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EU Gender Equality law

Serbia explanatory screening meeting

Chapter 19 – SOCIAL POLICY AND EMPLOYMENT

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European Commission
DG Justice

Outline

- Treaties and EU Charter
- Employment: Directive 2006/54/EC
- Access to goods and services: Directive 2004/113/EC
- Self-employment: Directive 2010/41/EU
- Pregnant Workers Directive 92/85/EEC
- Parental leave: Directive 2010/18/EU
- Social security (statutory): Directive 79/7/EEC

Gender equality in the Treaties

- **Article 2 TEU:** equality between women and men is a fundamental value of the EU common to all EU MS.
- **Article 3 TEU:** the EU shall promote equality between women and men.

Legal basis for legislation:

- **Article 157 TFEU**
- **Article 19 TFEU** (Dir. 2004/113 on access to goods and services)



Article 157 TFEU

- §1 Principle of **equal pay for men and women** for equal work or work of equal value.
- §2 Definition of "pay": the ordinary basic **wage** or salary and **any other consideration, whether in cash or in kind**, which the worker receives **directly or indirectly**, in respect of his **employment** from **his employer**.
- §3 Legal basis for the **adoption of legislation** (ordinary legislative procedure)

EU Charter of Fundamental Rights

Article 23: Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

Article 33: Family and professional life

To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the rights to paid maternity leave and to parental leave following the birth or adoption of a child.

Scope of the Charter: addressed to institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity, and to the Member States only when they are implementing EU law (Art. 51 TFEU).



Directive 2006/54/EC (Recast)

Prohibits direct and indirect discrimination on grounds of sex in the following fields:

- (a) **access** to employment, including promotion and dismissals, vocational training and participation in workers organisations
- (b) working conditions, including **pay**
- (c) **occupational social security schemes** (i.e.: pensions schemes for civil servants)

Directive 2006/54/EC

Equal pay (Art. 4)

- For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.
- In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.



Directive 2006/54/EC

Occupational social security schemes (Art. 7)

There shall be no direct or indirect discrimination on grounds of sex in occupational social security schemes, in particular as regards:

- (a) the scope of such schemes and the conditions of access to them;
- (b) the obligation to contribute and the calculation of contributions;
- (c) the calculation of benefits, including supplementary benefits due in respect of a spouse or dependants, and the conditions governing the duration and retention of entitlement to benefits.



Directive 2006/54/EC

Employment and occupation (Art. 14)

There shall be no direct or indirect discrimination on grounds of sex in the public or private sectors in relation to:

- conditions for access to employment
- vocational training
- promotion and working conditions (including dismissal)
- membership of, and involvement in, an organisation of workers or employers



Directive 2004/113/EC

access to and supply of goods and services

Applies to (Art. 3):

- all people and organisations (both public and private sector) that make goods and services available to the public;
- goods and services offered outside the area of private and family life.

Does not affect (Art. 3):

- the content of media and advertising nor to education;
- the individual's freedom to choose a contractual partner as long as an individual's choice of contractual partner is not based on that person's sex.



Directive 2010/41

self-employed

Scope (Art. 2)

- (a) self-employed workers;
- (b) the spouses of self-employed workers or the life partners of self-employed workers where they habitually participate in the activities of the self-employed worker.

Life partners: Member States are not obliged to recognise 'life partners' but where 'life partners' are already recognised under national law, they should be covered.



Directive 2010/41

- Prohibits direct or indirect discrimination based on sex when **establishing, equipping or extending a business**, or any other form of self-employed activity.
- Where a national social protection system exists for self-employed workers, **the spouses or life partners who participate in the activities of the self-employed worker have the right to social protection in their own name.**
- Self-employed women, and female spouses or life partners who contribute to the activity of self-employed workers shall be entitled to a **maternity allowance for at least 14 weeks**. This allowance shall be sufficient to enable them to interrupt their activities if they wish to do so.



Common provisions with anti-discrimination Directives

Directives 2006/54/EC, 2004/113/EC and 2010/41/EU share common provisions with the anti-discrimination Directives:

- * Definitions
- * Rules on burden of proof
- * Rules on defence of rights and on effective sanctions
- * Rules on equality bodies
- * Rules on protection against victimisation
- * Rules on social dialogue and dialogue with NGOs
- * Rules on positive action
- * Derogation for genuine and determining occupational requirements

Positive action

Article 157(4) TFEU

With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.



Positive action

Cumulative conditions developed by the case law of the Court:

- there are fewer women than men in the relevant post;
- the female candidate is equally qualified as the male competitor in terms of suitability, competence and professional performance;
- the application of each male candidate is subject of an objective assessment which will take account of all criteria specific to the individual candidates;
- the priority is not automatic and unconditional, but may be overridden if reasons specific to an individual male candidate tilt the balance in his favour.



Directive 92/85/EEC

maternity

- **Purpose:** To implement measures to improve the safety and health at work of pregnant workers and workers who have recently given birth or who are breastfeeding.
- Obligation of employers to **assess the safety of the workplace** for pregnant or breastfeeding workers (Art. 4)
- Obligation of employers to **adapt working conditions** if there is a risk to safety or health (Art. 5).

Directive 92/85/EEC

- **Night work (Art. 7)**

Women must not be obliged to perform night work during their pregnancy and for a period following childbirth.

- **Maternity leave (Art. 8)**

At least 14 weeks.

- **Ante-natal examinations (Art. 9)**

Pregnant workers have the right to take leave from work without loss of pay.

- **Protection against discriminatory dismissal (Art. 10)**

Women may not be dismissed for reasons related to their condition for the period from the beginning of their pregnancy to the end of the period of leave from work.

Directive 2010/18/EU

parental leave

- This Directive applies to **all workers, men and women**, irrespective of their type of employment contract (open-ended, fixed-term, part-time or temporary).
- Workers are entitled to **parental leave on the birth or adoption of a child**. Such leave may be taken until the child has reached an age determined by national law and/or collective agreements, up to the age of eight.
- Parental leave shall be granted for **at least a period of four months**. In principle, workers should be able to take all of their leave. It should therefore **not be transferable** from one parent to the other. However, such transfers may be authorised on condition that each parent keeps **at least one of the four months** of leave.



Directive 2010/18/EU

- After taking parental leave, workers shall have the right to **return to the same job**. If that is not possible, the employer must offer them an equivalent or similar job consistent with their employment contract or employment relationship.
- Workers shall be protected **against less favourable treatment or dismissal** on the grounds of an application for, or the taking of, parental leave.
- **Temporary changes to work schedules** – employees returning from parental leave have the right to request changes to their working hours for a limited period.



Directive 79/7/EEC

statutory social security

The Directive applies to:

- **the working population** – including self-employed persons, whose activity is interrupted by illness, accident or involuntary unemployment and persons seeking employment – and to retired or invalided workers and self-employed persons;
- **statutory social security schemes** which provide protection against sickness, invalidity, accidents at work and occupational diseases, unemployment and risks related to old age;
- **social assistance** which supplements or replaces the basic schemes.



Directive 79/7/EEC

Prohibits direct and indirect discrimination on grounds of sex, as regards:

- the scope of the schemes and the conditions of access thereto;
- the obligation to contribute and the calculation of contributions;
- the calculation of benefits and the conditions governing the duration and retention of entitlement to benefit.

Directive 79/7/EEC

Exceptions (Art. 7)

- survivors' benefits and family benefits schemes;
- the determination of different pensionable ages for men and women in old age pensions and retirement pensions;
- advantages related to the fact that the worker had brought up children and may have interrupted employment for that purpose.

Legislative proposals

- 1 - Proposal to amend the Maternity Directive
- 2 - Proposal on Women on Boards Directive
- 3 - Proposal on an Equal Treatment Directive

For further information

- <http://ec.europa.eu/justice/gender-equality/> (DG justice web site)
- http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/index_en.htm (summary of EU legislation on gender equality)
- <http://curia.europa.eu/> (Court of Justice of the EU website)
- http://ec.europa.eu/justice/gender-equality/files/case-law-compilation_en.pdf (compilation of case law on gender equality)
- <http://www.eige.europa.eu/> (European Institute for Gender Equality web site)
- <http://www.europarl.europa.eu/committees/en/femm/home.html> (femm committee web site)



Thank you for your attention!