

# EU Gender Equality law

Sectoral social dialogue committee for Railways

2 April 2019



European Commission  
DG EMPL & Justice

# Outline

- Treaties and EU Charter
- 1 - Employment: Directive 2006/54/EC
- 2 - Pregnant Workers Directive 92/85/EEC
- 3 - Parental leave: Directive 2010/18/EU

## OTHER

- Access to goods and services: Directive 2004/113/EC
- Self-employment: Directive 2010/41/EU
- Social security (statutory): Directive 79/7/EEC

# Gender or sex 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).



# 1- Directive 2006/54/EC - recast

## Prohibits

direct & indirect discrimination (and harassment)  
on grounds of sex in :

- (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

## 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 direct, indirect discrimination and harassment
- \* 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.



## 2 - Directive 92/85/EEC on 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.

## 3 - Directive 2010/18 on 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.









# The **new** Work-Life Balance Directive

- **Paternity leave** – 10 working days, paid as sick leave
- **Parental leave** – 2 months paid at adequate level (of 4m)
- **Carers leave** – 5 days / year / worker not paid
- **Flexible Working Arrangements** – right to request

## WHAT WILL THE COMMISSION'S PROPOSAL IMPROVE?

	CURRENT EU LAW	IMPACT OF THE PROPOSAL
<b>Paternity Leave</b> 	<p>No minimum standards for paternity leave at EU-level.</p>	<p>All working fathers will be able to take at least 10 working days of paternity leave around the time of birth of the child.</p> <p>Paternity leave will be compensated at least at the level of sick pay.</p>
<b>Parental Leave</b> 	<p>At least 4 months per parent, out of which one month is non-transferable between parents.</p> <p>Parents can take leave until their child is 8 years old.</p> <p>No minimum rules on allowance/ payment.</p>	<p>At least 4 months per parent that cannot be transferred between parents.</p> <p>Parents can take leave in flexible forms (full-time, part-time, in a piecemeal way).</p> <p>Parents can take leave until their child is 12 years old.</p> <p>Parental leave will be compensated at least at the level of sick pay.</p>
<b>Carers' Leave</b> 	<p>No minimum standards for carers at EU-level (except "force majeure" allowing to take short time off for imperative and unexpected family reasons.)</p> <p>No minimum standards at EU level on the length of the leave nor compensation</p>	<p>All workers will have the right to 5 days of carers' leave per year to take care of seriously ill or dependent relatives.</p> <p>Carers' leave will be compensated at least at the level of sick pay</p>
<b>Flexible Working Arrangements</b> 	<p>Right to request reduced and flexible working hours upon return from parental leave</p> <p>Right to request part-time work for all workers</p>	<p>All working parents of children up to 12 and carers with dependent relatives will have the right to request the following flexible working arrangements:</p> <ol style="list-style-type: none"> <li>1. Reduced working hours</li> <li>2. Flexible working hours</li> <li>3. Flexibility on the place of work</li> </ol>