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The Application of the Principle of Gender Equality in the Workplace

The EU Regulatory Framework and the Role of Social Partners

**Project 101145648: SD4EU
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1. Introduction.

The workplace is profoundly influenced by the array of social relationships that animate the context in which workers and employers operate. In other words, it can be aptly stated that the workplace should be understood as the "material substrate in which work is performed" (Montuschi, 1987, p. 86). Consequently, within the workplace, social structures reflecting human relationships—and in particular those between different genders—can be replicated.

This document aims to outline the regulatory framework concerning the application of gender equality in the workplace. The investigation will focus on three areas of analysis central to the most recent legislative activities of the European Union lawmakers, encompassing the main challenges for legal practitioners in this field: pay equity, social security, and work-life balance. Special attention will be devoted to the role of social partners in upholding the principle of gender equality in its various forms.

Indeed, the principle of equal treatment between genders affects several legal domains.

The need to protect the disadvantaged gender has traditionally fallen under anti-discrimination law. Specifically, the prohibition of gender discrimination originated with the principle of equal pay for equal work and has evolved through legislative and judicial developments into a general ban on discrimination. Noteworthy examples include the strengthening of European social policy through the Charter of Fundamental Rights of the European Union and, more recently, the adoption of the European Pillar of Social Rights. These have highlighted and promoted the implementation of work-life balance, whose social implications are still expanding.

Moreover, European Union labour law appears receptive to recent—albeit problematic—interpretive approaches to the concept of gender (Part I, Conclusions). It is worth noting highlighting that Recital 25 of Directive 2023/970/EU¹ underscores the importance of interpreting anti-discrimination law from an intersectional perspective, particularly in relation to pay disparities. This directive introduces the concept of "intersectional discrimination" into EU law². In this regard, promising new perspectives may emerge, seeking to move beyond the current "categorical" approach to tackling discrimination and instead recognising the complexity of the human person, in whom multiple factors of discrimination may coexist inseparably (see Corazza, 2024, pp. 40 ff.).

In this context, the analysis will explore the space reserved for social partners within the EU regulatory framework.

2. Fundamental Principles of Gender Equality in the Workplace.

At the outset, it is essential to identify the primary legal references relevant to the analysis of gender equality in the workplace.

The general principle of gender equality in working conditions is established by Article 157 of the Treaty on the Functioning of the European Union (TFEU) (explored in detail in Section 3). As previously mentioned (see Part I, Section 1.1), this provision, in its earlier version (Article 119 of the EEC Treaty), was initially limited to guaranteeing equal pay for male and female workers. However,

¹ Directive 2023/970/UE del European Parliament and the Council of 10 May 2023, to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.

² Under Article 3, paragraph 2, point (e), intersectional discrimination is defined as «discrimination based on a combination of sex and any other ground or grounds of discrimination protected under Directive 2000/43/EC or 2000/78/EC».

the pay issue has since been accompanied by additional dimensions, such as social protection (see Section 4) and, more recently, the reconciliation of personal and work life (see Section 5).

This was made possible, in part, by the explicit authorisation in Article 157 TFEU for adopting positive measures aimed at maintaining or implementing «measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers» (Part I, Section 1.2).

It may be reiterated (Part I, Conclusions) that the principle of equal treatment has shifted from a primarily economic objective, focused on ensuring the proper functioning of competition rules, to a broader objective applicable across all EU policies.

This commitment by the EU institutions to broaden the scope of the prohibition on gender discrimination is also reflected in the Charter of Fundamental Rights of the European Union. Article 23 of the Charter guarantees equal treatment «in all areas», explicitly referring not only to pay-related matters but also to employment and work (Part I, Section 1.3).

Among EU legislative instruments, Directive 2006/54/EC³ represents a key reference point in the field of gender anti-discrimination. The Directive obliges Member States to implement measures to combat gender discrimination, outlining a wide scope of application, including access to employment, including promotion, and to vocational training; working conditions, including pay; and occupational social security schemes.

In addition to previously mentioned aspects (Part I, Sections 2.2 and 3.1), it is important to highlight two particularly innovative features:

- The inclusion of «harassment»⁴ and «sexual harassment»⁵ within the scope of anti-discrimination law (Article 26);

- The reversal of the burden of proof in cases of discriminatory treatments as a key tool for ensuring the effectiveness of the principles enshrined in the Directive. This mechanism has been reinforced by Article 18 of Directive 2023/970/EU, which provides that, in cases where the employer has seriously and culpably breached transparency obligations, the burden of proof in pay discrimination claims shifts to the employer. Furthermore, as noted in Recital 52 of Directive 2023/970/EU, the issue of workers' access to evidence of discrimination is closely tied to the employer's fulfilment of transparency obligations⁶.

With respect to access to employment and vocational training, Directive 2006/54/EC allows for differential treatment only where it is justified by the specific nature of the work or the context in which it is performed. In all cases, the objectives must be legitimate, and the requirements proportionate (Article 14).

³ 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.

⁴ Under Article 2, paragraph 1, of Directive 2006/54/EC, harassment is defined as a situation «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».

⁵ Under Article 2, paragraph 1, of Directive 2006/54/EC, sexual harassment is defined as a situation «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».

⁶ Court of Justice, judgment of 17 October 1989, *Handels v. Dansk Arbejdsgiverforening*, C-109/88.

Social Dialogue in Directive 2006/54/EC. Directive 2006/54/EC states that the issue of gender inequalities must be tackled by Member States in collaboration with the social partners. To this end, the Directive underscores the need to introduce «appropriate parental leave arrangements which could be taken up by either parent as well as the provision of accessible and affordable child-care facilities and care for dependent persons» (Recital 11). It specifies that the principle of equal treatment cannot be limited to legislative measures, highlighting the potential contributions from dialogue between social partners. Social partners are encouraged to promote gender equality primarily through activities such as: monitoring company practices, collective agreements, codes of conduct, and best practices; introducing anti-discrimination rules into

The prohibition of gender discrimination in self-employment, as established under Article 157 TFEU, is specifically addressed in Directive 2010/41/EU⁷. Nevertheless, the scope of this Directive, which aligns with the provisions of Directive 2006/54/EC, is also extended to the spouses of self-employed workers, provided they «habitually [...] participate in the activities of the self-employed worker and perform the same or ancillary». The field of occupational social security schemes is harmonised for all workers, irrespective of their classification, under Directive 2006/54/EC (see below, para. 3).

The EU institutions have encouraged Member States to take action towards achieving gender equality objectives, including through soft-law instruments which, although non-binding, hold considerable political significance (Part I, para. 3.7).

Among these, special attention should be given to the European Pillar of Social Rights, signed on 17 November 2017 by the Presidents of the European Parliament, the Council of the European Union, and the European Commission.

Through this document, the EU institutions set out twenty principles designed, among other objectives, to «promote the well-being» of the peoples of the European Union and to «work for the sustainable development in Europe» (Preamble, Point 1).

In this context, Point 2 of the Pillar is dedicated to gender equality, with explicit reference to the labour market, terms and conditions of employment, career advancement, and pay (see Bell, 2018, on this topic). This focus represents a specific interpretation of Point 3, which addresses equal opportunities «regarding employment, social protection, education, and access to goods and services available to the public».

This measure has become a key reference point, explicitly cited in recent Directives on the subject, including, as will be examined in detail later, Directive 2019/1158/EU⁸ on work-life balance, Directive 2022/2041 on adequate minimum wages within the European Union, and Directive 2023/970, which seeks to strengthen the enforcement of the principle of equal pay for men and women for the same work or work of equal value through pay transparency and related enforcement mechanisms.

⁷ Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.

⁸ Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

3. Gender Equality and Pay Equity.

3.1. The Principle of Pay Equity in Article 157 TFEU.

The gender pay gap remains a significant issue in the labour market of the European Union. In 2022, Eurostat⁹ reported that the difference in average gross hourly earnings between male and female employees across the European Union stood at 12.7%, with the highest rate observed in Estonia (21.7%) and the lowest in Luxembourg (-0.7%). At the same time, it is worth noting that the gender pay gap has been gradually narrowing in recent years. In this regard, the average pay disparity in the EU decreased by 3.1% between 2010 and 2022¹⁰. Furthermore, research indicates that the gender pay gap is generally smaller among younger workers (under the age of 25)¹¹.

Within the EU legal framework, the principle of equal pay for men and women is established in Article 157 TFEU.

The provision requires each Member State to ensure the implementation of the principle of equal pay for male and female workers performing the same work or work of equal value.

Paragraph 2 of Article 157 TFEU specifies, first and foremost, that the principle of equal pay, without discrimination on the grounds of sex, requires that remuneration for the same piecework be calculated using a uniform unit of measurement. Moreover, Similarly, the principle of equal treatment in pay also extends to time-based work.

Paragraph 4 of Article 157 TFEU permits favourable treatment under national law. Specifically, it explicitly states that the principle of equal treatment does not prohibit Member States from maintaining or introducing measures that grant specific advantages to support the professional activity of the underrepresented gender or to prevent or offset for career disadvantages.

In this context, EU- derived measures aimed at tackling the gender pay gap within the European Union are implemented.

3.2. The Personal Scope of Article 157 TFEU: The Definition of “Worker”

Article 157 TFEU does not define the term "worker" in the context of anti-discrimination protection.

The case law of the European Court of Justice (ECJ) establishes that, for the application of the principle of equal treatment under Article 157 TFEU, the concept of "worker" cannot be determined by the national laws of Member States. Instead, it must be based on a harmonised definition at the EU level, which must not be interpreted restrictively¹². According to the definition developed in EU case law, a “worker” as a person who, «for a certain period of time, performs services for and under the direction of another person, in return for which they receive remuneration»¹³. The concept of "worker" in EU law therefore remains fragmented and, to a significant extent, subject to judicial discretion (Kountouris, 2018, p. 193).

Over the years, the judges in Luxembourg have included within the concept of a subordinate worker situations where the individual was only nominally classified self-employed. In this context, the assessment of subordination is unaffected by the formal classification of the individual as a self-employed service provider if that person «operates under the direction of their employer, particularly with regard to their freedom to choose the time, place, and content of their work; does

⁹ Eurostat (2022), *Gender Pay gap statistics*.

¹⁰ Openpolis (2024), *Anche nei salari il traguardo della parità di genere è lontano*.

¹¹ Eurostat (2022), *Gender pay gap statistics*.

¹² Court of Justice, judgment of 13 January 2004, *Allonby v Rossendale College*, Case C-256/01.

¹³ Court of Justice, judgment of 3 July 1986, *Lawrie-Blum*, Case C-66/85.

not assume the commercial risks of their employer; and is integrated into the employer's enterprise for the duration of the employment relationship, forming a single economic unit with it»¹⁴.

It follows that self-employed workers are excluded from the general protection afforded by Article 157 TFEU. However, they benefit from fragmented and residual protections (Ratti, 2023, p. 9), such as those provided under Directive 2010/41/EU and Directive 2006/54/EC, which are limited to provisions concerning occupational social security schemes.

3.3. The Material Scope: The Definition of "Pay".

Paragraph 2 of Article 157 TFEU defines pay as including the basic or minimum wage, as well as benefits, whether in cash or in kind, provided by an employer to a worker in relation to their employment.

This definition is reiterated in Article 2, paragraph 1, point (e) of Directive 2006/54/EC, where pay is defined as «the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his/her employment from his/her employer». Article 3, paragraph 1, point (a) of Directive 2023/970, while reflecting the definition provided in Directive 2006/54/EC, specifies that pay must also include "complementary or variable" components of employer payments.

According to the case law of the Court of Justice, the concept of pay covers all work-related payments, including piecework pay schemes¹⁵, sick pay allowances¹⁶, and maternity benefits¹⁷.

The principle of equal pay protects workers in both the public and private sectors¹⁸ and may be invoked in national courts in cases of discrimination arising from legal provisions, collective agreements, or instances where men and women are employed within the same company or office¹⁹. The Court of Justice²⁰ has further elaborated on the principle of equal treatment, holding that where pay differences between workers performing the same job cannot be attributed to a single "source" (i.e., the same employer), a comparison is not applicable. More recently, the Court has also ruled that, where the remuneration of workers of different sexes performing the same duties can be traced to a single source, their work and pay may be compared under Article 157 TFEU, even if they are employed at different establishments²¹.

¹⁴ Court of Justice, judgment of 4 December 2014, *FNV v Staat der Nederlanden*, Case C-413/13.

¹⁵ Court of Justice, judgment of 31 May 1995, *Royal Copenhagen*, Case C-400/93.

¹⁶ Court of Justice, judgment of 13 July 1989, *Rinner-Kühn v FWW Spezial-Gebäudereinigung GmbH*, Case C-171/88.

¹⁷ Court of Justice, judgment of 16 September 1999, *Abdoulaye v Régie nationale des usines Renault SA*, Case C-218/98.

¹⁸ Court of Justice, judgment of 21 May 1985, *Commission of the EEC v Federal Republic of Germany*, Case C-248/83.

¹⁹ Court of Justice, judgment of 31 March 1981, *J.P. Jenkins v Kingsgate*, Case C-96/80.

²⁰ According to the Court of Justice, in its judgment of 17 September 2002, *A.G. Lawrence v Regent Office Care Ltd*, Case C-320/00, Article 141(1) (now Article 157 TFEU) of the EC Treaty does not apply to situations where disparities in pay between male and female workers performing the same work, or work of equal value, cannot be attributed to a single source.

²¹ Court of Justice, judgment of 3 June 2021, *K and Others v Tesco Stores Ltd*, Case C-624/19.

Additionally, the concept of pay encompasses benefits such as transport allowances for former employees²², severance pay²³, and compensation for unfair dismissal²⁴. The source of these benefits is not relevant, as they may arise from employment contracts, collective agreements, legislation, or judicial decisions.

It is for the national court, when assessing compliance with the principle of equal pay, to examine the facts of the case and determine whether the two types of work are of equal value, or whether factors relating to the nature of the activities and the conditions under which they are performed can be considered objective and non-discriminatory, thereby justifying pay differences²⁵.

3.3.1. Continuation: The Definition of Equal Work

Another key aspect of the principle of equal pay, beyond remuneration, is the evaluation of equivalence between the tasks performed by workers of different sexes.

Article 119 of the EEC Treaty referred exclusively to the performance of the same work. However, Directive 75/117/EEC and, later, Article 4 of Directive 2006/54/EC broadened the scope of comparison to encompass work of equal value, thereby necessitating a substantive rather than purely formal assessment.

These regulations require that staff classification systems used to determine pay be based on common principles for both men and women and structured to eliminate any form of gender-based discrimination.

In line with this principle, Article 157 TFEU refers to equal pay for «work of equal value». This assessment must be conducted in a concrete manner, considering the tasks actually performed within the same establishment or office, without reference to hypothetical workers²⁶. Additionally, it is essential to examine whether workers of different sexes are comparable based on a range of factors, including the nature of the work performed, qualifications, and working conditions.

The European Court of Justice of the European Union has played a crucial role in interpreting these concepts and providing clarity on how different tasks should be compared for the purpose of applying the principle of equality.

With regard to professional classification systems, the Court of Justice has clarified that the method described above is merely one of several possible approaches to comparing different jobs, as equivalence between tasks can be demonstrated by any suitable means²⁷.

According to Article 3, paragraph 1, point (g) of Directive 2023/970/EU, work of equal value refers to as work that meets the EU criteria concerning the principle of non-discrimination.

These criteria must, therefore, be objective and gender-neutral, as stipulated by Article 4, paragraph 4 of the same directive. In this regard, the provision specifies that the criteria «shall not be based directly or indirectly on workers' sex. They shall include skills, effort, responsibility and working conditions, and, if appropriate, any other factors which are relevant to the specific job or position»

²² Corte di giustizia, sentenza del 9 febbraio 1982, *Eileen Garland c. British Rail Engineering Limited*, causa C-12/1981.

²³ Court of Justice, judgment of 9 February 1982, *Eileen Garland v British Rail Engineering Limited*, Case C-12/81.
Court of Justice, judgment of 27 June 1990, *Kowalska v Freie und Hansestadt Hamburg*, Case C-33/89.

²⁴ Court of Justice, judgment of 9 February 1999, *Regina v Secretary of State for Employment*, Case C-167/97.

²⁵ Court of Justice, judgment of 31 May 1995, *Specialarbejderforbundet i Danmark v Dansk Industri*, Case C-400/1993.

²⁶ Court of Justice, judgment of 27 March 1980, *Macarthys Ltd v Wendy Smith*, Case C-129/1979.

²⁷ Court of Justice, judgment of 6 July 1982, *EEC Commission v United Kingdom*, Case C-61/1981.

3.4. Directive 2023/970/EU and the Importance of Pay Transparency as a Tool to Address the Gender Pay Gap

With the adoption of Directive 2023/970/EU, the EU legislator has introduced a measure designed to strengthen the application of the principle of equal pay for men and women for the same or work of equal value, through the implementation of pay transparency and its associated enforcement mechanisms.

In its Communication on the “Gender Equality Strategy 2020–2025”²⁸, the Commission had already highlighted the issue of the widespread lack of transparency in pay levels, which leads to issues such as pay discrimination and gender-based bias, often failing to be promptly identified. This underscores the need for binding measures to enhance pay transparency (Recital 19).

Similarly, companies are encouraged to review their pay structures to ensure equal pay for men and women doing the same job or work of equal value, and to enable victims of discrimination to assert their right to equal pay. In this context, pay transparency serves as a tool to ensure the effectiveness of safeguards protecting gender equality in remuneration.

The Directive applies to employers in both the public and private sectors, as well as to all workers with an employment contract or a work relationship as defined by law, collective agreements, and/or national practices, in line with the case law of the Court of Justice.

In terms of pay transparency, it is relevant both when establishing the employment relationship and during its ongoing execution.

In particular, under Article 5, anyone applying for an employment has the right to receive information regarding:

- The initial pay or the corresponding pay range for the position, based on objective, gender-neutral criteria;
- Where applicable, the relevant provisions of the collective agreement applied by the employer in relation to the position.

Such information must be provided in a manner that ensures an informed and transparent stage in salary negotiations.

One approach for achieving this goal is the clear indication of the salary in the job vacancy notice, published prior to the interview.

The Directive requires that such notices be gender-neutral, and that recruitment procedures are conducted in a way that does not lead to discrimination or undermine the right to equal pay for the same work or work of equal value.

In this respect, Article 6 of the Directive mandates that employers make the criteria used to determine pay, pay levels, and employees’ pay progression accessible to their workers.

These criteria must be objective and fully gender neutral.

Article 9 of the Directive establishes a system for monitoring gender pay gap levels, requiring employers to provide the following information concerning their organisation:

- The gender pay gap;
- The gender pay gap in complementary or variable components;
- The median gender pay gap;
- The median gender pay gap in complementary or variable components;
- The proportion of female and male workers receiving complementary or variable components;

²⁸ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions A Union of Equality: Gender Equality Strategy 2020–2025, Brussels, 5.3.2020, COM(2020) 152 final.

- The proportion of female and male workers in each pay quartile band (defined in Article 3, paragraph 1, point (f) as "each of four equal groups of workers into which they are divided according to their pay levels, from lowest to highest");
- The gender pay gap between workers by categories broken down by ordinary basic wage or salary and complementary or variable components.

This provision introduces a monitoring system, which plays a central role in fulfilling the objective of the Directive, aimed at ensuring the effective application of the principle of equal pay.

This system prevents the emergence of segments within the work force where the lack of pay transparency leads to the inability to track (and prove) the existence of pay discrimination.

With Directive 2019/1152/EU²⁹, the European Union had already utilised transparency obligations as a tool for worker protection. This Directive requires employers to provide workers with essential details of their employment relationship, including pay, including remuneration, such as the initial base amount, any additional components, if applicable, specified separately, and the frequency and method of payment to which the worker is entitled. However, it is worth noting that Directive 2023/970/EU interprets the concept of transparency through workers' "information rights" on an individual level, focusing on the details contained within the individual employment contract. In contrast, Directive 2023/970/EU situates the workers within the broader organisational context of the company, as it enables the use and facilitates the comparability of pay data from other workers for anti-discrimination purposes (Lamberti, 2024, 251-252).

3.4.1. The Role of Social Partners in Directive 2023/970/EU.

Directive 2023/970/EU promotes the role of social partners in achieving the objective of equal pay.

Transparency serves as a tool that enables trade unions to identify gender biases and pay discrimination within an organisation. It should therefore be seen as a means of reducing the information asymmetry between the parties, allowing collective bargaining to identify more effective measures with respect to gender issues.

The Directive explicitly recognises that social partners play a role of "key importance" (Recital 64) in determining how the principle of pay transparency should be implemented in Member States' laws. These countries should promote and support the regulatory role of collective bargaining on the issues mentioned above.

In particular, the Directive allows Member States to delegate its implementation to the social partners. The following tasks are expressly mentioned for implementation:

- Developing tools or methodologies for the analysis, assessment, and classification of staff that is gender-neutral;
- Introducing financial penalties equivalent to fines, in line with the principles of effectiveness and proportionality;
- Providing training measures, as well as specific tools or methodologies, to support and guide employers in assessing what constitutes work of equal value.

Article 13 of the Directive is dedicated to promoting social dialogue.

It is the responsibility of the Member States, while respecting the autonomy of social partners and in accordance with national laws and practices, to adopt appropriate measures to ensure that social partners are genuinely involved through discussions on the rights and obligations set out in the Directive. Additionally, Member States must encourage the exercise of the right to collective

²⁹ Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.

bargaining to introduce measures aimed at addressing pay discrimination and its negative impact on the evaluation of jobs predominantly performed by workers of one sex.

The effectiveness of the implementing legislation is therefore closely linked to the extent of industrial relations culture in the Member States. However, it is important to note that, as indicated by Eurostat data updated to 2022³⁰, some countries within the European Union have very low collective bargaining coverage, even below 20% (including Estonia at 6%, Czech Republic at 9%, Lithuania, Malta, and Poland at 10%, and Hungary at 13%). This threatens the successful implementation of the tools and control measures needed to ensure the achievement of the Directive's objectives, thereby perpetuating disparities within the European Union.

Moreover, it should be acknowledged that remuneration issues are also influenced by the economic conditions of the individual countries in which economic operators operate, particularly when dealing with small and medium-sized enterprises.

3.5. Directive 2022/2041/EU on Adequate Minimum Wages and Its Impact on the Gender Pay Gap.

With Directive 2022/2041/EU, the EU institutions address adequate minimum wages within the European Union³¹.

The Directive does not explicitly seek to harmonise the minimum wages of Member States³². In this respect, Member States are free to choose the methods through which they aim to ensure an adequate minimum wage, in line with their respective national traditions.

Therefore, the Directive does not establish a legal minimum wage threshold (Article 1, paragraph 3), but provides a common framework for Member States to improve the coverage and adequacy of minimum wages. Member States may, in any case, either set a legal minimum wage threshold through explicit legislation or ensure adequate levels of collective bargaining that achieve the same objective.

The concept of "worker" to which the Directive applies may be defined through collective bargaining, in accordance with the case law of the Court of Justice (Article 2).

Directive 2022/2041/EU can be aligned with Article 153, paragraph 1, point (b) of the TFEU³³, as the level of remuneration is considered part of the broader category of working conditions (Bavaro, Borelli, Orlandini, 2021, p. 111 ff). The Court of Justice has already invoked the principle of non-discrimination to justify its interventions in matters of remuneration³⁴.

The European directive on minimum wages aims to ensure adequate minimum wages and decent living conditions for workers within the European Union, as outlined in Article 1 and Recital 28 of the same Directive.

Directive 2022/2041/EU also has a significant impact on the gender pay gap, as women workers, along with young workers, migrant workers, single parents, low-skilled workers, people with disabilities, and particularly those facing multiple forms of discrimination, are more likely to earn minimum or low wages compared to other groups. As highlighted in Recital 10 of Directive

³⁰ <https://www.eurofound.europa.eu/en/european-industrial-relations-dictionary/collective-bargaining-coverage>

³¹ Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union.

³² Moreover, Article 153, paragraph 5, TFEU clarifies that « the provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs ».

³³ Under Article 153, paragraph 1, point (b) TFEU, «with a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields: [...] b) working conditions».

³⁴ Court of Justice, 13 September 2007, *Del Cerro Alonso*, C-307/05.

2022/2041/EU, the overrepresentation of women in low-paid jobs and the improvement of wage adequacy can contribute to achieving gender equality, narrowing the gender pay and pension gaps, and lifting women and their families out of poverty, thereby supporting sustainable economic growth within the Union.

To achieve this objective, the issue of minimum wages can be linked to gender equality through measures aimed at reducing the wage gap in low-income groups. Data on the gender pay gap confirms that women are more likely to be employed in low-wage jobs and in sectors with lower pay, often characterised by precarious or part-time contracts. Therefore, implementing measures to achieve adequate minimum wage levels could help narrow the wage gap in these groups, improving the pay of many women workers.

Furthermore, the Directive could promote greater wage transparency, making the pay gap more visible and encouraging companies to address these inequalities. The regular review of minimum wages and the monitoring of wage adequacy make it more challenging for employers to maintain unjustified pay differences between men and women for work of equal value. In this context, an adequate minimum wage could enhance women's economic security, allowing them escape precarious or underpaid work.

In summary, the Directive can help reduce the gender pay gap, particularly among women in lower wage brackets, by fostering fairer working conditions and improved collective bargaining, thereby contributing to the reduction of structural wage inequalities.

3.5.1. Directive 2022/2041/EU and the Promotion of the Role of Social Partners.

Directive 2022/2041/EU affirms that the adequacy of minimum wages is strengthened by a «strong and well-functioning collective bargaining» (Recital 22).

To this end, the objective of wage adequacy should primarily be pursued by Member States through measures that promote collective bargaining, which, according to Article 4, paragraph 1, focused on four key areas:

- Developing and strengthening the capacity of social partners to engage in collective bargaining on wage determination, particularly at the sectoral and cross-sectoral levels;
- Encouraging constructive, meaningful, and informed wage negotiations between the social partners on an equal footing, ensuring all relevant stakeholders have access to the necessary information to carry out their roles;
- Implementing measures to safeguard the right to collective bargaining on wage determination and eliminate any distortions or retaliations that may hinder genuine access to bargaining platforms;
- Involving the social partners in determining and promptly updating the legal minimum wage.

If the collective bargaining coverage rate is below 80%, Member States are required to adopt an action plan to promote collective bargaining. This plan must be defined by Member States, following consultation with the social partners or through an agreement with them, or upon a joint request from the social partners, as agreed.

Even where a Member State has set a legal minimum wage, the Directive mandates the involvement of the social partners in its determination and updating.

In other words, the issue of addressing low pay, with its gender-related implications, appears to have been predominantly entrusted by the EU institutions to social dialogue, within the framework established by Member States' regulations.

4. Social Security and Gender Equality.

4.1. A Brief Systemic Overview of EU Principles in Social Security Law.

The pursuit of gender equality, in its various dimensions and theoretical frameworks, has also influenced the field of social security law, in fulfilling its role of providing social and welfare protection to economically and socially vulnerable individuals.

Social protection scheme. A distinct framework of rules to provide benefits to entitled beneficiaries which specifies the personal scope of the programme, entitlement conditions, the type of benefit, benefit amounts, benefit duration and other benefit characteristics, as well as the financing (contributions, general taxation, other sources), governance and administration of the programme. (Council Recommendation of 8 November 2019, 2019/C 387/01, paragraph 7, letter c).

Benefit. A transfer in cash or in kind made by a public or private entity to someone entitled to receive it as part of a social protection scheme. (Council Recommendation of 8 November 2019, 2019/C 387/01, paragraph 7, letter d).

It should be noted from the outset that, in the area of social security and social assistance, the Treaties grant Member States a wide margin of discretion.

Within the EU legal system, several provisions explicitly refer to the right to social security. The right of access to social security benefits and social services «in accordance with the rules laid down by Union law and national laws and practices» is set out in Article 34, paragraph 1 of the Charter of Fundamental Rights of the European Union (CFR).

It follows that the enjoyment of this right is primarily contingent upon compliance with the provisions of the Treaties. More specifically, social security systems are considered in relation to provisions on the free movement of workers (Articles 42 et seq. TFEU). In this context, Article 48 TFEU provides that any member of the Council has the authority to suspend the legislative procedure on social security if the proposed legislation affects «important aspects» of the national social security system, «including its scope, cost or financial structure, or would affect the financial balance of that system».

Article 153 TFEU includes «social security and social protection of workers» among the areas to be supported in order to achieve the social policy objectives outlined in Article 151 TFEU. In any case, the Treaty grants the Union only coordinating powers. However, paragraph 4 specifies that these provisions cannot undermine «the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof».

Nevertheless, the predominant role granted to Member States in independently determining the general principles of social security, particularly in light of the significant influence of economic sustainability factors in this area, seems to render the right enshrined in Article 34 CFR a «right devoid of substance and full of limitations» (Ales, 2015, p. 465).

Nevertheless, the EU legislator has adopted Regulation No. 883/2004³⁵, which has been updated multiple times, within the framework of legislation on the free movement of persons, concerning the coordination of social security systems. This Regulation is founded on two principles:

³⁵ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

- The principle of territoriality, whereby a worker engaged in either self-employment or dependent employment in a Member State is subject to the legislation of that State;
- The principle of aggregation, according to which the social security institution of a Member State, when determining periods of insurance, employment, self-employment, or residence, considers must take into account, to the necessary extent, the periods of insurance, employment, self-employment, or residence completed under the legislation of any other Member State, as if they were periods completed under its own legislation.

Among the supranational sources, the European Pillar of Social Rights deserves mention, as it dedicates point 12 to Social Protection. Specifically, it sets out the right of workers, regardless of the type and duration of the employment relationship, to adequate social protection. Among the objectives of the European Pillar, point 14 of the Preamble specifies that the proper functioning of social protection systems is a key aim, urging the adoption of «dedicated measures or legislation». It should be noted, in this context, that limiting the scope of protection to workers alone is risky. This is because it does not take into account other aspects that are increasingly present in the contemporary labour market, such as the need to protect those who are temporarily out of work (De Becker, 2023, p. 20).

4.2. Social Security and Gender Equality: Directive 79/7/EEC on Legal Social Security Schemes.

The EU legislator has adopted a series of directives to ensure gender equality, including in the area of social security.

Among the so-called "first-generation" directives, in addition to the already mentioned Directive 75/117/EEC³⁶ and Directive 76/207/EEC³⁷, the pursuit of equal treatment objectives of is further addressed by Directive 79/7/EEC³⁸, which applies to legal social security schemes.

This directive forms one of the three pillars (De la Corte-Rodríguez, 2021, p. 45-46) currently governing social security law within the EU framework, alongside Directive 2006/54/EC, which establishes principles for equal treatment in the area of occupational social security schemes, and Directive 2004/113/EEC³⁹, which applies to private insurance and pensions, both voluntary and unrelated to an employment relationship.

Despite its age, Directive 79/7/EEC remains fully in force.

The scope of the Directive is not limited to employed workers, but also covers self-employed workers, including those «whose activities is interrupted by illness, accident, or involuntary unemployment», job seekers, as well as retired or disabled workers. However, the Court of Justice has clarified that the term «working population» should extend to all those workers whose activity has been interrupted due to one of the risks outlined in Article 3 of the Directive⁴⁰.

In this regard, Article 3 of the Directive provides that it applies to legal schemes offering protection against the risks of illness, disability, old age, workplace injury, occupational diseases,

³⁶ 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.

³⁷ Council Directive 76/207/EEC of 9 February 1976 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.

³⁸ 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.

³⁹ 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.

⁴⁰ Court of Justice, judgment of 24 June 1986, *Drake v Chief Adjudication Officer*, Case C-150/85.

and unemployment, as well as provisions related to social assistance, insofar as they are intended to complement or replace these schemes.

Article 4 of the Directive sets out the principle of equal treatment as the absence of any «discrimination whatsoever on ground of sex either directly, or indirectly»⁴¹. This principle of equal treatment has been recognised as having direct vertical application to the public administrations of Member States⁴².

The Directive appears to link the role of women to the stereotypical role of the parent responsible for childcare. Article 7 excludes from the scope of the Directive - and consequently from the application of the principle of equal treatment - «advantages in respect of old-age pension schemes granted to persons who have brought up children» as well as the acquisition of entitlements to benefits «following periods of interruption of employment due to the bringing up of children». The notion of women as “dependents” rather than workers is further evident from the provision allowing Member States to exclude from the scope of the Directive the granting of «old-age or invalidity benefit entitlements» as well as «increases of long-term invalidity, old-age, accidents at work and occupational disease benefits» in favour of a spouse. Among the possible exceptions to the principle of equality permitted to Member States, Article 7 also includes «the determination of pensionable age for the purposes of granting old-age and retirement pensions and the possible consequences thereof for other benefit», as well as «the consequences of the exercise, before the adoption of this Directive, of a right of option not to acquire rights or incur obligations under a statutory scheme».

Although dated, the Directive has stood the test of time and proven itself to be an effective tool for “adjusting” (Vimercati, 2020, p. 372) the distortions in the economic and market system that hinder the free enjoyment of a female worker’s time. Recently, the Court of Justice, in the *Elbal Moreno*⁴³ *Villar Láiz*⁴⁴ judgements, has used the concept of indirect discrimination under Directive 79/7/EEC to challenge the application of less favourable contribution treatment for part-time workers.

4.2.1. Equal Treatment in Occupational Schemes.

The principle of equal treatment also applies to private pension schemes, including those negotiated at the company level, whether substitutive or complementary (Izzi, 2023, p. 331).

The sector-specific rules are set out in Chapter II of Directive 2006/54/EC, which deals with equal treatment in occupational social security schemes, specifically in Articles 5-13. The definition of «occupational social security scheme» is found in Article 2, paragraph 1, letter (f), which refers to schemes designed to provide workers with «benefits intended to supplement the benefits provided by statutory social security schemes or to replace them», provided they are not already covered by the scope of Directive 79/7/EEC.

With regard to the subjective and objective scope, the Directive largely follows the provisions of Directive 79/7/EEC, while also explicitly extending the principle of equal treatment to public sector employees » «if the benefits payable under the scheme are paid by reason of the employment relationship with the public employer».

Among the exclusions from the «material scope of the Directive» outlined in Article 8, the following are specified: individual contracts for self-employed workers; schemes for self-employed

⁴¹ It should be noted that the Court of Justice aligned the concept of indirect discrimination in Directive 79/7/EEC with that in Directive 2006/54/EC.

⁴² Court of Justice, judgment of 13 March 1991, *Cotter McDermott*, Case C-377/89.

⁴³ Court of Justice, judgment of 22 November 2012, *Elbal Moreno v INSS*, Case C-385/11.

⁴⁴ Court of Justice, judgment of 8 May 2019, *Villar Láiz v INSS*, Case C-161/18.

workers with only one member; in the case of employees, insurance contracts where the employer is not a party; optional provisions of professional social security schemes offered individually to participants to guarantee complementary benefits, the choice of the date from which the normal benefits for self-employed workers will apply, or the option to choose between different benefits; and occupational social security schemes where the benefits are financed by contributions made by workers on a voluntary basis.

For the purposes of this discussion, the case law of the Court of Justice stemming from the *Barber* judgement is particularly significant. In this ruling, the Court brought the contributions and benefits of private pension funds within the definition of remuneration and, by extension, within the scope of the equal treatment principle under Article 119 of the EC Treaty. The principles established in this judgement led to the replacement of Directive 86/378/EEC, which was succeeded by Directive 96/97/EEC, and later consolidated in the well-known Directive 2006/54/EC.

The Barber Ruling of 17 May 1990 (Case C-262/88). The case concerns the discriminatory nature of the pension scheme of the Guardian pension fund, which set different age for women to access pension benefits (62 for men and 57 for women).

In this context, the Court ruled that derogatory schemes are equivalent to remuneration and fall under the principle of equal treatment. These pension schemes are fully funded by the employer and result from either a unilateral decision by the employer or an agreement with the social partners. Moreover, these schemes do not apply to the general workforce. Therefore, according to the Luxembourg judges, pension benefits provided by these pension schemes must be classified, in the same way as remuneration, as «benefits paid by the employer to the employee by reason of their employment».

The principle established in the Barber ruling was incorporated into Directive 96/97/EC, which, however, limited its application to periods of employment after 17 May 1990 (the date of the ruling), due to potential financial implications for Member States' systems, with the exception of workers or their beneficiaries who, before that date, had initiated legal action or made an equivalent claim under the applicable national law. This provision was included in Protocol No. 33 to Article 157 TFEU, annexed to the Treaty on the Functioning of the European Union.

4.3. New Social Protection Policies and the Role of Social Partners.

Poverty and social exclusion continue to be prevalent issues within the social fabric of Member States. According to Eurostat, in 2023, 21.4% of the population of the European Union (approximately 94.6 million people) was at risk of poverty or social exclusion⁴⁵. This issue notably affects women more than men, with 22.4% of women facing this risk compared to 20.3% of men. From an intersectional perspective, women with disabilities (29.5%)⁴⁶ and women from non-EU countries (40.7%)⁴⁷ are particularly vulnerable to poverty and social exclusion.

This highlights the need for social protection measures to also address gender issues.

⁴⁵ Eurostat (2023), *Living conditions in Europe – poverty and social exclusion*.

⁴⁶ Eurostat data cited by the European Disability Forum (2022), *Disability and Gender Gaps: Addressing unequal employment of women with disabilities*, p. 4.

⁴⁷ European Commission, *2017 Report on equality between women and men in the European Union*, p. 27.

The **risk of poverty or social exclusion (AROPE)** is a statistical indicator used by Eurostat that includes individuals living in poverty, those disadvantaged in material and social terms, or those living in households with very low work intensity.

To address this issue, in recent years, the EU institutions have adopted regulatory acts aimed at filling the gaps in social protection systems.

One such example is the Council Recommendation of 8 November 2019⁴⁸, which aims to establish an adequate level of social protection for both employed and self-employed workers in Member States. By “adequate social protection”, it is meant a level that ensures a decent standard of living and provides an appropriate replacement income, consistently safeguarding individuals from poverty. The Recommendation also includes the possibility for «minimum standards in the field of social protection of workers and the self-employed » to be entrusted to social partners, enabling such standards to be established through a «combination of schemes» (Point 1.2), in collaboration with public bodies, private entities, and social actors.

With the subsequent Recommendation of 30 January 2023⁴⁹, the Council adopted a measure related to the adequacy of minimum incomes and social inclusion, taking into account the underlying gender issue.

Minimum income. Safety nets of last resort for individuals who do not have sufficient resources, non-contributory in nature and subject to income source verification, operating within the framework of social protection systems.

As a measure to tackle gender inequality, the Recommendation encourages Member States to ensure that the option to request minimum income support is available to individual family members. In fact, various social assistance measures in Member States are based on the household unit. This approach, though seemingly neutral, risks overlooking the differing income levels and roles within the family. The Recommendation further highlights that women are more likely to receive lower incomes and wages, partly due to their greater caregiving responsibilities.

The Recommendation assigns social partners a central role to in defining policies for access to the labour market, with a particular focus on training. Point 11 of the Recommendation suggests member States, «where relevant in cooperation collaboration with social partners», ensure the activation of the labour market and support vulnerable individuals in their reintegration into quality employment. Social partners are specifically referenced, especially in relation to enhancing inclusive policies in education and training, aimed at increasing skill levels for workforce requalification.

5. Work-Life Balance as a Measure for Gender Equality.

⁴⁸ Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed 2019/C 387/01.

⁴⁹ Council Recommendation of 30 January 2023 on adequate minimum income ensuring active inclusion 2023/C 41/01.

5.1. Balancing Work Time and Life Time and Gender Equality.

The protection of the various dimensions of a worker's life has received growing attention from the EU legislator. In particular, the family dimension has become increasingly significant through measures that promote flexibility and work-life balance. This issue is especially relevant to gender equality. Indeed, in most cases, women are the primary caregivers within the family unit. This affects their ability to freely choose how to carry out their work, as women are often required to factor in the time needed for family care.

Article 33 of the CFR, as mentioned, enshrines the right to balance family and professional life, including protections such as the prohibition of dismissal during maternity leave and the right to paid parental leave in the case of childbirth or adoption.

These principles have also been endorsed by the European Parliament, which, in its Resolution of 13 September 2016⁵⁰, promotes favourable working conditions aimed at achieving a more effective work-life balance. This Resolution recognises that work-life balance is a broad concept, encompassing legislative policies designed to support a balance between work, leisure, family care, and personal development.

In this context, Directive 2019/1158/EU plays a key role with Article 9 dedicated to «flexible working arrangements».

Flexible Working Arrangements. The possibility for workers to adjust their working pattern, including through the use of remote working arrangements, flexible working schedules, or reduced working hours (Article 3, paragraph 1, letter (f)).

The regulation grants workers with children aged eight or younger, as well as caregivers, the right to request flexible working hours for caregiving duties. The employer is responsible for deciding on the request and must balance the needs of both the worker and the business. In any case, the duration of the caregiving period must be "reasonable".

The Directive, in Recital 6, links the introduction of work-life balance measures to the achievement of gender equality objectives. In this regard, policies aimed at balancing professional activity and family life should support gender equality by promoting women's participation in the labour market and ensuring an equal distribution of caregiving responsibilities between men and women, thus narrowing the gender pay gap. In this regard, Recital 10 further reiterates that achieving this balance remains a significant challenge for many working parents.

In particular, the growing prevalence of long working hours and fluctuating work schedules (Ricci, 2005, p. 42 ff.) has a negative impact on female employment. Working mothers are more likely to dedicate fewer hours to work.

Furthermore, the increasing integration of work and personal life, driven by the digital revolution, presents new challenges. Remote working risks making employees constantly available, undermining their leisure time and mental and physical well-being. This highlights the need for new measures, such as the right to disconnect, which is crucial for maintaining a genuine balance between work and personal life (see below, section 4.2.1.).

⁵⁰ European Parliament resolution of 13 September 2016 on creating labour market conditions favourable for work-life balance (2016/2017(INI)).

5.2. Flexibility in Location: Performing Work Outside the Workplace through Telework.

When considering work-life balance, it is also essential to take into account contractual arrangements that allow employees to work remotely.

These flexible arrangements, in terms of the location of work, enable more efficient management of commuting and daily tasks, fostering a better balance between working and non-working hours. Balancing these aspects also plays a key role in promoting gender equality, for the reasons outlined in the previous section.

Telework is regulated at the EU level through a collective agreement, the Framework Agreement on Telework, signed in Brussels on 16 July 2002 by the ETUC, UNICE/UEAPME, and CEEP.

Definition of Telework: Telework is a form of organising and/or performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employer's premises, is carried out away from those premises on a regular basis (Clause 1, paragraph 1).

The social partners explicitly recognise that telework serves, on the one hand, to modernise the organisation of work, both in public institutions and private businesses.

On the other hand, it enables workers to balance their professional activities with their social life, providing them with greater autonomy in carrying out their assigned tasks.

Clause 2, paragraph 1, establishes the voluntary nature of the contractual arrangement, which can be introduced both at the outset of the employment relationship and during its course. This is particularly relevant to technological sectors and the development of policies aimed at promoting collaborative models and good business practices.

The use of this arrangement has become increasingly common, particularly since the start of the COVID-19 pandemic. According to recent statistics, the proportion of people working from home nearly doubled in recent years, rising from 11% in 2019 to 22% in 2021⁵¹.

The widespread adoption of remote work, which has influenced various aspects of teleworking regulations in Member States, led the EU social partners to include a commitment in the “European Social Dialogue Work Programme 2022-2024” of 28 June 2022⁵² to review and update the 2002 Agreement through a legally binding framework, to be implemented by means of a directive.

5.2.1. Continued. The Right to Disconnect.

With the rise of new technologies and, consequently, remote work, some Member States have introduced models for the “**right to disconnect**” from digital tools, designed to protect workers while performing their duties outside the workplace.

The first model, developed in France and Belgium, is based on legislative framework that recognises this right but leaves the definition of practical implementation methods to collective bargaining or company regulations (Biasi, 2022, p. 400).

In Austria and Germany, the right to disconnect is exclusively addressed through collective bargaining (*Tarifverträge*) or “company agreements” (*Betriebsvereinbarungen*) applicable to all employees.

⁵¹ Eurofound, *The rise in telework: Impact on working conditions and regulations*, 2022, pp. 7-8.

⁵² European Social Dialogue Work Programme 2022 – 2024.

In Italy, the right to disconnect is closely linked to the smart working agreement. Article 19 of Law No. 81/2017 states that the smart working agreement must include «the technical and organisational measures necessary to ensure the worker's disconnection from company technologies».

The need to harmonise the regulation of the right to disconnect led the European Parliament to adopt the Resolution of 21 January 2021, which includes recommendations to the Commission on this right⁵³.

The resolution highlights how the increasing use of digital tools for work exposes workers to the risks associated with the «“ever- connected”, “always on”, or “constantly on call” culture». According to the European Parliament, this could have a negative impact on the full enjoyment of a range of «workers' fundamental rights», with specific reference to gender issues⁵⁴.

The Resolution includes a proposed directive for regulating the right to disconnect. This proposal would introduce minimum requirements allowing workers to use digital tools for work purposes and exercise the right to disconnect, applying to all sectors, both public and private, and to all workers, regardless of their status or working arrangements.

Four key points are highlighted in this context:

- The introduction of a clear definition of «disconnect», defined as «not to engage in work-related activities or communications by means of digital tools, directly or indirectly, outside working time» (Article 2, paragraph 1);
- The requirement for employers to set up a reliable and accessible system to track the daily working hours of each employee. Workers can request and obtain a record of their working hours to fully exercise their right to disconnect (Article 3, paragraph 2);
- The inclusion of the right to disconnect within the occupational health and safety framework under Directive 89/391/EEC. This reference is particularly relevant from a gender perspective, considering the greater exposure of women to work-related stress. This risk may be heightened by the increased potential for work to encroach on personal time, which could result from the use of technological tools, such as in remote work⁵⁵. Remote working increases exposure to the risks of work overload, especially for roles that require frequent interactions⁵⁶. Additionally, the rise of telework has significantly impacted work organisation, increasing the expectation for employees to remain available and responsive, thus contributing to issues related to work-related stress;
- The strengthening of the role of social partners in regulating the right to disconnect through their consultation (see paragraph 4.2.2.).

On 30 April 2024, the European Commission launched the first phase of consultation with social partners under Article 154 TFEU regarding a potential EU-wide action on telework and the right to disconnect⁵⁷.

⁵³ European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2019/2181(INL)).

⁵⁴ Recital C of the European Parliament Resolution of 21 January 2021 (2019/2181(INL)) states that «the ever greater use of digital tools for work purposes [...] can have detrimental effect on workers' fundamental rights and fair working conditions, including fair remuneration, the limitation of working time and work-life balance, physical and mental health and safety at work and well-being, as well as, because of its disproportionate impact on workers with caring responsibilities, who tend to be women, equality between men and women; whereas the digital transition should be guided by respect for human rights and for the fundamental rights and values of the Union, and should have a positive impact on workers and working condition».

⁵⁵ In 2020, 23.64% of female workers reported a work-related injury caused by physical or mental stress, compared to 22.76% of male workers (Weber – Henke, 2023).

⁵⁶ For a more in-depth analysis, refer to EU-OSHA, *Telework and health risks in the context of the COVID-19 pandemic: Evidence from the field and policy implications*, 2021,

⁵⁷ Under Article 154 TFEU, paragraph 2, «before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Union action».

5.2.2. The Role of Social Partners in Managing and Regulating the Right to Disconnect.

Under the framework of the 2021 Resolution, social partners are tasked with contributing to the practical implementation of the right to disconnect.

In this context, on the one hand, the measures for implementing the right to disconnect are to be established by Member States following consultation with the social partners, ensuring that workers can exercise their right and that employers implement it (Article 4, paragraph 1). Specifically, social partners would be consulted on critical issues, such as the practical means of disconnecting from digital tools for work purposes, including performance monitoring tools; the system for measuring working hours; health and safety assessments related to the right to disconnect; exceptions to the employer's obligation to implement the right; methods and criteria for compensating work done outside of working hours; and awareness-raising and training measures, including those aimed at employers.

It is also important to note that collective bargaining – at all levels – is given the opportunity to complement the measures introduced by Member States or to establish new ones (Article 4, paragraph 2). This could lead to innovative approaches on the topic, going beyond the constraints of a rigid regulatory framework.

The need to protect workers' rights in relation to the right to disconnect was recognised by the European social partners even before the 2021 Resolution, through the Framework Agreement on Digitalisation of 22 June 2020.

The Framework Agreement focuses on measures related to organisational aspects, as well as preventive measures for health and safety. The reference to work organisation and workload, including the number of employees, is particularly significant. In this context, employers' autonomy could be further restricted by collective agreements, as achieving organisational and productivity objectives «should not require out of hours connection».

Moreover, the Framework Agreement stresses the importance of fostering a corporate culture that ensures the effective implementation of health and safety principles. It promotes the introduction of alert systems and dialogue between employers and workers regarding processes and workloads, as well as the prevention of isolation.

5.3. Flexibility in Working Time: Part-Time Contracts.

Regarding the flexibility of working hours, it is important to focus on part-time contracts and their implications for gender equality. This form of employment aims to promote a balance between personal, family, and professional life, addressing the following needs:

- Creating a more flexible work organisation in the interests of businesses;
- Supporting the reconciliation of work and family life in line with the needs of workers.

Therefore, this type of contract is widely used by women, who bear a disproportionate share of family caregiving responsibilities. In this regard, data shows that in the European Union in 2023, 27.9% of women were employed on part-time contracts, compared to 7.7% of men⁵⁸.

At the EU level, the relevant regulations are found in Directive 97/81/EC of 15 December 1997, which implements the European Framework Agreement concluded on 6 June 1997 between the cross-sectoral organisations UNICE, CEEP, and ETUC⁵⁹.

⁵⁸ Eurostat (2023), *Part-time and full-time employment – statistics*.

⁵⁹ Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC.

As outlined in Recital No. 5, the Union has recognised the need for measures to promote employment and equal opportunities between men and women, emphasising the need to adopt measures that increase the employment intensity of growth. This includes, in particular, a more flexible organisation of work that meets both the needs of workers and the demands of competitiveness. Such measures include the use of part-time contracts, as well as education and training initiatives to improve skills and career prospects, in the mutual interest of both employers and employees, and in ways that foster the development of business.

Directive 97/81/EC seeks to protect part-time workers from less favourable treatment compared to «comparable full-time workers solely because they work part-time» (Clause 4.1). The anti-discrimination protection for part-time workers is balanced by the principle of *pro rata temporis* (in proportion to time). In other words, for certain benefits, such as hourly pay or annual leave, part-time workers' entitlements must be adjusted in line with the shorter duration of their working hours⁶⁰.

The EU measure also played a crucial role in harmonising and standardising the definition of part-time workers across Member States, defined as «an employee whose normal hours of work, calculated on a weekly basis or on average over a period of employment of up to one year, are less than the normal hours of work of a comparable full-time worker» (Clause 3, paragraph 1, point 1).

5.3.1. The Role of Collective Bargaining in Regulating Part-Time Contracts.

The Framework Agreement grants a significant role to the social partners in implementing its provisions.

Firstly, collective bargaining has the authority to determine the scope of the Agreement's application. Clause 2 specifies that the term «worker», for the purposes of the Agreement, can be defined by collective bargaining.

Social partners must also be consulted if Member States intend to exclude, either fully or partially, part-time workers who work on an occasional basis from the provisions of this Agreement for objective reasons.

The negotiating parties are responsible for determining how the principle of non-discrimination for part-time workers is applied to employment conditions.

The Agreement also grants social partners an active role in implementing measures to facilitate access to part-time work. «Acting within their sphere of competence and through the procedures set out in collective agreements», they are required to «identify and review obstacles which may limit opportunities for part-time work and, where appropriate, eliminate them» (Clause 5, paragraph 1, point (b)). This Clause is particularly important in the context of addressing gender equality. In this regard, based on the aforementioned Clause, collective bargaining could introduce measures to encourage the use of part-time contracts among men as well. In doing so, a measure promoting part-time work could further contribute to redistributing caregiving responsibilities within the family, thereby alleviating the burden on women.

Social partners are, in any case, permitted to maintain or introduce provisions more favourable than those set out in the Agreement.

5.3.2. The limitations of Prolonged Use of Flexible Working Arrangements.

While part-time contracts serve as a tool for balancing work and life, it is important to highlight the potential drawbacks of prolonged reliance on this type of arrangement. In this context, Directive

⁶⁰ Court of Justice, 7 July 2022, *Ville de Mons, Zone de secours Hainaut-Centre v RM*, Case C-377/21.

2019/1158/EU emphasises how extended periods of reduced working hours can « lead to lower social security contributions and thus reduced or non-existing pension entitlements» (Recital 35). In general, the discontinuity and flexibility of work negatively impact workers' social security protection. This issue disproportionately affects gender equality, as women continue to be the primary group using part-time contracts (D'Onghia, 2023, pp. 137–138).

Therefore, Directive 2019/1158/EU, with regard to the regulation of flexible working arrangements, aims to introduce safeguards to prevent their excessive duration. In this context, Article 9 of the Directive stipulates that such arrangements must be time- limited and subject to reasonable restrictions. Collective bargaining appears to be the most appropriate mechanism for defining the “reasonableness” of these restrictions, ensuring a fair balance between the needs of the business and the workers.

Furthermore, the Directive grants workers who have adopted flexible working arrangements the right to return to the original pattern of their working life, even before the agreed period ends, whenever a change in circumstances justifies it. The employer must consider requests for an early return and responds «taking into account the needs of both the employer and the worker». In this regard, social partners could play a role in clearly defining and specifying the circumstances that justify the worker's early return.

5.4. The Role of Institutional Social Dialogue in Leave Legislation.

In pursuing the objectives of equal treatment, EU institutions have given significant attention to work-life balance, particularly with regard to setting minimum regulations for leave.

This stems from the understanding that women's underrepresentation in the labour market is influenced by an unequal distribution of caregiving responsibilities. Recent statistics show that, in the European Union, women are primarily responsible for childcare. In this regard, it has been noted that, in 50% of couples, it is the woman who is responsible for meeting the primary needs of their children, compared to just 6% of men⁶¹. Specifically, it should be noted that around 56% of women with children under the age of 12 spend at least five hours a day on their care, compared to 26% of men⁶². These figures have a direct impact on women's employment status. The same study reveals that women who care for children are employed at a rate of 70%, while the employed rate for men is 83%.

Therefore, through Directives 1996/34/EC and 2010/18/EU, and now with Directive 2019/1158/EU on work-life balance for parents and carers, the institutional and social partners of the European Union have recognised leave as an effective instrument for promoting gender equality in the workplace.

⁶¹ EIGE (2022), *A Better Work–Life Balance: Bridging the gender care gap*, p. 2.

⁶² Ibid.

Maternity Leave. Leave from work for the mother to be taken before and/or after childbirth (Directive 92/85/EEC).

Paternity Leave. Leave from work for fathers or, where and insofar as recognised by national law, for equivalent second parents, on the occasion of the birth of the child for the purposes of providing care (Directive 2019/1158/EU).

Parental Leave. Leave from work for parents on the grounds of the birth or adoption of a child to take care of that child (Directive 2019/1158/EU).

Carers' leave. Leave from work for workers in order to provide personal care or support to a relative, or to a person who lives in the same household as the worker, and who is in need of significant care or support for a serious medical reason, as defined by each Member State (Directive 2019/1158/EU).

In other words, with the aforementioned directives, the principle of non-discrimination is primarily implemented by addressing the reconciliation of working hours with family life.

This represents a paradigm shift, and consequently, a change in the legal framework used compared to Directive 92/85/EEC, which focuses on measures to enhance the health and safety at work of pregnant, postnatal, or breastfeeding workers. This Directive is a specific provision under the so-called "framework" Directive 89/391/EEC on health and safety. In this case, leave does not aim to promote women's access to the labour market. Instead, it serves as a safety measure designed to prevent health and safety risks for workers nearing childbirth. In this regard, the goal of gender equality is a secondary consideration to the primary objective of health and safety protection. This further highlights the multifaceted nature of the "gender factor" and how it impacts the organisation of work.

The shift in approach, towards redistributing family caregiving responsibilities, was achieved through Directive 96/34/EC. This Directive implemented a framework agreement concluded by the social partners UNICE, CEEP, and ETUC, in line with the institutionalised social dialogue procedure currently outlined in Article 155(2) TFEU. Subsequently, the social partners BusinessEurope, UEAPME, CEEP, and ETUC revised the previous agreement, which was entirely replaced by the agreement of 18 June 2009, adopted through Directive 2010/18/EU.

These directives have the merit of aligning, within the EU institutional framework, the individual right to parental leave with the already established right to maternity leave. In particular, Clause 2 of the 2009 Agreement required Member States to introduce parental leave for each parent, to be taken before the child reaches the age of eight, for a minimum period of four months, one of which is non-transferable. The methods of application were left to the Member States and/or the social partners themselves (Clause 3).

Furthermore, achieving the goal of work-life balance as a social policy measure of the European Union finds explicit protection in Article 33 of the CFR, which enshrines the right of every individual to «paid maternity leave and parental leave following the birth or adoption of a child». The prominent role of paid leave entitlements is reaffirmed in the European Pillar of Social Rights, which establishes the right to «suitable leave» for «parents and people with caring responsibilities» (Point 9)⁶³.

⁶³ Point 9 of the European Pillar of Social Rights also states that «women and men shall have equal access to special leaves of absence in order to fulfil their caring responsibilities and be encouraged to use them in a balanced way».

5.4.1. Directive 2019/1158/EU: Sharing Family Care Responsibilities.

A significant step forward in the redistribution of caregiving responsibilities within the family unit was made with Directive 2019/1158/EU, following a lengthy and complex legislative process (as discussed by Chiericato, 2020, p. 125 et seq.).

As early as 2016, the European Parliament urged the European Commission to present an ambitious proposal to effectively improve the reconciliation of professional and private life⁶⁴. Particularly innovative is the Resolution's emphasis on the need to promote the role of fathers in achieving gender equality objectives (Point 24), underlining the "urgency" of introducing paternity leave (Point 26).

These calls are addressed by Directive 2019/1158/EU, which introduces several innovations aimed at recognising the role of men as caregivers and providers of support (Izzi, 2020, p. 341). Specifically, the Directive mandates that Member States ensure «fathers or, where and insofar as recognised by national law, equivalent second parents» are entitled to at least ten working days of paternity leave. Member States may determine whether paternity leave can be taken partly before the birth of the child, whether the full leave must be taken after the birth, the period within which it must be used, and whether—and under what conditions— part-time or flexible leave arrangements are allowed (Article 4). Recital 19 of the Directive further highlights the goal of strengthening the bond between fathers and children, with the aim of making the leave more effective in fundamentally shifting caring responsibilities.

Article 5 of the Directive confirms the minimum duration of parental leave as four months, but, on the other hand, increases the non-transferable portion of leave to two months. The aim of the EU legislator is, in this regard, to grant and ensure the effective exercise of the right to parental leave for all workers with parental responsibilities. In this context, the Directive acknowledges the low take-up of parental leave by fathers. The causes of this phenomenon are identified as:

- The lack of paid parental leave (Recital 11);
- The limited flexibility in exercising the right to parental leave (Recital 23).

However, Article 8 of the Directive, which leaves the definition of payment or allowance during the leave to Member States or social partners, specifies that it should «facilitate the take-up of parental leave by both parents».

Furthermore, Article 5, paragraph 6, requires Member States to take measures to ensure the right to parental leave « in flexible ways ». It should be noted, however, that the flexibility in exercising this right is limited by the employer's assessment, who can decide whether to grant parental leave during a specific period, taking into account «the needs of both the employer and the worker».

Additionally, Article 5, paragraph 4, appears to conflict with the objective of ensuring parental leave for all workers. The provision states that « Member States may make the right to parental leave subject to a period of work qualification or to a length of service qualification, which shall not exceed one year».

The Directive's substantive approach is further reflected in the introduction of a leave period (five working days per year) for «carers» (Article 6)⁶⁵. This provision arises from the recognition that

⁶⁴ European Parliament resolution of 12 May 2016 on the application of Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (2015/2097(INI)), point 18.

⁶⁵ The carer is defined by the Directive as « a worker providing personal care or support to a relative, or to a person who lives in the same household as the worker, and who is in need of significant care or support for a serious medical reason, as defined by each Member State ».

women not only bear the responsibility for caring for children, but are often also the family members who care for other relatives. This need is becoming increasingly significant, in line with the ageing population across Europe. In fact, the Directive itself highlights this need in light of «challenges that arise from demographic change, together with the resultant pressure on public expenditure in some Member States» (Recital 7).

It is important to note that the case law of the Court of Justice has extended the prohibition of direct discrimination to non-disabled workers who face adverse treatment due to the disability of their child, for whom they provide essential care⁶⁶. Following this ruling, in an interlocutory order dated 17 January 2024, the Italian court of Cassation asked the Court of Justice — which has yet to deliver a ruling—whether a caregiver could benefit from anti-discrimination protections in cases of indirect discrimination caused by the caregiving responsibilities undertaken⁶⁷.

Therefore, in its efforts to combat gender discrimination, the EU legislator has taken a step further than simply reconciling work and personal life. With its substantive approach, the Directive appears to aim at dismantling stereotypical relational models that impede genuine emancipation of women from their initial subordinate roles. In line with this perspective (Alessi 2018, p. 807), it seems appropriate to interpret the recent legislative changes within the European Union as measures for *sharing* caregiving responsibilities, rather than merely *reconciling* them.

The effective application of the Directive's principles faces challenges, particularly due to significant differences among Member States. Gaps in the implementing legislation can be identified, especially in relation to parental leave and allowances, protections for flexible working arrangements, and legal protections (De la Corte-Rodríguez, 2022, p. 127). A recent opinion from the European Economic and Social Committee points out that only 10 Member States adequately compensate for the two months of non-transferable parental leave⁶⁸. Adequate remuneration for parental leave is crucial for the effectiveness of the Directive, as parents who receive higher pay – typically men – may be discouraged from taking the leave.

Moreover, in Belgium, Ireland, Estonia, Sweden, and Slovenia, the right to caregiver leave is not granted to the individual worker but may be shared between different workers⁶⁹. This provision fails to address gender inequalities within the family unit. Therefore, it would be more appropriate to grant this right individually to each worker.

6. Conclusions

The analysis conducted thus far presents a multifaceted view of the areas where the principle of gender equality has been implemented. This discussion has focused aspects of equal treatment related to pay, social security, and, ultimately, work-life balance, with particular emphasis on the role of social partners.

Section 2 outlines the general regulatory framework for the prohibition of gender discrimination in the workplace. Section 3 specifically addresses pay-related issues, in this regard, the analysis focuses on the principle of pay transparency and the innovations introduced by the directive on adequate minimum wages. Section 4, which deals with the implementation of gender equality in social security, begins with earlier directives on legal and professional schemes and

⁶⁶ Court of Justice, 17 July 2008, C-303/06.

⁶⁷ Civil Court of Cassation, 17 January 2024, No. 1788.

⁶⁸ Opinion of the European Economic and Social Committee of 10 January 2025, C/2025/116, point 3.1.2., ii).

⁶⁹ Opinion of the European Economic and Social Committee of 10 January 2025, C/2025/116, point 3.1.2., iii).

progresses to the Council Recommendations of 2019 and 2023, which set new objectives for Member States and EU social actors. Finally, Section 5 examines work-life balance issues. Drawing on the principles of Directive 2019/1158/EU, this section explores the challenges related to telework (flexibility in choosing the work location), part-time contracts, and leave policies (flexibility in working hours) in relation to gender equality.

The common feature of all the topics discussed is the central role assigned to social partners.

In Directive 2023/970/EU, a significant margin of discretion is granted to social partners regarding the implementation of the principle of pay transparency. Social partners are permitted to develop tools and methodologies for the analysis, evaluation, and classification of personnel that are gender-neutral and capable of guiding the actions employers. The use of collective bargaining is also encouraged to identify innovative measures to combat pay discrimination. Furthermore, according to Directive 2022/2041/EU, collective bargaining is the preferred tool for addressing low wages, as it «contributes to improving the adequacy of minimum wages as well as the living and working conditions of workers » (Recital 22). Member States with collective bargaining coverage rate below 80% are, furthermore, required to adopt a plan to promote collective bargaining. Even where a Member State has introduced a legal minimum wage, social partners are involved in the mechanism for updating and determining it. The directive indirectly provides a more favourable measure for women, considering the ongoing pay gap and their employment in low-wage occupations.

In the field of social security, it can be observed that social partners, in collaboration with both public and private bodies, are responsible for defining the minimum standards in the social protection system for both employees and self-employed workers. Specifically, in relation to the regulation of minimum income and social inclusion, social partners play a key role in implementing policies for the training and reskilling of workers. The strengthening of the social protection system is also closely linked to the issue of gender equality. Indeed, evidence shows that women are more vulnerable to in-work poverty, low wages, and are particularly disadvantaged by socially neutral social benefits aimed at the family unit.

The implementation of the principle of gender equality is also closely tied to regulations concerning the flexibility of working hours and locations. These arrangements allow for a more effective balance between work and personal life. Specifically, with regard to teleworking and part-time contracts, it is evident that social partners have played a key role in recognising the potential of these practices and establishing appropriate regulations. The EU framework on teleworking and part-time contracts originates from framework agreements between social partners. Collective bargaining, in turn, proves to be a flexible tool that aligns with the interests of the parties, enabling quicker adaptation to regulatory changes compared to the lengthy legislative process. These regulatory potentials could soon be realised further in the definition of the right to disconnect. The framework agreement on digitalisation and the European Parliament's 2021 resolution grant significant regulatory discretion to social partners regarding the right to disconnect.

However, teleworking – which is more widely used by female workers (according to Vargas Llave, Huxley, Peruffo, Rodríguez Contreras, Adascalitei, Botey Gaude, Staffa, Vacas Soriano, 2021, the usage rates are 24% for women, compared to 21% for men) – seems insufficient on its own to achieve full equality of treatment. While it effectively enables a balance between personal and work life, it does not address the issue of the unequal distribution of caregiving responsibilities within households.

In this regard, Directive 2019/1158/EU is particularly innovative in introducing the obligation to provide paternity leave and care leave for caregivers. This approach appears to play a progressive role in rebalancing caregiving responsibilities within the family, extending beyond child-rearing. S

such, the evolving regulations of leave seems to aim at promoting the sharing responsibility for caregiving, alongside its reconciliation with work.

The implementation of policies to achieve gender equality, however, encounters cultural barriers rooted in the structural aspects of the social fabric within the Member States. The evolution of European societies based on a patriarchal family model⁷⁰ has, in turn, led to the prevalence of the so-called “male breadwinner” model, where the man is the main earner and engages in paid work, while the woman is responsible for unpaid caregiving work (Shireen – Robin, 2017).

This dynamic has resulted in the spread of gender stereotypes about working women. For example, 34% of EU citizens believe a woman’s most important role is to care for the home and family⁷¹. Specifically, in the managerial sphere, 21% of EU citizens still think that women are too emotional to be effective leaders⁷². Notably, only 34.7% of managerial positions are held by women⁷³.

The link between women and caregiving work is further evidenced by the higher number of women working as teaching assistants (92.6% compared to men), secretaries (89.3%), and primary school teachers (88.2%)⁷⁴. On the other hand, women are underrepresented in blue-collar jobs, such as construction (1.4% compared to men) and mechanics (2.9%)⁷⁵.

One area where the EU and collective bargaining could play a role is closing the gender gap in sectors with low female representation.

The road to gender equality thus remains a complex issue, with developments spanning multiple fields and categories of labour law. Over the years, Member States' policies aimed at achieving gender equality have contributed to an increase in women's participation in the labour market. For instance, the female employment rate (for women aged 20 to 64) rose from 62.1% in 2010 to 66.5% in 2017⁷⁶. The evolution of laws ensuring effective gender equality has been broad, impacting anti-discrimination law, working hours, pay, and worker health. Given the wide-ranging impact of this right, which affects the social dynamics of human relationships, it requires a multidisciplinary and interconnected approach to meet the new and evolving challenges of implementing gender equality. In this context, social partners can play a crucial role.

The legal evolution towards ensuring actual gender equality has been broad-reaching, impacting anti-discrimination law, as well as working hours, pay, and worker health. Given the far-reaching nature of this right, which influences social relations and human interactions, a multidisciplinary and interconnected approach is required to address the new and progressive challenges presented by the implementation of gender equality principles. In this context, social partners can play a pivotal role.

⁷⁰ Patriarchy refers to a «social system of masculine domination over women», EIGE, Glossary and thesaurus, patriarchy.

⁷¹ European Commission (2024), *Special Eurobarometer 345. Gender Stereotypes*.

⁷² European Commission (2024), *Special Eurobarometer 345. Gender Stereotypes*.

⁷³ Eurostat (2024), Jobs with the highest shares of women in Q3 2023.

⁷⁴ Eurostat (2024), Jobs with the highest shares of women in Q3 2023.

⁷⁵ Eurostat (2024), Jobs with the highest shares of women in Q3 2023.

⁷⁶ European Commission: Directorate-General for Communication, *Spotlight on EU action for women*, Publications Office of the European Union, 2020, <https://data.europa.eu/doi/10.2775/38208>.

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