement* of the relevant *equal pay legislation in the courts* is also of great importance. Unfortunately, only a few cases on equal pay are brought to the courts every year (and some additional cases to the competent equality bodies). A specific reason for this low level of litigation may be that the alleged victim must often look for a comparator. The comparison is, in principle, restricted to the workplace or company where the individual works or where the same collective agreement applies. A comparison across sectors and undertakings is, as a rule, not permitted. In particular, **the United Kingdom** is notorious for the very narrow comparator-driven approach in equal pay cases. The legislation defines as an appropriate 'comparator' for these purposes a person of the opposite sex who is employed by the same employer in the same establishment, or one at which broadly similar terms and conditions apply, for 'like work', 'work rated as equivalent' (e.g. by a job evaluation scheme undertaken by the employer) or 'work of equal value'.

Another major problem is proving pay discrimination as the necessary information is of an individual and confidential nature and is not easily accessible, or is not at all available. Thus, for instance, in **Finland** it is very difficult to compare 'work of equal value' as information about other jobs is not easily accessible. In **Germany**, as there is no obligation to publish employees' salaries and fringe benefits – although this is proposed by some – it is difficult to otherwise establish whether there is gender discrimination within a company. The main argument is the protection of personal data, although the

[13] Cf. S. Laulom 'Gender Pay Gap in France', *European Gender Equality Law Review* no. 1/2009 pp. 5-15, soon available at http://ec.europa.eu/social/main.jsp?catId=641&langId=en

data could be made anonymous. Also in **Latvia** information on salaries is considered to be confidential (except for representatives of workers and/or representatives of trade unions who must have access to information on salaries, but they must also keep it confidential) and no effective mechanism exists to control pay systems in private undertakings.

6. Occupational pension schemes

As was already observed above, the ECJ has made clear in its case law – in particular in the famous *Barber* judgment[14] – that occupational pension schemes are to be considered as pay and therefore the principle of equal treatment applies to these schemes as well. According to the ECJ, and in contrast to the so-called statutory schemes, to be discussed in Section 7, Article 141 EC applies to schemes which are:

i) the result of either an agreement between workers or employers or of a unilateral decision of the employer;
ii) wholly financed by the employer or by both the employer and the workers; and
iii) where affiliation to those schemes derives from the employment relationship with a given employer.

The most important consequence of this case law was that certain aspects of the Occupational Schemes Directive, which was adopted in the meantime, were contrary to Article 141 EC and had to be amended. The most salient forms of discrimination in this Directive were the retention of different pensionable ages for women and men and the exclusion of survivor's benefits for widowers.[15] In the light of the ECJ's case law, these forms of discrimination were no longer allowed. Similarly, in relation to the use of gender-segregated and different actuarial factors – in particular the different longevity of women and men (i.e. the fact that on average women live longer which also means that they need old-age pensions for a longer period of time) – the ECJ 'corrected' the Occupational Schemes Directive (86/378) to a certain extent.[16]

The case law on occupational pensions had a considerable impact on equal treatment in occupational pension schemes in those Member States where it had been believed that Article 141 EC was not applicable and certain forms of discrimination were still allowed.

6.1. Uncertainty about the nature of national schemes

Apart from the problem that in some countries it was initially believed that Article 141 did not apply to their national schemes, another source of confusion was and still is the distinction between occupational schemes and statutory schemes. In some countries the characteristics of the national social security system do not correspond with a concept such as 'occupational pension schemes'. This led the respective governments to believe that it was not necessary to transpose the EU provisions on occupational social security schemes, even after the amendments to the initial directive (e.g. **Bulgaria**, **Finland**, **Latvia** (in relation to the so-called long-term service pensions), **Romania**, **Slovakia** and **Sweden**).

Illustrative of the problems that occur is, for instance, the situation in **Greece**, where the concept of occupational pension schemes is virtually unknown. Therefore, it is unclear which Greek social security schemes fall under this concept and which do not. However, in a recent judgment, the ECJ found that the Greek civil and military pensions' scheme, laid down in a code, was to be considered as an

14 Case C-262/88 *Douglas Harvey Barber* v *Guardian Royal Exchange Assurance Group* [1990] ECR I-1889.
15 Strictly speaking, there is, under ECJ case law, a difference between the retirement age in the sense of the age at which women or men have to leave their employment, which must be equal, and the age at which women and men qualify for their old-age and related pensions. In certain schemes this difference can be retained. See Section 7 on Statutory Schemes of Social Security.
16 Cf. now Directive 86/378/ EEC as amended by Directive 96/97.

occupational pension for the purposes of EU gender equality law. Therefore, the provisions of the code that differentiated between male and female workers with regard to the pensionable age and the minimum length of service infringed the principle of equal treatment. Moreover, the ECJ made it clear that such differences cannot be justified as a form of positive action: the measures at stake cannot be considered as measures that contribute to helping women conduct their professional life on an equal footing with men.[17]

The crucial question in this case was whether the Greek scheme had to be considered as a statutory one, since in that case a long list of exceptions, including differences in pensionable age, are applicable. The ECJ decided otherwise.

However, **Greece** is not the only country encountering this problem. The distinction between statutory and occupational schemes is (and was) problematic for some 'older' Member States, such as **France**, **Italy**, **Austria**, **the United Kingdom**, **Finland** and **Denmark**. Moreover, some of the 'new' Member States, in particular the post-communist states, had restructured their social security system in accordance with the so-called 'World Bank Model' (e.g. **Bulgaria** and **Hungary**). This model does not follow a three-pillar structure like the one used in the EU framework (i.e. statutory, occupational and private schemes). Instead, the World Bank Model follows the distinction between state schemes, mandatory savings schemes and voluntary schemes. It would seem that it is less obvious how to apply the EU criteria for occupational schemes to the latter model. Furthermore, there may also be other reasons why the national social security structure just does not fit within the EU division, as was the case in **the Czech Republic**. Despite this, in its judgment of December 2008, the ECJ declared that **the Czech Republic** had failed to adopt (all) the laws, regulations and administrative provisions necessary to comply with relevant directives on equal treatment in occupational pension schemes.[18]

6.2. Actuarial factors

As already observed above, the use of gender-related actuarial factors is, within certain limits, still allowed under the Occupational Schemes Directive. Have all the Member States and the EEA countries used this option? An overall look at the occupational schemes provides the following picture:

- The use of unisex actuarial data – i.e. using the same average life expectations for purposes of the old-age pension for both sexes – is common in **Denmark**, **France and Iceland**, and can be found in certain large-scale schemes in **the Netherlands**, **Sweden** and **Greece**.
- Gender-related actuarial factors are used in, for instance, **Belgium**, **Germany**, **Italy**, **Liechtenstein**, **Malta**, **Norway**, **the United Kingdom** and in some schemes in **the Netherlands**, **Spain**, and **Luxemburg**. In **Italy**, such use is not prohibited by law, but at the moment there are no occupational schemes that make a distinction between men and women as regards gender-related actuarial factors. In **Austria**, the use of gender-related actuarial data is allowed under a new (2007) provision of the Act on Private Pensions.

7. Statutory schemes of social security

Equal treatment of women and men in statutory schemes of social security was introduced in 1979 (Directive 79/7). Statutory schemes ensure certain benefits for workers which is not so much a matter that falls under the employment relationship, but is rather a matter of – general – social policy. They concern protection in the case of sickness, invalidity, old age, accidents at work, occupational diseases, and unemployment. Survivors' and family benefits are in principle excluded. The Directive contains a long list of derogations, i.e. areas in which discrimination is still allowed.

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17 Case C-559/07 *Commission of the European Communities* v *Hellenic Republic* [2009]; not yet reported in ECR. Cf. also Case C-46/07 *Commission of the European Communities* v *Italy* [2008]; not yet reported in ECR.

18 Case C-41/08 *Commission of the European Communities* v *Czech Republic* [2008]; not yet reported in ECR.

The two most important derogations pertain to:

- The determination of different pensionable ages for men and women in old-age pensions and retirement pensions;
- Certain advantages related to the fact that the persons concerned had brought up children and may have interrupted employment for that purpose.

Despite these derogations, the Directive has had a considerable impact in a number of Member States, like **the Netherlands**, **Belgium**, **Germany**, **the United Kingdom** and **Ireland**.

Moreover, some litigation revolved around the question of whether a scheme is statutory or occupational. As already pointed out in Section 6 above, this is particularly important since certain exceptions are allowed under the Statutory Schemes Directive but not under the Occupational Schemes Directive.

Most of the transposition measures taken by the respective countries concerned amendments to the rules governing the various schemes. In many countries, social security legislation is a complicated matter, governed by a web of legislative provisions, and this is also true for the introduction of gender equality in this domain. All the relevant legislation had to be screened.

In some states, the provisions in general equality legislation may also concern social security. For instance in **Belgium**, the so-called 'Gender Act' from 2007 also contains a prohibition of discrimination in statutory social security schemes.

7.1. Family and survivor's benefits

Family benefits and survivors' benefits are not covered by the Statutory Schemes Directive. Nevertheless, it is interesting to note that in most of the Member States and EEA countries, gender discrimination in these areas has been abolished, independently of EU law requirements. In two Member States a transitional regime exists for the introduction of equality in this area (**Germany** and **Sweden**). The only Member State where the benefits are not yet entirely equalized is **Cyprus**.

7.2. Social assistance

Social assistance is partially excluded from the scope of the Directive. Only where it intends to supplement or replace the statutory schemes does the prohibition of discrimination laid down in that Directive apply. Yet, it would seem that, overall, the social assistance schemes are at least gender-neutral (which unfortunately sometimes means that men and women are treated equally poorly, the level of benefits often being low). An exception to the equal treatment in social assistance schemes is the fact that a means test, which seems to exist in quite a few of the schemes (although it has different modalities), may amount to indirect discrimination. However, it is to be expected that the means test will be objectively justified if submitted to the courts, the ECJ included. From the ECJ case law it can be deduced that, in schemes which guarantee a minimum subsistence level, the Member States may take into account that persons who are dependent on spouses are less in need of a benefit than single persons. This is indeed motivated by the necessary control of social expenditure.[19] As it is still the case that more women are dependent on their husbands than the other way round, at the end of the day fewer women than men will qualify for the assistance in question.

7.3. Derogations from equal treatment: periods of care

As to the derogations from the principle of equal treatment, a similar tendency can be observed: many countries have abolished gender discrimination on their own initiative. As was already observed, the two most important derogations relate to periods of care and to the pensionable age.

[19] Case C-229/89 *Commission of the European Communities* v *Kingdom of Belgium* [1991] ECR I-02205.

As far as periods of care are concerned, these are taken into account by some states in one form or another. In fact, there is a whole array of these 'advantages' that relate to the fact that women, or more often one of the parents, has engaged in raising the children. They can take the form of qualifying periods, i.e. periods on leave that nevertheless count for the purposes of (certain types of) social security, various bonuses or notional contributions. Much depends on the national scheme in question.

The majority of the countries concerned seem to opt for gender-neutral advantages in this respect. In **France**, the advantage of a 2-year credit for women per child has been upheld. However, in a recent case, the *Cour de Cassation*, applying Article 14 of the European Convention on Human Rights, held that such a difference in treatment between men and women is contrary to the Convention; it can only be allowed if there is an objective and reasonable justification for this difference.[20] Thus the man who brought the case, a father who had raised six children, was entitled to the same pension benefits as a woman. In some countries there are presumptions in favour of women (e.g. **Germany** and **Italy**) or only women may benefit (**Cyprus**, **Italy**). In **Greece**, women employed in the private sector, in the first place, are entitled to a service/pension credit and only if they make no use of this may the father benefit from it, provided that he is insured by the same scheme. In **Lithuania**, the advantages in respect of old-age pension schemes are gender-neutral, but there is one exception in favour of women who have brought up and raised, until the age of eight years, seven or more children.

7.4. Derogations from equal treatment: difference in pensionable age

As far as the traditional difference in pensionable age is concerned, the overall picture of the statutory schemes in the Member States and the EEA countries is as follows:

- In some states there is no difference in this respect (**Cyprus**, **France**, **Iceland**, **Ireland**, **Liechtenstein** (since 2001), **the Netherlands**, **Norway**, **Portugal**, **Sweden**, **Luxemburg**, **Spain**);
- In other states there is or has been a process of equalizing the pensionable age, sometimes with long transitional arrangements (**Austria**, **Belgium**, **the United Kingdom** (transitional measures until 2020), **Estonia**, **Germany**, **Malta**, **Slovakia**, **Hungary**);
- In the remaining states the difference in pensionable age is maintained (**Bulgaria**, **Czech Republic** (if a woman has brought up children), **Italy** (the difference has in fact been reintroduced), **Lithuania**, **Poland**, **Romania**, **Slovenia**, **Greece**).

Interestingly, it is in particular the former 'socialist' countries that maintain this difference. In these countries the difference is regarded as fair since it compensates for unequal working conditions for men and women. Although the difference has given rise to some litigation, the (male) complainants have not been successful, at least not in **the Czech Republic**. The lower pensionable age for women, when a woman has raised one or more children, does not apply to men, even where they raise children alone. The Czech Constitutional Court has upheld this form of discrimination. As we have seen in Section 6 the ECJ has another opinion concerning this difference in pensionable cases. However, in the area of statutory social security it cannot overrule the explicit wording of the Statutory Schemes Directive.

8. Self-employed and assisting spouses

Protection against gender discrimination of self-employed persons and their spouses, who are not employees or partners, is a complex area and is less well-developed in EU gender equality law. On the one hand, the Member States are requested to take measures which are necessary to ensure the elimination of all provisions which are contrary to the principle of equal treatment, especially in respect of the establishment, equipment or extension of a business or the launching or extension of any other

[20] *Cour de cassation*, 19 February 2009, n°07-20668.

form of self-employed activity including financial facilities. On the other hand, however, several other obligations under the relevant Directive (86/613) are rather 'soft'.

For instance, as far as the protection of female self-employed workers or assisting spouses during pregnancy and maternity is concerned, the Member States are merely required to examine whether, and under what conditions, these persons have access to services supplying temporary replacements or existing national social services, or are entitled to some kind of social security benefits in the form of cash payments. The Directive does not set minimum standards and neither does it prescribe that these groups should enjoy independent rights to access these services or cash benefits. Another crucial problem, namely that assisting spouses often have no professional status at all, is addressed by requesting the Member States to examine the possibilities for recognising their work. Seen against this background, it is important to note that the 'Self-employed Directive' is currently under review.[21]

Similarly, it will not come as a surprise that in many Member States the protection of this category of persons goes further than the discrete requirements in the Directive.

To this one may add, however, that various other gender equality directives are also relevant for the equal treatment of the self-employed, but then in certain respects only. Directive 2002/73, for instance, introduced the principle of non-discrimination as far as access to self-employment is concerned. Also Directive 2004/113, the 'Goods and Services Directive' discussed below, is relevant to the self-employed, because it requires equal treatment in relation to, for instance, the renting of accommodation and services such as banking, insurance and other financial services.

Due to its non-committal character, in most countries the impact of the Directive has been quite modest. Often provisions on the equal treatment of men and women in a self-employed capacity are included in legislation on gender equality. In some countries the rules and recommendations laid down in the Directive have extended social security protection for self-employed persons and/or assisting spouses.

Although most of the countries have taken measures to eliminate provisions which are contrary to the principle of equal treatment, it may be questioned in how far this *abolition of discriminatory provisions* also includes the elimination of indirect discrimination. The fact that discriminatory legal norms have been abolished does not necessarily mean that equality has been achieved in practice. In particular, indirect discrimination is still widespread. An indication of that is the enduring strong gender segregation in the area of self-employment.

8.1. Pregnancy, maternity and parental rights

The protection of the pregnancy, maternity and parental rights of self-employed women and assisting spouses are often closely linked to access to social security schemes in general. Some countries have legislation concerning *pregnancy* and *maternity* (and often also adoption), which applies to self-employed women, but the conditions are sometimes less favourable than for workers. For instance in **Ireland**, the self-employed are entitled to maternity and adoptive leave benefits, and in **Italy** there exists a maternity allowance for self-employed women and in certain areas also three months' remunerated parental leave. In **Norway** self-employed women have received full maternity benefits since 2008. In **Finland**, all parents are entitled to benefits during parental leave, including the self-employed. Sometimes only specific groups of self-employed person are granted paid parental leave, but the conditions are sometimes less favourable than for workers.

Assisting spouses are also entitled to maternity protection in some countries. However, their affiliation is sometimes subject to specific conditions, and in some cases less favourable conditions apply to persons working in the agricultural sector.

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[21] Proposal for a Directive of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Directive 86/613/EEC, COM(2008) 636, available at http://ec.europa.eu/social/BlobServlet?docId=608&langId=en, last accessed 19 June 2009.

The protection of the health and safety of pregnant self-employed women or assisting spouses merits specific attention. The same is true for conditions applying to access to private insurance schemes in relation to pregnancy and maternity. For instance in **the Netherlands** and **Portugal**, self-employed women encounter difficulties in accessing private health insurance schemes, in particular as far as insurance for pregnancy and maternity leave is concerned.

In most countries no provisions exist on services supplying *temporary replacements* and this is a serious problem. However, sometimes specific facilities are provided such as, for example, a stand-in system in the agricultural sector (**Finland**) or replacements provided through insurance companies, as regulated under the Business Support Act (**Austria**). Benefits for temporary replacements are sometimes granted, but only for a short period of time and the benefits are rather low.

8.2. Professional status of assisting spouses

As already observed, the *professional status of assisting spouses* and, in particular their position under the social security scheme, is a key problem for assisting spouses and the picture is rather complex. In some countries, important steps have been taken in this respect. In **Spain**, for instance, a new legal status has recently been created (in 2007) so as to recognize the work and social protection of assisting spouses.

A form of recognition of the status of assisting spouses is mirrored in the social security systems of those states where affiliation is compulsory. Mostly additional requirements apply, for instance that an assisting spouse has a taxable income and/or reaches a certain level of income. In these systems assisting spouses enjoy individual rights.

In **Belgium**, for instance, affiliation to the whole system of social security for the self-employed, covering *inter alia* sickness and certain maternity benefits, has been made compulsory for assisting spouses as well. Also in **Slovenia**, both self-employed and assisting spouses are covered by mandatory social security schemes. Under certain conditions they are also entitled to maternity and parental leave and benefits. In **Portugal**, the maternity provisions for dependent workers have been partially extended to independent workers. The latter category, which also includes assisting spouses, is also covered by a social security scheme. Under **Hungarian** law, assisting family members (which is a broader category than assisting spouses) are covered by the social security scheme on a compulsory basis if they earn at least one-third of the statutory minimum wage. In **France**, since 2005, the spouse of a self-employed worker, participating in the spouse's activity, has to decide whether he/she wishes to work in the 'spouse's business' as an employee, as a partner or as a co-working spouse (*conjoint collaborateur*). In the last-mentioned case, the co-working spouse must contribute to a pension scheme. Furthermore, this spouse can apply for sickness benefit and for a daily maternity benefit plus a benefit for a temporary replacement. The spouse can also apply for a benefit for a temporary replacement for paternity leave. In the area of agriculture, these rights are also granted even if the couple are not legally married but have entered into a civil partnership (*pacs*). In Cyprus assisting spouses are covered compulsorily by the social security scheme for the self-employed and are entitled to all benefits under the same conditions, including maternity allowance. Some form of recognition, combined with mandatory social security coverage, also exists for instance in **Cyprus**, **the Czech Republic** and **the United Kingdom**.

Some countries have a mixed system of mandatory cover for some risks and voluntary insurance for others. In **Denmark**, for example, self-employed men and women and assisting spouses are covered by the social security system. However, some risks (unemployment, occupational injuries) are only insured if self-employed persons and assisting spouses join the scheme on a voluntary basis. In **the Netherlands** assisting spouses are automatically covered by the Old-age Pension Act and the Survivor's Pension Act and they can claim social assistance. Other risks can be covered by private insurance.

In other countries assisting spouses may join certain social security schemes on a voluntary basis, usually subject to the condition that contributions are paid. This is for instance the case in **Austria**. In **Germany**, the self-employed and assisting spouse enjoys no protection whatsoever in relation to pregnancy and maternity, unless they have joined the social security scheme voluntarily and paid the

contributions required. A parental allowance is paid to those who are covered by statutory social security, i.e. farmers and members of the liberal professions.

The situation of the legal status of assisting spouses, in particular as reflected in the social security scheme, is unclear in **Bulgaria** and in some countries there is no protection or recognition at all (e.g. **Slovakia** and **Ireland**).

9. Goods and services

The equal treatment of men and women in the access to and the supply of goods and services has been introduced in EU gender equality law relatively recently (in 2004). Here, for the very first time, gender equality outside the field of employment is addressed. Direct and indirect discrimination, including less favourable treatment of women for reasons of pregnancy and maternity, is prohibited, as well as harassment and sexual harassment and instruction to discriminate wherever goods or services are offered or supplied. The Directive also contains a provision on positive action.

An important exception is that the Directive does not apply to the content of media and advertising nor to education. Another exception relates to goods and services provided exclusively or primarily to members of one sex when there is a justification for doing so. Even so, the aim pursued must be legitimate and the means chosen to achieve that aim must be appropriate and necessary. Special rules apply in the area of insurance. In principle, the use of sex as a factor in the calculation of premiums and benefits may not result in differences in individual premiums and benefits. However, some exceptions for the use of different gender-based actuarial data – e.g. the fact that, on average, women live longer than men – are allowed. However, costs related to pregnancy and maternity may in no event result in differences in individual premiums and benefits.

The Directive has been transposed in most of the countries by amendments to existing legislation.[22] In some countries new legislation has been designed to regulate sex discrimination in relation to goods and services. In many countries, the legislation goes further than what the Directive requires and also covers areas explicitly excluded from the Directive. For instance, gender discrimination in *education* is covered in **Belgium**, **France**, **Slovakia**, **Sweden**, **Greece**, **Hungary**, **Ireland**, **Lithuania**, **Malta**, **the Netherlands**, **Spain** and **Finland**.

Greece, **Ireland**, **Spain**, **Malta**, **France** and **Belgium** also cover discrimination in relation to the *media and advertising*. **Lithuanian** legislation prohibits humiliating advertisements and the encouragement of public attitudes that one sex is superior to the other.

On the other hand, some limitations may have sneaked in during the transposition process, for instance in **Germany**. The German legislation regulates gender discrimination in access to goods and services only to the extent that the goods and services are covered by 'mass contracts'. These are contracts concluded on similar terms with multiple parties, typically without reference to the identity of the other party, or where the identity of that person is of little importance. Such a limitation is highly questionable as a proper transposition of the Directive.

Overall, the central concepts have been implemented on a satisfactory basis. The main problem is that the national transposition legislation seems to be rather abstract and vague, in particular because the transposing legislation does not define 'goods' and 'services'. Similarly, since the transposition is relatively recent, only time will tell what the impact will be in everyday life. Below, some salient issues are briefly discussed.

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[22] For a detailed discussion see S. Burri & A. McColgan *Sex-segregated Services*, European Network of Legal Experts in the field of Gender Equality, European Commission 2008, available at http://ec.europa.eu/social/main.jsp?catId=641&langId=en&moreDocuments=yes, last accessed 19 June 2009, and S. Burri & A. McColgan *Sex Discrimination in the Access to and Supply of Goods and Services and the Transposition of Directive 2004/113/EC*, European Network of Legal Experts in the field of Gender Equality, European Commission, not yet published.

9.1. Pregnancy, maternity and parenthood

A rather widespread phenomenon is *discrimination in relation to pregnancy and maternity*.

In **Poland**, for instance, it quite often occurs that owners refuse to rent flats to pregnant women or families with young children. In some countries, pregnant women or women with young children may also experience difficulties in obtaining loans, even if these are enterprise related. Another well-known example of pregnancy discrimination is restrictions on pregnant women travelling by aircraft which are not always necessary and objectively justified.

Viewed against this background it is important to note that most countries now explicitly regulate discrimination in connection with pregnancy and maternity in the area of goods and services (e.g. **Austria**, **Belgium**, **Cyprus**, **Estonia**, **Finland**, **France**, **Greece**, **Hungary**, **Ireland**, **Italy**, **Latvia**, **Malta**, **the Netherlands**, **Norway**, **Portugal**, **Romania**, **Slovakia**, **Spain** and **the United Kingdom**). In other countries discrimination in connection with pregnancy and maternity is not regulated or is only implicitly regulated. Whether this is to be regarded as problematic very much depends on the national context. Another point of concern might be the lack of specific provisions dealing with breastfeeding as a form of discrimination.

Another form of discrimination closely related to maternity discrimination is *discrimination against parents*, i.e. in particular parents with young children who experience difficulties in, for instance, access to public spaces and transport. In **Estonia**, the advertising of 'children-free' spa-hotel stays has given rise to quite a bit of controversy. Although the Directive and, therefore also the transposition legislation, does not regulate discrimination against parents, such discrimination may amount to indirect gender discrimination. In some countries discrimination between parents occurs and amounts to direct gender discrimination. In **Romania**, for instance, the National Council for Combating Discrimination had to deal with a case involving refusals by hospitals to allow fathers to stay with hospitalised children.

9.2. Positive action

Most of the national legislation provides scope for *positive action* in the area of access to and the supply of goods and services, though sometimes in cautious terms. Such positive action may, for instance, take the form of 'women's universities' and other mechanisms to encourage women to enter technical fields (e.g. **Germany**). But other countries – **Latvia**, **Malta**, **Slovakia**, **France** and **the United Kingdom** – do not allow positive action, or only to a very limited degree.

9.3. Derogations from equal treatment

Under the Directive, *differences in treatment are allowed* 'if the provision of the goods and services exclusively or primarily to members of one sex is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary'. A great deal of the transposing legislation has adopted this provision and overall the legislation appears to be at least broadly in conformity with the Directive. In some countries – **the Netherlands**, **the United Kingdom** and **Ireland** – acceptable instances of differential treatment are explicitly listed.

Examples of such differential treatment are services to women suffering from domestic or sexual violence, sanitary facilities, changing and sleeping rooms, saunas, swimming pools, fitness clubs, female driving schools and taxi services which specialise in secure taxi services. Differential treatment may be justified in such cases on grounds of personal privacy, decency, safety considerations, etc. Similarly, a difference in treatment in relation to beauty and sporting contests may be justified. In the area of life insurance a justification may lie in the very fact that there might be a relevant difference in sex as well, although here some risks exist that insurance companies may rely on actuarial factors more than is necessary. The use of gender-segregated actuarial data is allowed, though subject to certain conditions, for instance in **Austria**, **Belgium**, **Bulgaria** and **Estonia**.

However, there are also instances of different treatment which are more questionable, as in the case of male-only clubs or women's cafés. In any case, in a controversial decision relating to an **Irish** golf club

that denied membership to women the High Court accepted that 'there is nothing inherently undesirable with persons seeking – in a social context – the society of persons of the same gender'.[23]

Outright prohibited under both the Directive and national transposition legislation are practices such as differential pricing of services in or access to nightclubs and differential pricing structures in dating services. In **Austria**, for instance, a case was decided in January 2009 by the Equal Treatment Commission concerning the legality of providing free access to a nightclub to women (but not to men). The Commission found that there was direct discrimination of men. This case also provides a good example of instructions to discriminate, as the owner of the club had instructed employees at the cash desk. Obviously, this type of differentiation reinforces sexual stereotyping and the commoditisation of women, instead of fighting discrimination on grounds of gender.

10. Enforcement and compliance

An important part of EU gender discrimination law relates to the defence of equal treatment rights. Provisions have been enacted regarding protection through court proceedings, remedies and sanctions, the burden of proof, and protection against victimisation. Similarly, the promotion of equal treatment through equality bodies and through social dialogue are considered vital.

Before embarking upon a brief discussion of all these aspects, it seems advisable to highlight three general points: the so-called direct effect of gender equality law, the role of the ECJ and the role of the European Commission.

In 1975, in the famous *Defrenne II* case, the ECJ decided that individuals may rely on Article 119 EEC Treaty (now Article 141 EC Treaty) in the national courts in order to receive equal pay for equal work or work of equal value, without discrimination on grounds of sex.

Later case law also clarified that directives can be relied upon in the national courts, though with certain limitations. In any event, this possibility to use EU gender equality law in national proceedings is a powerful tool for individuals to enforce their EU equality rights wherever gender equality law is not properly transposed into national law or where it is not adequately applied and protected.

Whenever EU gender equality law is relied upon in the national courts, the courts are able and sometimes even obliged to request preliminary rulings – a sort of binding advice on the interpretation of EU law provisions – from the ECJ (Article 234 EC Treaty). In the field of equal treatment, since 1971 the ECJ has delivered more than two hundred binding judgments, sometimes providing far-reaching interpretations of relevant provisions, like the judgment in *Defrenne II*. Generally speaking, the ECJ has played, in particular through this preliminary procedure, a very important role in improving the ability of women and men to enforce their equality rights.

Finally, the European Commission has an important task in the enforcement of EU gender equality law. The Commission monitors and analyses whether the Member States are fulfilling their obligations regarding the implementation of Treaty provisions and directives. The Commission may also initiate inquiries into specific problems in a certain Member State, either on its own initiative or on the basis of complaints by individuals or organisations, which can be submitted to the services of the Commission rather easily. The Commission has the power to bring a case before the ECJ. If the ECJ considers that the Member State has failed to fulfil an obligation under EU law, EU gender equality law included, and the Member State does not take the necessary measures to comply with the judgment of the ECJ in good time, the state might even be subjected to penalties.

10.1. Judicial procedures

Member States have the obligation to ensure that judicial procedures are available to all persons who consider themselves to have been wronged by a failure to apply the principle of equal treatment to

[23] *Equality Authority* v *Portmarnock Golf Club & Ors* [2005] IEHC 235, 10 June 2005 (on appeal).

them, even after the relationship in which the discrimination is alleged to have occurred has ended. According to the ECJ's case law, national courts must provide effective judicial protection and access to the judicial process must be guaranteed.[24]

In a number of countries the courts charged with the enforcement of equality law are *specialised labour courts*. Thus, for instance, there is the Industrial Disputes Court in **Cyprus**, the Equality Tribunal in **Ireland**, special labour and social security courts in **Poland** and employment tribunals in **the United Kingdom**. Normally the *raison d'être* of specialised employment tribunals and/or labour courts is their accessibility to employees, which is reflected among other things by the comparative informality of the proceedings, their low costs, etc. Yet, even where they do exist, they do not have a monopoly over the enforcement of sex equality claims; civil and sometimes criminal courts may also be involved.

The main feature with regard to courts is that in a majority of the countries – e.g. **Austria**, **Belgium**, **Estonia**, **France**, **Greece**, **Germany**, **Latvia**, **Lithuania**, **Luxembourg**, **the Netherlands**, **Portugal** – there is a division of competence between *civil and administrative courts*. Moreover, in many countries, public sector employees, in particular civil servants, are in a special position and there may exist special arrangements in the administration of justice, as in **the Netherlands** and **Greece**, where a special court recently established by virtue of the Constitution hears civil servants' pay cases.

As far as criminal law is concerned, it would seem that the use of criminal law in labour law/gender equality matters is a sensitive issue, in particular for those Member States which prefer law enforcement through administrative and civil law channels (see also below, 10.2).

Court proceedings in general, and discrimination cases in particular, are a stressful experience. Moreover, alleged victims of discrimination are often in a dependent and therefore vulnerable position. Taking a case to the courts may prove to be very difficult, also from a financial point of view. Viewed from this perspective, organisations that act on behalf of the victim or, at least support her/him, may play a very important role. To this one may add that in the area of the provision of goods and services, due to the specific difficulties associated with individual litigation in this context, such as low sums to be recovered against high costs, action by organisations are crucial. For these reasons, EU gender equality law provides that *organisations and associations* which have, in accordance with the criteria laid down in national law, a legitimate interest in whether the provisions of the equal treatment directives are complied with, may act before the courts. Such organisations, for example associations for women's rights or trade unions, may engage, either on behalf or in support of the complainant, with his/her approval, in any judicial or administrative procedure provided for the enforcement of the obligations under the equal treatment directives.

Much depends on what national law provides. On the one hand, in **Portugal** for instance, gender equality NGOs, similar associations and often also trade unions may participate in and promote legal action for the defence of collective interests, even in the absence of a specific victim. Similarly, in **Iceland** organisations bring actions in their own name or on behalf of the alleged victim. Also in **France**, **Bulgaria**, **the Netherlands**, **Spain**, **Romania**, **Poland** and **Italy** organisations and trade unions take action under certain conditions on behalf of the victims and, indeed, assist persons in court. In **Italy**, equality advisers may also assist victims or may act in their own name in cases of collective discrimination. Comparable rules for actions by organisations in the case of collective discrimination also exist in **Hungary** and, since 2008, in **Slovakia**.

In other countries, like **Luxembourg**, ministerial approval is needed in order to permit non-profit organisations to litigate on behalf of victims and also in **Austria** only organisations mandated by legislation may support victims of discrimination in court cases.

In many countries, equality bodies may also act on behalf or at least in support of victims of discrimination (see below, at 10.5)

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[24] Well-established case law ever since Case C-222/84 *Marguerite Johnston* v *Chief Constable of the Royal Ulster Constabulary* [1986] ECR I-01651.

On the other hand, in some countries, like **Germany**, **Finland** and **Slovenia**, NGOs, interest groups and other legal entities have no standing before the courts.

Court proceedings are often preceded by an *administrative procedure* and many cases may already be resolved at that level, either, for instance, before an equality body (see below, at 10.5) or through *labour inspectorates*. In a number of countries, for instance in **Belgium**, **Germany**, **Greece**, **Italy**, **Luxembourg**, **Portugal**, **Romania**, **Slovakia** and **Slovenia**, labour inspectorates play an important role in the enforcement of equality law.

Conciliation, explicitly referred to in the Recast Directive, also precedes court proceedings. In a number of states conciliation is compulsory, though before proceedings are brought before certain courts, or only compulsory in certain types of disputes. Thus in **Liechtenstein** conciliation is compulsory before proceedings can be brought before the courts. In **France** and **Germany** conciliation is only compulsory as the first step of court proceedings before the labour courts. In other states, for instance **Belgium** and **Italy**, conciliation is only compulsory in certain types of disputes, i.e. individual or collective, respectively. Even where it is not compulsory, conciliation may still play an important role as is the case in, for instance, **the United Kingdom** and in **Ireland**. *Mediation* may play an important role as well.

10.2. Remedies and sanctions

Infringements of the prohibition of discrimination must be met by effective, proportionate and dissuasive sanctions, which might comprise the payment of compensation to the victim.

These requirements were initially developed by the ECJ and only later laid down in EU discrimination legislation. Compensation or reparation has to be real, effective and dissuasive. Moreover, it has to be proportionate to the damage suffered. The fixing of a prior upper limit may not, in principle, restrict such compensation or reparation. Similarly, national law may not exclude an award of interest.

The picture in the Member States and EEA countries concerning the issue of remedies and sanctions varies greatly.

The sanctions which can be imposed can be administrative, criminal fines or even imprisonment (e.g. **France**, **Greece**), civil, disciplinary or any combination of these. Criminal sanctions are hardly ever imposed in **the Netherlands**, since sex discrimination as such is not included in the Criminal Code.

The reinstatement of the employee can be ordered in certain types of proceedings in a number of countries, including **Cyprus**, **Germany** and **France**. In **Greece** there is no question of reinstatement, as the illegally dismissed employee retains his/her post; the dismissal is deemed never to have taken place. Discriminatory acts are null and void, in some countries 'voidable' or they can be annulled by the administrative or other competent courts (e.g. in **Greece**, **Hungary**, **Ireland**, **Lithuania**, **Norway**, **Portugal**, **Spain**). In **Ireland**, a wide range of orders for specific courses of action can be made by the courts and also in **Belgium** the courts may issue injunctions to put an end to discrimination.

Compensation is probably the most common form of remedy. In some countries – for instance **Austria** and **Germany** – limits are imposed on the amount of compensation which can be awarded for a refusal to appoint someone to a particular post. The limits to compensation in relation to other situations that existed in both **Germany** and **the United Kingdom** have been abolished as a result of litigation before the ECJ. In **Finland**, the maximum compensation in cases concerning access to employment is capped at EUR 16 210 for all candidates that have been discriminated against. Yet, no maximum is set for other situations where discrimination takes place.

The real issue with compensation, however, is not so much the existence of an upper limit, but rather the non-existence of a minimum amount. In some countries such a minimum does exist, like in **Poland**, where there is a minimum which is related to a minimum remuneration to be established on the basis of specific rules. More generally it would seem that in some countries the problem is not so much the non-existence of effective sanctions and remedies, but rather the unwillingness of the courts to grant such remedies or impose such sanctions. This is in fact the background to a new type of indemnity

recently introduced in **Sweden**. This discrimination indemnity is exclusive for discrimination and should compensate for the very fact that the indemnities awarded by the courts are not very effective.

In some states, an extra requirement of '*intent*' is imposed for certain remedies, which is difficult to reconcile with EU law standards. For instance, in **Finland**, when relying on tort law, it is required that the defendant has acted *intentionally*. In **Germany** also a requirement of fault, intent or gross negligence is imposed in certain circumstances.

As the examples of pre-existing limits on compensation in **Germany** and **the United Kingdom** show, individual litigation can have an effect beyond the individual case. In both countries changes in the legislation resulted from challenges brought by individual applicants. Successfully challenging the conformity of national legislation with Community law should always bring about an amendment of that legislation, but in this area the impact has been striking.

The above examples also illustrate another problem. By its very nature, the remedy awarded or the sanction imposed, just like equality litigation in general, will often remain limited to the individual case. In many cases a finding that an employer has been discriminating against an employee does not guarantee that the practice will change. Another employee may be obliged to start his/her own legal proceedings. An exception may indeed be when the discrimination lies in national legislation or in a collective agreement and the litigation has the effect that these are amended. As to the amendment of collective agreements, it must be pointed out, however, that much depends on the willingness of the trade unions to renegotiate. As gender equality is often not a leading priority of the unions, discriminatory provisions may continue to exist for a long time. One of the possible mitigating factors is greater standing for NGOs and other interest organisations, which may bring actions in the general interest, discussed briefly above.

10.3. Victimisation

As a matter of EU gender equality law, persons who have made a complaint or instigated legal proceedings aimed at enforcing compliance with the principle of equal treatment have to be protected against dismissal or adverse treatment in reaction to their action.

This provision has been transposed on a satisfactory basis in most of the countries. In **Poland**, a recent amendment to equality legislation has corrected the very narrow protection given under the previous law. The scope of protection against worse treatment in case of filing a discrimination claim has been broadened, by extending its application to supporting and assisting persons and by extending the prohibition of retaliation also to other kinds of unfavourable treatment besides dismissal from one's work.

10.4. Burden of proof

As a result of difficulties which are inherent in proving discrimination, EU gender equality law provides for a shift in the burden of proof. An alleged victim of discrimination has to establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination. It is, however, for the respondent to prove that there has been no breach of the principle of equal treatment. If the Member States so wish, they may introduce more favourable rules for plaintiffs. These rules do not apply in criminal proceedings. Again, various aspects of this law of evidence in discrimination cases were initially developed by the ECJ and only later laid down in legislation.

In most Member States and the EEA countries, a shift in the burden of proof is implemented in national law, or it already existed as a matter of national law, at least in certain cases, such as pregnancy discrimination (e.g. **the Netherlands**). This holds true for civil and labour law in particular. A shift in the burden of proof does not apply in criminal law and sometimes also not in administrative proceedings. The latter may, however, be questionable under EU gender equality law. Furthermore, in **the Netherlands** there is some discussion as to whether the partial reversal of the burden of proof applies in cases of victimisation and whether it should be applied in sexual harassment cases.

Also in relation to the transposition of the Goods and Services Directive, all transposition legislation shifts the burden of proof, except for the case of criminal provisions. This means that the burden of proof also changes in areas other than the traditional areas of employment discrimination.

This being said, it is still often very difficult to establish even a presumption of discrimination as the necessary data are often not readily available. As far as equal pay is concerned, in **Denmark**, the question was pending before the courts in 2002-2006 whether the principle of effectiveness could form the basis of a requirement imposed on employers to produce gender-specific wage statistics (see further also above, Section 5). Indeed, such data could help victims to identify pay discrimination. However, the Supreme Court dismissed the claim since it found that it was too general and could not be imposed upon an employer irrespective of its size. Comparable measures, which make the access to data easier, exist in **Italy**. Here companies with more than one hundred employees must draw up, every two years, a report on the workers' situation (male and female) in relation to recruitment, professional training, career opportunities, remuneration, dismissal and retirement. On the other hand, in **Germany**, the courts disagree as to whether statistical data are sufficient as *prima facie* evidence of discrimination. However, such a view is, in turn, difficult to reconcile with the well-established case law of the ECJ.[25]

Finally, another problem has arisen in **Greece**. The EU rules on the burden of proof have been transposed in that country, though only by special legislation implementing the directives. They have not been included in the Codes of Civil and Administrative Procedure which means that the rules are, in practical terms, almost unknown.

10.5. Equality bodies

Since 2002, by virtue of Directive 2002/73, the Member States and EEA countries are obliged to designate equality bodies. The tasks of these bodies are the promotion, analysis, monitoring and support of equal treatment between women and men. They may form part of agencies with responsibilities at the national level for defending human rights or safeguarding individual rights. These bodies must have the competence to provide independent assistance to victims of gender discrimination, to conduct independent surveys concerning gender discrimination and to publish independent reports and make recommendations.[26]

In order to meet this obligation, a number of states, such as **Malta** and **Spain**, have established a gender equality body or amended their existing gender equality body so as to bring it into line with EU law (e.g. **Ireland**). Some states, such as **Sweden**, **the Netherlands** , **Portugal** or **the United Kingdom**, already had a working (gender) equality body which adequately implemented Directive 2002/73.

Other states have established an equality body, not in accordance with the standards and obligations laid down in Directive 2002/73 but in response to international human rights agreements. As a result the bodies in question do not specifically and exclusively address the issue of gender equality in the workplace. Instead, these bodies adopt a more general human rights approach to gender equality. This is the case for instance in **Cyprus**, where the Commissioner for Administration (Ombudsman) was appointed as the competent body (an independent authority) to deal and decide upon discrimination in Cyprus. As a result, two separate Authorities were created, namely the Cyprus Anti-Discrimination Body and the Equality Authority, which together comprise the Cyprus Equality Body. Parallel and according to the Equal Treatment Directive the Gender Equality Committee in Employment and Vocational Training was set up under the auspices of the Ministry of Labour and Social Insurance with authority *inter alia* to give advice and receive complaints relating to employment matters. In **Slovakia**, the competencies of the Human Rights body were amended to allow for the body also to address gender equality and the other EU – Article 13 – grounds of discrimination. Interestingly, in **the United Kingdom** the opposite

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25 Cf. Case C-129/92 *Dr Pamela Mary Enderby* v *Frenchay Health Authority and Secretary of State for Health* [1993] ECR I-05535; Case C-167/97 *Regina* v *Secretary of State for Employment, ex parte Nicole Seymour-Smith and Laura Perez* [1999] ECR I-00623.

26 On equality bodies in general see R. Holtmaat *Catalyst for Change: Equality Bodies according to Directive 2000/43/EC* 2007, available at http://www.migpolgroup.com/publications_detail.php?id=159, last accessed 19 June 2009.

position has been adopted: the government has decided to broaden the mandate and incorporate human rights functions into the equality body.

A new development is that gender equality bodies are incorporated into a 'multiple grounds' equality body, in so far as they have not been part of such a more encompassing body from the very beginning. Thus, for instance, the equality bodies in **Bulgaria**, **Germany**, **Ireland**, **the Netherlands**, **Lithuania**, **Slovenia**, **France** and recently **Luxembourg** deal with a multiplicity of grounds of discrimination in transposition of all Article 13 directives.[27] Also **Sweden** has recently set up a 'multiple grounds' Discrimination Ombudsman.

In some countries equality bodies that fully satisfy the EU law requirements are still lacking. This is the case in **Poland** and in **Denmark**, where there is no equality body with the full range competences required in the gender equality directives, the Gender Equality Complaints Board having competence to provide assistance to alleged victims only. In **Greece**, an act transposing Directive 2002/73 makes the Ombudsman, whose independence is constitutionally guaranteed, an equality body. In his office a deputy Ombudsman deals with gender equality, but it is not clear whether he/she has all the powers required by the Directive. **Italy** has various bodies that could qualify as equality bodies under EU law, but it is not entirely clear to what extent they satisfy the EU requirements, in particular that of operating independently.

One of the major concerns in relation to equality bodies is indeed the *independence* of the bodies or at least their capacity to perform their tasks independently. Much here depends on, *inter alia*, the procedures for appointing the staff of the bodies, their autonomy *vis-à-vis* the government, their mandate, their investigative powers and, last but not least, their funding.

Another matter of concern is that where equality bodies deal with multiple grounds of discrimination, there are fears that this might lead to gender discrimination being marginalised.[28]

The *purposes* of the equality bodies are multiple. Similarly, their *competences* often differ in accordance with their purpose. Very generally speaking, almost all equality bodies have been established to monitor national legislation and measures and to evaluate the implementation of equal treatment and non-discrimination. Most equality bodies have a responsibility to promote gender equality and conduct research in that area. Most of them may also assist victims of discrimination by providing advice, information etc. In addition, however, competences exist which go beyond what the directives require but which are of great importance for the enforcement of gender equality law.

First, some equality bodies have the authority to hear complaints on gender equality and, in some cases, to give a non-binding opinion. This is the case in, for instance, **Austria**, **Estonia**, **Belgium**, **Cyprus**, **France**, **Iceland**, **Latvia**, **Lithuania**, **Malta**, **Slovakia**, **Spain**, **Denmark**, **the Netherlands**, **Portugal** and **Norway**. In some countries the equality bodies may issue binding decisions, like **Bulgaria** and **the United Kingdom**. In **Cyprus**, the Gender Equality Committee in Employment and Vocational Training hears complaints and submits them to the Chief Inspector for further action, but the Ombudsman's decisions when acting as the Equality Body are binding. The **Lithuanian** authority may impose administrative sanctions. The **Irish** Equality Authority may issue non-discrimination notices, a sort of binding indication concerning the steps which have to be taken. The Authority may also refer a case to the Equality Tribunal or the appropriate court.

Second, some of the equality bodies may challenge discrimination in the courts, often on behalf of a particular victim and sometimes even without an actual victim. They may sometimes do so on their own initiative and in the general interest. So, for instance in **Belgium**, **Cyprus**, **Denmark**, **France**, **Romania**, **Slovakia** and, where there is no identified victim, also in **Spain**, equality bodies have standing to litigate.

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27 Thus also including the 'non-gender' directives. See Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000, p. 22 and Council Directive 2000/78/EC of 27 November 2000 establishing a legal framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, p. 16.

28 Cf. on this aspect K. Nousiainen 'Unification (or not) of Equality Bodies and Legislation', *European Gender Equality Law Review* no. 2/2008 pp. 24-33, available at http://ec.europa.eu/social/main.jsp?catId=641&langId=en&moreDocuments=yes, last accessed 19 June 2009.

In **Hungary**, the Equal Treatment Authority may both represent victims in court or bring its own action in collective cases of discrimination, i.e. discrimination against a major undefined group of individuals. In **the United Kingdom**, the Equality and Human Rights Commission may also take judicial review proceedings in relation to unlawful actions by public authorities. However, it cannot act on behalf of victims in the ordinary courts, although it can assist individuals in bringing claims. **Malta's** National Commission for the Promotion of Equality and **Sweden's** Discrimination Ombudsman can only litigate with the victim's approval. The same is true in **Latvia**.

10.6. The role of the social partners

Increasingly, the social partners, alongside NGOs and other stakeholders, are also called upon to play a part in the realisation of gender equality. Member States and the EEA countries have the obligation to promote social dialogue between the social partners with a view to fostering equal treatment. This dialogue may include the monitoring of gender equality practices at the workplace, promoting flexible working arrangements, with the aim of facilitating the reconciliation of work and private life, as well as the monitoring of collective agreements, codes of conduct, research or exchange of experience and good practice in the area of gender equality.

Similarly, the states are required 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.

Within the Member States and EEA countries, there is a contrast between the role of social partners in relation to gender equality and the enforcement of gender equality. The important role played by collective agreements and the role of the social partners appears to be a source of concern as they often give little priority to gender equality. The same holds true for the more specific issues of pregnancy, maternity, parental and paternity rights. Often the strength and resolution of the unions in negotiating different working conditions is lacking. The fact that the social partners in general are male-dominated might indeed have an influence.

On the other hand, where the social partners take an interest this can have some real impact. Thus, for instance, in **Denmark**, most of the EU-driven litigation has been brought by trade unions. In other countries they provide free legal counselling to their members. In **Denmark** and **Greece** the social partners were responsible for the pregnancy/maternity and parental leave arrangements which were later copied and adopted by the legislator. Similarly, in some countries the social partners have been pioneers in developing better and longer family-related forms of leave (e.g. **France**, **Sweden**). It is indeed rather common for collective agreements to guarantee longer and better-paid maternity, parental and paternity leave. Similarly, in **the Netherlands**, collective agreements often contain supplementary rights to child-care facilities and care leave. Furthermore, the social partners play a role in the area of equal pay. The **Swedish** collective agreements often address gender equality in relation to wage setting and extra wages during parental leave. As was already pointed out above (Section 5) in **France** there exists the obligation to negotiate every year on equality and on the gender pay gap. In 2004, an important inter-professional national agreement aimed at promoting professional equality between men and women was agreed upon. Also in **Spain** the social partners are under the general obligation to negotiate, in collective agreements, measures promoting equal treatment and opportunities or equality plans.

In **Austria** collective agreements at both the plant and sector levels are used as a tool for promoting gender equality. Good practice models have been developed in this context. There is also a great deal of emphasis on the reconciliation of work and family life. In this country, the social partners may also bring a special case before the Supreme Court to request a declaratory judgment on the existence or non-existence of certain rights which may include equality rights.

Finally, in **Portugal**, the Labour Code establishes a system for an assessment of the content of collective agreements by the CITE (*Comissão Para a Igualdade no Trabalho e no Emprego,* a public body which deals with gender equality issues specifically in the area of work and employment), to be carried out during the first 30 days after the publication of these agreements and designed to check them for possible discriminatory clauses and to promote the elimination of such clauses by the courts.

11. Winding up: law in the books and law in practice

What conclusions can be drawn from the general overview, giving an overall impression of how the EU rules on gender equality have been transposed in the EU Member States and EEA countries? The most important one is probably that these rules have been transposed into national law in a satisfactory manner. The realization of the equal treatment of women and men is certainly not only an achievement of the EU. At the national level the respective states may always adopt measures that are better and that go further, since, in this area, EU law lays down minimum requirements only. On the other hand, it should also be stressed that, in many respects, EU rules and case law have provided a crucial impetus to gender discrimination law in the Member States and the EEA countries.

However, a correct transposition of the EU rules into national law is not enough. As has already been observed here and there in the overview, what also matters is that the transposed rules are applied in everyday life and are effectively enforced through the appropriate mechanisms, like labour inspectorates, equality bodies and, where necessary, the courts. In other words, law in the books must also be law in everyday practice. Unfortunately the law in the books and law in practice still differ, sometimes dramatically.

One of the basic preconditions in this respect is that not only lawyers and judges familiarize themselves with EU gender equality law. Last but not least, the broader public must be aware of their rights under EU law. The present publication is a discrete contribution to that effect.

Annex I Directives

- Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women *OJ L 45, 19.2.1975, pp. 19–20.*

- Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions *OJ L 269, 5.10.2002, pp. 15–20.*

- 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 *OJ L 6, 10.1.1979, pp. 24–25.*

- Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes *OJ L 46, 17.2.1997, pp. 20–24.*

- Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood *OJ L 359, 19.12.1986, pp. 56–58.*

- 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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) *OJ L 348, 28.11.1992, pp. 1–8.*

- Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC *OJ L 145, 19.6.1996, pp. 4–9.*

- 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 *OJ L 373, 21.12.2004, pp. 37–43.*

- 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 (recast) *OJ L 204, 26.7.2006, pp. 23–36.*

Annex II Contact Details of National Equality Bodies*

AUSTRIA
Austrian Ombud for Equal Treatment
Telephone number: +43 1 5320244
Email address: gaw@bka.gv.at
Website: www.gleichbehandlungsanwaltschaft.at

BELGIUM
Belgian Institute for Equality between Men and Women
Address: Ernest Blerotstraat 1 - 1070 Brussel
Telephone number: +32 2 233 41 75
Fax number: +32 2 233 40 32
Email address: gelijkheid.manvrouw@igvm.belgie.be
Website: www.iefh.fgov.be

BULGARIA
Bulgarian Commission for Protection Against Discrimination
Telephone number: +359 2 807 30 30
Website: www.kzd-nondiscrimination.com/

CYPRUS
The Office of the Commissioner for Administration (Ombudsman)
Address: Era House 2, Diagorou Street 1097 Nicosia
Telephone number: +357 22 405500
Fax number: +357 22 672881
Email address: ombudsman@ombudsman.gov.cy
Website: www.ombudsman.gov.cy

CZECH REPUBLIC
Office of the Public Defender of Rights
Address: Brno, Údolní 39, PSČ 602 00
Telephone number: +420 542 542 888
Website: www.ochrance.cz
Government Council for Human Rights – Head of the Secretariat
Telephone number: +420 224 002 111
Email address: posta@vlada.cz

DENMARK
Danish Institute for Human Rights
Address: Strandgade 56 1401 Copenhagen K
Telephone number: +45 3269 8888
Fax number: +45 3269 8800
Email address: center@humanrights.dk
Website: www.humanrights.dk

* See for more information on national equality bodies http://ec.europa.eu/social/main.jsp?catId=642&langId=en and the website of Equinet, the European Network of Equality Bodies: http://www.equineteurope.org

ESTONIA
Estonian Gender Equality Commissioner

Address:	Margit Sarv Soolise võrdõiguslikkuse ja võrdse kohtlemise volinik Gonsiori 29, 15027 Tallinn
Telephone number:	+372 6269 259
Fax number:	+372 6269 259
Email address:	info@svv.ee
Website:	www.svv.ee

FINLAND
The Ombudsman for Equality

Address:	PO Box 33, 00023 GOVERNMENT
Telephone number:	+358 9 1607 3248
Fax number:	+358 9 1607 4582
Email address:	tasa-arvo@stm.fi
Website:	www.tasa-arvo.fi

FRANCE
French High Commission against Discrimination and for Equality – Halde

Address:	11 rue Saint Georges 75009 Paris
Telephone number:	+33 1 55 31 61 00
Email address:	contact@halde.fr
Website:	www.halde.fr

GERMANY
German Federal Anti-Discrimination Agency

Address:	Alexanderstr. 1, 10178 Berlin
Telephone number:	+49 3018 555-1855
Fax number:	+49 3018 555-41865
Email address:	poststelle@ads.bund.de
Website:	www.antidiskriminierungsstelle.de

GREECE
The Greek Ombudsman

Telephone number:	+30 210 7289600
Email address:	synigoros@synigoros.gr
Website:	www.synigoros.gr

HUNGARY
Hungarian Equal Treatment Authority

Address:	Budapest 1024. Margit krt. 85.
Telephone number:	+36 1 336 7843 / 336 7851
Email address:	ebh@egyenlobanasmod.hu
Website:	www.egyenlobanasmod.hu

IRELAND
Irish equality authority

Address:	The Equality Authority, 2 Clonmel Street, Dublin 2
Telephone number:	+353 1 4173336
Email address:	info@equality.ie
Website:	www.equality.ie

ITALY
National Equality Advisor

Telephone number:	+39 6 46832843
Email address:	consiglieranazionaleparità@lavoro.gov.it
Website:	www.lavoro.gov.it/ConsiglieraNazionale/

LATVIA
Ombudsman Office of the Republic of Latvia
Address: Baznīcas street 25, Riga, LV-1010
Telephone number: +371 67686768
Fax number: +371 67244074
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Lithuanian Office of the Equal Opportunities Ombudsman
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Website: www.lygybe.lt

LUXEMBOURG
Centre pour l'égalité de traitement
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Dep, N-0031 Oslo
Telephone number: +47 24 05 59 50
Email address: post@LDO.no
Website: www.ldo.no/no

POLAND
Ministry of Labour and Social Policy – Department of Women, Family and Counteracting Discrimination (Observer)
Telephone number: +48 22 628 42 19
Website: www.rodzina.gov.pl

PORTUGAL

Portuguese Commission for Equality at Work and in Employment (CITE)

Telephone number: +351 21-7803709
Email address: cite.gov.pt
Website: www.cite.gov.pt

Commission for Citizenship and Gender Equality – CIG

Address: Comissão para a Cidadania e Igualdade de Género Sede,
Av. da República, 32 - 1º, 1050-193 Lisboa
Telephone number: +351 217983000
Email address: cig@cig.gov.pt
Website: www.cig.gov.pt

ROMANIA

Romanian National Council for Combating Discrimination – CNCD

Address: Piata Valter Maracineanu nr 1-3, sector 1, 010155 Bucuresti
Telephone number: +40 21 312 65 78
Fax number: +40 21 312 65 85
Email address: contact@cncd.org.ro
Website: www.cncd.org.ro

SLOVAKIA

Slovak National Centre for Human Rights

Address: Slovak National Centre for Human Rights, Kýčerského 5,
811 05 Bratislava
Telephone number: +421 2 208 501 11
Email address: info@snslp.sk
Website: www.snslp.sk

SLOVENIA

Office for Equal Opportunities

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Fax number: +386 1 478 1491
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Email address: inmujer@migualdad.es
Website: http://www.migualdad.es/mujer/index.htm

SWEDEN

The Equality Ombudsman

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Email address: do@do.se
Website: www.do.se

THE UNITED KINGDOM

GB Equality and Human Rights Commission – EHRC

Telephone number: +44 20 3117 0235 (non helpline calls only); helpline: 0845 604 6610 (England);
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European Commission

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The present publication provides a brief and general overview of the main features of EU gender equality law and its transposition in the 27 Member States of the European Union, as well as in the EEA countries of Iceland, Liechtenstein and Norway to which most of the EU equality law applies. It is aimed at a broad and not necessarily legal public and highlights the most important trends as well as difficulties in the transposition of EU gender equality rules at national level.
The sections are structured around the main subject areas of EU gender equality law: access to work and working conditions, pregnancy and maternity protection and parental leave, equal pay, equal treatment in occupational pension schemes and equal treatment in statutory schemes of social security, equal treatment of self-employed persons and assisting spouses and equal treatment of men and women in the access to and the supply of goods and services. A number of features are common to all directives, namely certain central concepts, such as discrimination and harassment, and matters relating to compliance and the enforcement of the equality rules in practice. These issues are also discussed, in two separate sections.

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