
EU Legislation Effects on Women's Rights and Equal Treatment and Opportunities in the Workplace

REGINA SEDERGREN

TALLINN UNIVERSITY OF TECHNOLOGY, ESTONIA

ANNAREGINA.SEDERGREN@GMAIL.COM

Abstract: *This research investigates the effects of EU legislation in the labor market concerning equality between men and women. Studies imply that the female participation in the labor market has significantly increased but there's still recognized indirect gender-based discrimination. Parental leave legislation, policies and segregation in the labor market is discussed. Data concerning gender pay gap differences is analyzed in addition to labor market policy effect on employment of women. Case law and ECJ rulings are introduced to provide evidence that there is indirect discrimination towards women in the labor market. EU has taken actions towards more equal pay between genders in form of legislation, since there are several factors contributing gender pay gap it's not possible to close it via legislation. The structure of the labor market, the general mindset of the people and the economy is structurally modeled to work certain way. Women tend to work in lower income fields than men. Overall, the effect of EU legislation is positive, and it's what secures women's rights in case of indirect discrimination.*

Keywords: *equality, discrimination, gender, pay, employment*

INTRODUCTION

This paper analyses the effects of EU legislation on women participation in a workplace and also its effects on the more equal work environment. The main question is, if the legislation, for instance, on equal opportunities have improved women's rights in the workplace. Studies and data imply that the female participation in the labor market has increased but there still is indirect gender-based discrimination towards women in the workplace.¹ The gender pay gap between male and female workers is different in different EU countries and that is mainly because of segregation in the labor market, how work is valued and work-life balance. The aforementioned are the reasons for the gender pay gap which are one of the factors resulting in inequality between male and female workers in the labor market.²

European Union works towards closing the gender pay gap and promotes equal economic independence for both sexes.³ The gender pay gap is the difference in average gross earnings between male and female workers. The main factors that contribute to the gender pay gap are aforementioned, segregation in the labor market, how work is valued and work-life balance. Therefore, high gender pay gap indicates that the labor market is segregated, and lower gender pay gap indicates that there's less segregation in the job market.⁴ One of the European Union founding

¹ Jan Dirk Vlasblom, Joop J. Schippers. "Increases in female labour force participation in Europe: similarities and differences", *European Journal of Population*, 2004, p.389. Accessible: <https://link.springer.com/article/10.1007%2Fs10680-004-5302-0>

² Causes of unequal pay between men and women, European Commission – European Commission. Accessible: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/equal-pay/causes-unequal-pay-between-men-and-women_en

³ Gender equality, European Commission – European Commission. Accessible: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality_en

⁴ Causes of unequal pay between men and women, European Commission – European Commission. Accessible:

principles, equal pay for equal work, prohibits to pay women less than men for the same work.⁵ However, there remains indirect discrimination towards women in organizational hierarchies and some positions.⁶ Directive 2006/54/EC of the European Parliament and the Council of 5 July 2006 on the implementation of the equal opportunities and equal treatment of men and women in matters of employment and occupation show the efforts European Union has made towards equal pay between male and female workers.

The directive implies that the equal treatment of men and women cannot be confined to the prohibition of discrimination based on the fact that a person is one of other sex.⁷ Female participation in the labor market has increased in Europe, however, the segregation of female and male labor remains to be one of the main reasons for the gender pay gap.⁸ Eurostat data shows that the gender pay gap is higher on the private sector in some EU countries than it is in the public sector which may be due to the fact that there are collective pay agreements protecting the employees.⁹ The policy agenda of EU has been moved up by equal opportunities, the downside of this is the fact that then the approach to equal opportunities is formed by the agenda of European employment strategy. The process of working towards more equal opportunities is more about changing the whole structure of the labor market than focusing on isolated defects.¹⁰ However, segregation in the labor market does not directly indicate inequality although it's one of the main causes for the gender pay gap. Women tend to generally pursue lower income work than men do.¹¹

1. FACTORS THAT CONTRIBUTE THE GENDER PAY GAP AND LEGISLATION SECURING EQUALITY

One of the European Union founding principles, equal pay for equal work, regulates that it's not allowed to pay women less for the same work than man and vice versa. There are also several directives supporting, for instance, equal treatment and opportunity of men and women in matters of employment and occupation.¹² There is still an existing gender pay gap in the EU member states and the main factors that contribute this are segregation in the labor market, how work is valued and

https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/equal-pay/causes-unequal-pay-between-men-and-women_en

⁵ Dobrin, S., & Chochia, A. (2016). The concepts of trademark exhaustion and parallel imports: a comparative analysis between the EU and the USA. *Baltic Journal of European Studies*, 6(2), 28-57.

⁶ Mark Smith. "Analysis Note: The Gender Pay Gap in the EU – What policy responses?", 2010, p.3-4 Accessible: [http://www.eif.gov.cy/mlsi/dl/genderequality.nsf/All/F592B6E5C824A8A6C22579A700296E29/\\$file/the_gender_pay_gap_in_the_eu_egge_2010.pdf](http://www.eif.gov.cy/mlsi/dl/genderequality.nsf/All/F592B6E5C824A8A6C22579A700296E29/$file/the_gender_pay_gap_in_the_eu_egge_2010.pdf)

⁷ EUR-Lex – 32006L0054 – EN – EUR-Lex, Eur-lex.europa.eu. Accessible: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1553349084039&uri=CELEX:32006L0054>

⁸ Jan Dirk Vlasblom, Joop J. Schippers. "Increases in female labour force participation in Europe: similarities and differences", *European Journal of Population*, 2004, p.389. Accessible: <https://link.springer.com/content/pdf/10.1007/s10680-004-5302-0.pdf>

⁹ Gender pay gap statistics – Statistics Explained, ec.europa.eu. Accessible: https://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics#Gender_pay_gap_higher_in_the_private_sector

¹⁰ Jill Rubery. "Gender mainstreaming and gender equality in the EU: the impact of the EU employment strategy.", 2002, p.516. Accessible:

[http://www.eif.gov.cy/mlsi/dl/genderequality.nsf/0/9E015C850578EF53C2257A750029B512/\\$file/Rubery.pdf](http://www.eif.gov.cy/mlsi/dl/genderequality.nsf/0/9E015C850578EF53C2257A750029B512/$file/Rubery.pdf)

¹¹ European equality law network. Key EU directives in gender equality and non-discrimination. Accessible: <https://www.equalitylaw.eu/legal-developments/16-law/76-key-eu-directives-in-gender-equality-and-non-discrimination>

¹² Mark Smith. "Analysis Note: The Gender Pay Gap in the EU – What policy responses?", 2010, p.3-4 Accessible: [http://www.eif.gov.cy/mlsi/dl/genderequality.nsf/All/F592B6E5C824A8A6C22579A700296E29/\\$file/the_gender_pay_gap_in_the_eu_egge_2010.pdf](http://www.eif.gov.cy/mlsi/dl/genderequality.nsf/All/F592B6E5C824A8A6C22579A700296E29/$file/the_gender_pay_gap_in_the_eu_egge_2010.pdf)

work-life balance.¹³ There are also structural inequalities in the labor market favoring men in higher positions.¹⁴ Besides the legislation securing women the same pay for the same work than men, there are cases of indirect discrimination and the whole structure of the current labor market is not supporting full equality in matters of the gender pay gap. However, segregation which is one of the main causes for the gender pay gap does not always indicate inequality. Inequality shows in some selection processes, in organizational hierarchies, in case law and it also has its roots in people's mindsets.¹⁵

1.1. Parental leave and legislation

Women experience more career interruptions than men. For instance, parental leave which women tend to take more often is a case of career interruption.¹⁶ This explains why the gender pay gap is lower among younger people since they haven't yet experienced these interruptions.¹⁷ As an example in Sweden there are policies that aim to facilitate the combination of work and family for both mothers and fathers, still there is knowledge of the impact of long parental leave can leave in woman's career. Circumstances of long parental leave give women the opportunity to keep the job they held before the parental leave. This may lead to different treatment when coming back to the job. These long parental leaves support the idea that the man is the main breadwinner in the house, which results in supporting larger gender pay gap and the model that men make the money and women stay home taking care of the children.¹⁸ Revised Framework Agreement between European social partners on parental leave – Council Directive 2010/18/EU implements on parental leave. Its key points are that workers are entitled to parental leave on the birth or adoption of a child, it applies equally to all workers, men and women and the parental leave must be granted for at least a period of 4 months as an individual right of both parents. It specifies the return to work and non-discrimination. According to the directive, workers must be protected against less favorable treatment or dismissal on the grounds of an application for, or the taking of, parental leave.¹⁹ The Parental Leave Directive does not inflict any obligations to pay during parental leaves and it leaves

¹³ Causes of unequal pay between men and women, European Commission – European Commission. Accessible: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/equal-pay/causes-unequal-pay-between-men-and-women_en

¹⁴ Mark Smith. "Analysis Note: The Gender Pay Gap in the EU – What policy responses?", 2010, p.3-4 Accessible: [http://www.eif.gov.cy/mlsi/dl/genderequality.nsf/All/F592B6E5C824A8A6C22579A700296E29/\\$file/the_gender_pay_gap_in_the_eu_egge_2010.pdf](http://www.eif.gov.cy/mlsi/dl/genderequality.nsf/All/F592B6E5C824A8A6C22579A700296E29/$file/the_gender_pay_gap_in_the_eu_egge_2010.pdf)

¹⁵ Francesca Bettio, Alina Verashchagina. "Gender segregation in the labour market: root causes, implications and policy responses in the EU.", 2008, p.36. Accessible: <https://core.ac.uk/download/pdf/60417738.pdf>

¹⁶ Causes of unequal pay between men and women, European Commission – European Commission. Accessible: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/equal-pay/causes-unequal-pay-between-men-and-women_en

¹⁷ Gender pay gap statistics – Statistics Explained, ec.europa.eu. Accessible: https://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics#Gender_pay_gap_higher_in_the_private_sector

¹⁸ Marie Evertsson and Ann-Zofie Duvander. "Parental Leave-Possibility or Trap? Does Family Leave Length Effect Swedish Women's Labour Opportunities?", 2010, p.435-436. Accessible: [https://s3.amazonaws.com/academia.edu.documents/45394043/Parental_LeavePossibility_or_Trap_Does_F20160505-2665-](https://s3.amazonaws.com/academia.edu.documents/45394043/Parental_LeavePossibility_or_Trap_Does_F20160505-2665-1olcy1l.pdf?AWSAccessKeyId=AKIAIWOWYYGZ2Y53UL3A&Expires=1555239056&Signature=Mcwa5ejAm%2sOn%2Fp5tE%3D&response-content-disposition=inline%3B%20filename%3DParental_Leave_Possibility_or_Trap_Does.pdfBsZellBrZG)

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¹⁹ EUR-Lex. Summary of: Parental Leave. Accessible: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legisum:em0031>

this for the member states to define.²⁰ European Commission has made a proposal for a directive for the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU. This proposal addresses women's under-representation in employment and support women's career progression, it builds on existing rights and policies. Objectives of this directive are to improve access to work-life balance arrangements and to increase take-up of family-related leaves and flexible working arrangements by men.²¹

1.2. Segregation in the labor market

One of the main causes of the gender pay gap is segregation, meaning men and women generally work in different jobs. The segregation in the labor market is relatively high EU wide. Four especially high segregation countries are Estonia, Finland, Slovakia and Latvia and four low-segregation countries are Greece, Romania, Malta, and Italy.²² Significant increases in female participation in the may raise the levels of segregation on a more or less temporary basis.²³ Women tend to pursue lower income jobs generally. However, there are several case studies that show women's skills underestimation. One example is a case (Ferreira 2008) where female and male waiters were interviewed for a survey in Portugal and justified women's lower pay because women are more 'sensitive', and men are able to cope better with 'physical effort'.²⁴ Undervaluation and discrimination are aspects of existing wage inequality. This does not indicate that segregation in the labor market always leads to inequality.²⁵ When it comes to European labor market policies most of the policy action is focused on skill-training. 10 EU member states have reported that they have implemented governmental training programmes devoted to counter segregation. These member states are Austria, Belgium, Finland, France, Germany, Greece, Norway, Portugal, Sweden, and the UK. Training has been often one of the only ways of providing women with so-called 'male', usually technical, skills without questioning men's occupational choices.²⁶

1.3. Gender pay gap differences in private and public sector

According to Eurostat data, the gender pay gap is significantly higher in the private sector than it is in the public sector. This may be due to, for instance, collective pay agreements that are supporting employees. There are also large differences between member states considering this matter of subject. The unadjusted gender pay gap by economic control by percentage in 2017 was in Romania in the private sector 7,0% and in the public sector 5,4%. Comparing these numbers to Finland where the percentage was in the private sector 16,2% and in the public sector 18,3%, it's clear that the differences between these two countries are significant. Overall, as an unadjusted indicator, the GDP gives a view of the differences between women and men concerning earnings, this measures a lot of wider concept than the concept of the European Union principle, equal pay for

²⁰ EUR-Lex. Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on work-life balance for parents and carers and repealing Council Directive 2010/18/EU. Accessible: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017PC0253>

²¹ *Ibidem*.

²² Dutt, P., Ferraro, S., Chochia, A., & Muljar, R. (2018). Using patent development, Education policy and research and development Expenditure policy to understand differences between countries: the case of Estonia and Finland. *Baltic Journal of European Studies*, 8(1), 123-153.

²³ Francesca Bettio, Alina Verashchagina. "Gender segregation in the labour market: root causes, implications and policy responses in the EU.", 2008, p.19-22. Accessible: <https://core.ac.uk/download/pdf/60417738.pdf>

²⁴ *Ibidem*. P.34.

²⁵ *Ibidem*. P.36.

²⁶ *Ibidem*. P.48.

equal work. Higher gender pay gap indicates wider segregation in the job market.²⁷ Therefore, when the pay gap is generally higher in the private sector it implies that the labor market is more segregated in the private sector than it is in the public sector. This data is from the year 2017 that is after the implementation of the directive on equal opportunities and equal treatment of men and women in matters of employment and occupation.

1.4. Directive on equal opportunities and equal treatment of men and women in the matters of employment and occupation

The objective of the Directive 2006/54/EC on is to ensure equal opportunities and equal treatment of women and men in the matters of employment and occupation. The prohibition of direct and indirect discrimination, harassment and sexual harassment in pay are required by this directive.²⁸ The Directive 2006/54/EC is an important aspect of the gender equality law in the European Union. European Commission intends to submit a new directive that is based on Article 13 of the directive on equal opportunities and equal treatment in matters of employment. This would extend the principle of equal treatment of men and women beyond employment law.²⁹

1.5. Labor market policy effect on employment of women

European Union has released in 1997 its “European Employment Strategy”. This is a set of policies which objective is to increase the individual employability and also emphasize the aim of obtaining equal opportunity for women and men.³⁰ The effects of policies like skill-training programs, monitoring and sanctions, job search assistance and employment subsidies are larger for women than for men, particularly shown in areas that have low female labor force participation. According to a survey on active labor market policy effects for women in Europe seems that skill training programs are more effective on women and job search assistance is more effective for men. Overall, active labor market policies have a positive effect on employment for women.³¹

2. CASE LAW AND EQUAL OPPORTUNITIES AND TREATMENT

There are cases of indirect discrimination based on gender in the Union and there are also European Court of Justice (ECJ) rulings on the grounds of one of the main principles of the European Union, equal pay for equal for men and women. Case law shows how the legislation finds its way in individual situations. Circumstances that deal with indirect discrimination must be handled case by case and the solutions can be found from the legislation. Current EU legislation aim is to secure

²⁷ Gender pay gap statistics – Statistics Explained, ec.europa.eu. Accessible: https://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics#Gender_pay_gap_higher_in_the_private_sector

²⁸ European equality law network. Key EU directives in gender equality and non-discrimination. Accessible: <https://www.equalitylaw.eu/legal-developments/16-law/76-key-eu-directives-in-gender-equality-and-non-discrimination>

²⁹ Dagmar Schiek. “A New Framework on Equal Treatment of Persons in EC Law.” 2002 p.291. Accessible: https://s3.amazonaws.com/academia.edu.documents/38022186/schiek_elj_2002.pdf?AWSAccessKeyId=AKIAIWOWY YGZ2Y53UL3A&Expires=1555495952&Signature=Eu2Y3eMiVR4YKP%2F0mtbU6Ck1%2BBE%3D&response-content-disposition=inline%3B%20filename%3DA_New_Framework_on_Equal_Treatment_of_Pe.pdf

³⁰ Active labor market policy effects for women in Europe: A survey. P.2. Accessible: <https://www.econstor.eu/bitstream/10419/78669/1/525034781.pdf>

³¹ *Ibidem*. P.14.

equality in the matters of employment and occupation.³² Therefore, the more that there appear cases of inequality in the ECJ, the more there will be rulings and precedents concerning the subject. These rulings and precedents will also have an effect on future cases that concerns indirect discrimination towards women.

2.1. Case Kenny and others v Minister for justice, Equality Law Reform and others and indirect discrimination

Case Kenny and others c Minister for Justice, Equality and Law Reform and others is an example of an indirect discrimination case in Ireland. Ms. Kenny and 13 other female civil servants were employed to perform clerical duties for the Irish Police force. The claimants claimed indirect discrimination against them in the form of salaries. Their claim was that they were engaged in work equivalent to the work of a group of police officers also assigned to do the same duties but were paid a higher rate. The Irish Labor court found that there was indirect discrimination in question but also stated that the difference in pay was objectively justified. The claimants appealed to the High Court in Ireland, which referred questions to the European Court of Justice (ECJ).³³ In light of ECJ rulings, in this case, it's for the employer to establish objective justification for the difference in pay. In the case where the indirect discrimination aspect has been established, the justification in the difference in pay must relate to the comparators who have been recognized by the national court in establishing the pay difference.³⁴ In light of this case, the unequal treatment of male and female workers can be objectively justified in certain situations even when indirect discrimination has been recognized. The directive on equal opportunities and equal treatment between men and women in matters of employment prohibits direct and indirect discrimination,³⁵ but in these circumstances, the ECJ has set in its ruling aforementioned limits to in which situations indirect discrimination can be objectively justified when established.

2.2. European Court of Justice (ECJ) rulings

As a way to enacting the principle of equal treatment, individual law enforcement has proven to be a slow way.³⁶ One of the main principles of the European Union is the aforementioned principle of equal pay for equal work for male and female workers. Therefore, all the member states have to ensure that this principle is applied in their legislative systems. Description of equal pay without discrimination based on sex is that pay for work at time rates is the same for the same job and that pay for the same work at piece rated shall be calculated on the basis of the same unit of measurement.³⁷ The article 141 of the EC Treaty ensures equal pay for work of equal value and

³² Gender equality, European Commission – European Commission. Accessible: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality_en

³³ Personnel Today. Kenny and others v Minister for Justice, Equality and Law Reform and others. 2013. Accessible: <https://www.personneltoday.com/hr/case-of-the-week-kenny-and-others-v-minister-for-justice-equality-and-law-reform-and-others/>

³⁴ *Ibidem*.

³⁵ EUR-Lex – 32006L0054 – EN – EUR-Lex, Eur-lex.europa.eu. Accessible: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1553349084039&uri=CELEX:32006L0054>

³⁶ Dagmar Schiek. "A New Framework on Equal Treatment of Persons in EC Law." 2002 p.299. Accessible: https://s3.amazonaws.com/academia.edu.documents/38022186/schiek_elj_2002.pdf?AWSAccessKeyId=AKIAIWOWY YGZ2Y53UL3A&Expires=1555495952&Signature=Eu2Y3eMiVR4YKP%2F0mtbU6Ck1%2BBE%3D&response-content-disposition=inline%3B%20filename%3DA_New_Framework_on_Equal_Treatment_of_Pe.pdf

³⁷ Heide Ineborg. "Supranational action against sex discrimination: equal pay and equal treatment in the European Union." 2001, p.477. Accessible: http://cite.gov.pt/pt/destaques/complementosDestqs2/Women_gender_and_work_2001.pdf#page=478

applies not only to regular wages but also to “any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his (or her) employment from his (or her) employer.”³⁸ The rulings of ECJ will also lead the way for the future cases that concern indirect discrimination, especially towards women.

CONCLUSION

As a conclusion, according to the aforementioned research, the European Union has taken several actions towards more equal pay between men and female workers in the form of legislation, directives, etc. Since there are various factors that contribute the gender pay gap, the legislation is not able to fully close it, it does secure certain rights, but it doesn't change the structure of the labor market in short-term. The labor market, as well as the general mindset of the people and the economy, is structurally modeled to work a certain way. Therefore, the gender pay gap has its roots in deep and it can't be changed via legislation, at least not on a short-term basis. One of the main factors contributing to the gender pay gap is segregation in the labor market between male and female workers, meaning that women and men generally work in different jobs. However, segregation does not always imply inequality in the labor market. Lower income jobs are more likely to be occupied by female workers and higher income jobs occupied by male workers. Obviously, this is a statistical generalization. According to the aforementioned research, women are more likely to be stigmatized, for instance, being more sensitive than men and men are more likely to be stigmatized as the breadwinner of the household, the money maker. This is a difficult matter of subject since the legislation doesn't give a direct answer to it. The existing legislation may prohibit direct and indirect discrimination, but it does not ensure full equality between male and female workers. Since the last few decades, female participation in the labor market has increased and this may be, at least partly, due to EU legislation supporting equality, the directive on equal treatment and opportunities in matters of employment, equal pay for equal work, etc. Since there are more equal opportunities for both sexes, it encourages female participation in the labor market in terms of where it has been lacking. The legislation prohibits direct and indirect discrimination in terms of employment and occupation, however, there are cases like *Kenny and others v Minister of Justice and, Equality Law Reform and others* where indirect discrimination can be objectively justified even when recognized in some cases. When individual legislation has proven to be a slow way to enact the principle of equal treatment it still does have an effect. Overall, the effect of EU legislation on women's rights and equality in the workplace is positive. Today women's equal rights with men have better security than before and there is legislation where to turn to in case of, for instance, indirect discrimination, and there is the possibility to try and correct the injustice via existing legislation in any of the member states. However, since the gender pay gap consists on aspects like labor market segregation that does not always indicate inequality between men and women in matters of employment, it's not necessarily something that is even possible to fully close via legislation.

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³⁸ *Ibidem*. P.480.

2. Francesca Bettio, Alina Verashchagina. “*Gender segregation in the labour market: root causes, implications and policy responses in the EU.*”, 2008, p.19-48. Accessible: <https://core.ac.uk/download/pdf/60417738.pdf>
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