

Legislation on women's work in Europe

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ABSTRACT

The first legislation to provide a framework for women's paid work was ratified in the nineteenth century with the aim of protecting women at work and, in some cases, guaranteeing their right to work. After the Second World War, rather than offering protection, the objective was to guarantee equal rights for men and women in employment. Despite opposition from some member states, the treaties, directives, and jurisprudence of the European Court of Justice established a body of Community law based on gender equality, which has been implemented to varying degrees throughout the European Union.



Equal pay protest, Valencia, March 8, 2015. © DR. [Source : El periodico](#)



Women's paid work started to be seen as a social problem during the nineteenth century as industrialisation shifted women's work from the family sphere to the factory or the mill. Female workers gained particular visibility when debate began to focus on equality of opportunity, the morality and even the legality of women's paid work. For a long time some professions remained closed to women. For example, women were not allowed to practice as lawyers until 1900 in France, although access to the legal profession had already been opened to women in countries such as Norway, where formal equality with men was almost fully achieved by the late 1870s.

When early social protection schemes were being established in Europe after 1870, campaigns denouncing the exploitation of women and children in industry led to demands for protective legislation. One of the first measures to be introduced was the limitation on the length of the working day. In 1892, France also banned night-time working for women in industry. The abolition of this law a century later under pressure from the European Community gave rise to a lively debate. In most countries, married women had not been allowed to work without their husband's consent, which was not the case in Norway, where spouses had been legally treated as adults since 1888.

Legislation varied from one country to another, as demonstrated by the debates at international conferences in the late nineteenth century and by the adoption of the International Labour Organisation's (ILO) first conventions in 1919. ILO legislation focused primarily on the protection of pregnancy and maternity. Although the fifteen countries participating in the international conference in Berlin in 1890 had recommended four weeks' maternity leave, the proposal was only gradually adopted more widely. The issue of equal pay was not incorporated into most national legislation until the second half of the twentieth century, and then only under pressure from international and European organisations. Norway, by contrast, adopted the principle of equal pay in the 1920s, at the same time as the right granting women access to all public sector employment.

In 1951, the ILO's Convention 100 affirmed the principle of "equal remuneration for men and women workers for work of equal value". The Treaty of Rome, establishing the European Economic Community (EEC) in 1957 partly restated this principle in article 119 but limited it to the concept of the "same" remuneration for the "same job", which resulted in diverging interpretations. The question was not resolved until the Court of Justice of the European Union (CJEU) issued its judgments in 1976 and 1978 in response to lawsuits brought in 1965 by Belgian female workers at FN Herstal, who went on strike to obtain equal pay with men, and in 1968 by an airline hostess from the Belgian company Sabena, who was forced to retire at the age of 40 whereas male stewards were not subject to the same age limit. Since that time, the number of cases brought before the CJEU has continued to increase, and the body of legislation on women's work has been extended from equal pay to other areas of professional life such as recruitment, career development, and more recently the representation of women on the boards of directors in large companies.

From the 1970s, the CJEU gradually developed the concept of discrimination to distinguish between direct and indirect discrimination, and to shift the burden of proof onto employers, thereby enabling victims of alleged discrimination to assert their rights.

Apart from the treaties instituting the general principles to be applied in all member states, directives provide a framework for establishing national legislation on equal pay and equal treatment in employment, training, career development and working conditions. Seven directives adopted during the 1980s and 1990s in the areas of employment and paid work were combined in 2006 into a "recast directive", which defines the concept of direct discrimination, and includes the issue of sexual harassment. The directive became part of Community *acquis* based on the CJEU's rulings. At the same time, proposals were being implemented for reconciling work and family life as a corollary to equal treatment, thereby encouraging the social partners to promote gender equality through social dialogue.

Since the mid-1990s, the focus has been less on responding to women's aspirations than on reinforcing their participation in the labour market, in an effort to increase their economic independence, reduce the risk of child poverty and advance gender equality. This objective, which is an integral part of the European employment strategy, justified strengthening policies for balancing paid work and family life, with parental leave serving as a symbolic measure. Countries such as Sweden, France, and Germany did not wait for the 1996 directive to establish legislation on parental leave, whereas other member states such as the United Kingdom or Ireland, opposed the terms of the directive. After having been blocked for many years, the directive on parental leave was adopted using the procedure for legislation concerning working conditions, health and safety at work. Despite these changes, the individual rights granted under the relevant directive remain less extensive than those that already existed in the Nordic countries, Germany, and France, and in some Central and Eastern European member states. However, as demonstrated by the case of parental leave, where the conditions for access, compensation, sharing and flexibility vary from one country to another, the issue of balancing work and family has been interpreted in various ways.

Whereas the adoption of directives is not always consensual, neither their transposition into national legislation nor their implementation is unproblematic. In July 1991, France was condemned by the CJEU (Stoekel decision) for maintaining the ban on night work and specific advantages for mothers in collective bargaining agreements, and for holding separate recruitment procedures for men and women for positions in the public sector. In Germany, legislation establishing equality in the public sector was not introduced in the *Länder* until the 1990s, and the general law on equal treatment was passed only in 2006, outlawing all discrimination based on gender, sexual orientation, or ethnicity.

Even though the construction of equality legislation has made considerable progress over the past fifty years, gender inequalities remain in employment and paid work. Despite the convergence brought about by the Community acquis regarding social rights for women in employment, major disparities remain between countries, reflecting the influence of culture on the representation of women's roles, as well as differences in the construction of social protection systems.

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