



**Department of Political Science**

Master's Degree in Policies and Governance in Europe

Chair of Social and Labour Market Regulation

**The European Union and the Enforcement of Gender  
Equality in the Labour Market: Fragmentation, Limits,  
and Emerging Paradigms**

Prof. Edoardo Ales

---

SUPERVISOR

Prof. Marco Leonardi

---

CO-SUPERVISOR

**Giulia Calabresi - 655372**

---

CANDIDATE

Academic Year 2024/2025

*A Valeria, il mio orgoglio e la mia ispirazione.*

*Alle donne della mia vita, simboli di forza e resilienza.*

*A tutte le donne che combattono ogni giorno per il cambiamento.*

## Table of Contents

Table of Contents.....	3
Introduction .....	1
Chapter 1- Foundations and Literature Review over the EU Enforcement of Gender Equality in the Labour Market .....	2
1.1 Conceptual and Theoretical Foundations .....	2
<i>1.1.1 Gender Equality as a Legal and Social Concept</i> .....	2
1.2 Legal Foundations and Enforcement Doctrines in EU Law .....	4
<i>1.2.1 From Economic Harmonisation to Fundamental Right and Positive Action</i> .....	4
<i>1.2.2 Art. 21 and Art. 23 of the Charter of Fundamental Rights: Non-Discrimination and Transformative Equality</i> .....	5
<i>1.2.3 The CJEU as an Enforcement Actor</i> .....	7
<i>1.2.4 National and Administrative Enforcement Challenges</i> .....	11
1.3 From Soft Law to Retrenchment: The Limits of EU Gender Equality Enforcement .....	13
<i>1.3.1 Soft Governance: from the European Employment Strategy to the European Semester</i> .....	13
<i>1.3.2 The Crisis and Gendered Retrenchment (2010–2015)</i> .....	16
<i>1.3.3 The EPSR and MFF 2014–2020</i> .....	19
1.4 A New Era of Enforcement (2019–2024) .....	20
<i>1.4.1 Political Momentum and Institutional Shift</i> .....	20
<i>1.4.2 COVID-19: Exposing Fragilities in Enforcement</i> .....	21
<i>1.4.3 Financial Infrastructure: MFF 2021–2027 and Beyond</i> .....	22
1.5 Key Findings and Analytical Implications .....	23
Chapter 2 - Research Design & Methodology: How to Assess Enforcement of Gender Equality in the Labour Market .....	25
2.1 Research Design: Legal and Policy Framework Analysis .....	25

<b>2.2 Analytical Framework: Dimensions and Expectations Sustaining the Comprehensive Analysis</b>	<b>27</b>
<b>2.3 Sources and Materials</b>	<b>28</b>
<b>2.4 Analytical Approach</b>	<b>29</b>
<i>2.4.1 Case Selection Rationale: The Pay Transparency Directive</i>	29
<i>2.4.2 Case Selection Rationale: Italy and Spain</i>	30
<b>2.5 Limitations of the Study</b>	<b>31</b>
<b>Chapter 3- Current Enforcement: National and Supranational Evaluation of Gender Equality in the Labour Market</b>	<b>33</b>
<b>3.1 The Pay Transparency Directive as a New Enforcement Paradigm</b>	<b>33</b>
<i>3.1.1 Pay Transparency as a Legal and Enforcement Concept</i>	33
<i>3.1.2 Precedent EU Framework on Pay Transparency</i>	35
<i>3.1.3 Normative Content and Legal Innovations</i>	37
<i>3.1.4 Enforcement Architecture and Legal Significance</i>	40
<i>3.1.6 Legal Challenges and Doctrinal Issues</i>	45
<i>3.1.7 Assessment of Binding Legal Design</i>	47
<b>3.2 Evaluating the Directive's Enforcement Potential in Italy and Spain</b>	<b>48</b>
<i>3.2.1 Pre-PTD Legal Baseline</i>	48
<i>3.2.2 Private and Public Enforcement's Dimensions</i>	52
<i>3.2.3 Justice Functions</i>	64
<i>3.2.4 Critical Assessment of the case studies</i>	68
<b>3.3 Institutional Framing and Political Discourse of the Pay Transparency Directive</b>	<b>70</b>
<i>3.3.1 Discursive Framing of Pay Transparency</i>	70
<i>3.3.2 Institutional Context at EU Level</i>	73
<i>3.3.3 Complementary EU Instruments</i>	75
<i>3.3.4 From Framing to Enforcement Potential</i>	76

**Conclusions** .....78

**Bibliography** .....83

**EU Documents** .....85

**Case Law** .....87

**Legislation** .....88

**Sitography** .....90

## Introduction

Gender equality in the labour market has long been a declared objective of the European Union (EU). From the insertion of Article 119 in the Treaty of Rome to Article 23 of the Charter of Fundamental Rights, equality between women and men has been formally recognised as both a constitutional principle and a guiding value of European integration. Over time, successive strategies, directives, and judicial doctrines have consolidated this commitment. Yet, despite these advances, significant inequalities persist across Member States in access to employment, career progression, remuneration structures, and the distribution of care responsibilities. This gap between normative ambition and practical reality lies at the core of what this thesis calls the EU's enforcement paradox.

The literature highlights three dimensions of this paradox. Firstly, fragmentation: horizontally, judicial, administrative, and collective mechanisms rarely function in coordination, while vertically, EU law depends on Member State procedures. Even within the judicial channel, enforcement remains reactive, individualised, and often inaccessible, reinforcing this fragmentation. Second, national mediation: outcomes vary widely because enforcement depends on Member States' institutional resources, procedural rules, and legal cultures, producing uneven remedies and levels of protection across the Union. Third, discursive framing: whether gender equality is understood primarily as an economic asset or as a fundamental right shape the strength of enforcement instruments, from soft governance to binding directives.

The adoption of Directive (EU) 2023/970 on Pay Transparency represents a turning point in this trajectory. It was conceived not only to embed existing case law but to address long-standing enforcement deficits by introducing binding obligations for employers, empowering equality bodies and inspectorates, and strengthening collective redress. In doing so, it raises a central question: does the Directive signal a qualitative shift, positioning the EU as a true enforcement agent for gender equality in the labour market, or does enforcement remain primarily dependent on national institutions and political will?

By addressing this question, the thesis contributes to broader debates on the EU's social dimension and its capacity to transform declared rights into effective protections. Through the lens of the Pay Transparency Directive and a comparative analysis of Italy and Spain, it explores whether the EU is moving beyond symbolic commitment toward a more integrated, multi-channel model of enforcement, or whether the uneven realities of national implementation will continue to define the effectiveness of gender equality in practice.

# Chapter 1- Foundations and Literature Review over the EU Enforcement of Gender Equality in the Labour Market

## 1.1 Conceptual and Theoretical Foundations

### 1.1.1 Gender Equality as a Legal and Social Concept

The European Union has been widely recognized as a leader in promoting gender equality. Using the definition provided by the European Commission (EC), gender equality is understood as the principle that individuals, regardless of their sex, should enjoy equal rights, responsibilities, and opportunities in all spheres of life, including employment, social security, political participation, and economic activity.<sup>1</sup>

Thus, gender equality at European level represents more than a moral imperative, but it is rather understood as a substantive objective that shall be present in all the different realms of a society.

Legally, gender equality has been embedded by the EU as a fundamental right in its primary law, forming part of the Union's foundational values and constitutional framework. Indeed, instruments such as the Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights (CFR) explicitly prohibit discrimination based on sex and affirm the commitment to ensure equal treatment.<sup>2</sup> This legal recognition imposes binding obligations on both the European institutions and Member States to promote gender equality and to implement measures that can achieve it in practice.<sup>3</sup>

Simultaneously, gender equality operates as a significant policy goal within the EU's social and economic governance. Beyond its normative status as a right, it is frequently presented as a strategic objective linked to economic growth, competitiveness, and social cohesion.<sup>4</sup>

---

<sup>1</sup> European Commission. (2020). A Union of Equality: Gender Equality Strategy 2020–2025 (COM(2020) 152 final). European Commission. [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy_en).

<sup>2</sup> European Union. (2012). *Charter of Fundamental Rights of the European Union*, 2012 O.J. C 326/391, Arts. 21, 23; European Union. (2012). *Consolidated version of the Treaty on the Functioning of the European Union*, Art. 157. Official Journal of the European Union, C 326, 47–390.

<sup>3</sup> Federal Ministry of Education, Science and Research. *Women's rights and gender equality in the EU*. Republic of Austria. <https://www.bmfwf.gv.at/en/women-and-equality/women-s-rights-and-gender-equality-in-the-eu.html>

<sup>4</sup> Lombardo, E., & Meier, P. (2008). Framing gender equality in the European Union political discourse. *Social Politics: International Studies in Gender, State & Society*, 15(1), 101–129; Rubery, J. (2021). Pay transparency and the EU's new strategy for gender equality. *Cambridge Journal of Economics*, 45(5), 1079–1098.

This dual character, both as a fundamental right and as a policy aim, thus creates a complex paradigm for enforcement. While legal provisions establish clear mandates for equality, the practical realization of these rights often depends on political priorities, cultural attitudes, and administrative capacities within Member States.

### ***1.1.2 Discursive Framings of Gender Equality and Enforcement***

As mentioned, the effectiveness of gender equality enforcement in the European Union depends not only on legal instruments but also on how gender equality is conceptualised and framed within political and institutional discourse.

Building on Jacquot's analysis, EU gender equality policy reflects three evolving logics. The latter are: market-making, market-correcting, and social engineering, which correspond respectively to the models of equal treatment, equal opportunities, and gender mainstreaming. These concepts not only define differing visions of equality, but also underline the structural and political dynamics that shape enforcement within the EU.<sup>5</sup>

The equal treatment model, contained in liberal theory, emphasises formal equality and individual rights which are enforced mainly through legal norms and litigation. Closely aligned with the EU's market-making phase, this approach supports the direct effect of legal provisions and relies on the ability of individuals to activate their rights through courts. However, its effectiveness is constrained by national legal cultures and procedural differences, and it often fails to address systemic inequalities. By contrast, the equal opportunities' strand reflects a market-correcting logic. It recognises that structural discrimination affects women as a group and justifies the introduction of positive action measures accordingly, including quotas, targeted programmes, or funding mechanisms. While this model moves beyond formal neutrality, its political marginalisation and inconsistent application across Member States limit its transformative and enforcement potential. Finally, gender mainstreaming corresponds to a social engineering logic. It seeks to embed gender related actions across policymaking and looks to reshape the institutional and societal norms that uphold gendered related schemata. Though this model aspires to structural transformation, it suffers from significant challenges of implementation, resource allocation, and accountability. Often times it indeed to diluted responsibility, where gender equality becomes everyone's concern, but no one's priority.

---

<sup>5</sup> Jacquot, S. (2015). *Transformations in EU gender equality: From emergence to dismantling*. Palgrave Macmillan.



These models thus demonstrate distinct enforcement logics. They help explain how different framings of gender equality interact with EU integration processes and why certain mechanisms become legally binding and enforceable, while others remain largely symbolic.

## 1.2 Legal Foundations and Enforcement Doctrines in EU Law

The practical translation of political and policy priorities have been translated into enforceable rights through specific legal and institutional instruments operationalised through the European Union. These tools range from hard law measures, such as treaties and directives, to soft law tools like recommendations, strategies, and funding mechanisms. The effectiveness of gender equality enforcement ultimately depends also on how these instruments are designed, implemented, and monitored in practice.

### 1.2.1 From Economic Harmonisation to Fundamental Right and Positive Action

The principle of equal pay for men and women, originally found in Article 119 of the Treaty of Rome, was introduced largely for economic reasons.<sup>6</sup> Indeed, as Böttner and Blanke sustain, France insisted on including this provision to protect its industries from competitive disadvantage if other Member States paid women lower wages. Thus, gender equality began as an instrument of economic harmonisation, not as a social rights imperative.<sup>7</sup>

The *Defrenne* judgment marked, in this sense, a shift. The Court of Justice of the European Union (CJEU) ruled that Article 119 had direct effect, enabling individuals to invoke it before national courts.<sup>8</sup>

However, the original text of Article 119 did not address positive action. It indeed guaranteed equal pay but provided no explicit legal basis for measures designed to correct structural disadvantages faced by women in the labour market. As Dorsemont et al. explain, the absence of clear language within the Treaty led to uncertainty, particularly visible in the early case law such as *Kalanke*, where the Court initially struck down automatic preferential measures for women, treating positive action as an exception requiring strict justification.<sup>9</sup>

---

<sup>6</sup> European Economic Community. (1957). *Treaty establishing the European Economic Community (Treaty of Rome)*, 25 March 1957, 298 U.N.T.S. 11, Art. 119.

<sup>7</sup> Böttner, R., & Blanke, H.-J. (Eds.). (2023). *Treaty on the Functioning of the European Union – A commentary. Volume II: Articles 90–164* (Springer Commentaries on International and European Law). Springer.

<sup>8</sup> Court of Justice of the European Union. (1976). *Gabrielle Defrenne v. Société anonyme belge de navigation aérienne Sabena*, Case C-43/75, ECLI:EU:C:1976:56; Böttner & Blanke, (2023).

<sup>9</sup> Court of Justice of the European Union. (1995). *Kalanke v. Freie Hansestadt Bremen*, Case C-450/93, ECLI:EU:C:1995:322; Dorsemont, F., et al. (2019). *The Charter of Fundamental Rights of the European Union and the employment relation* (1st ed.). Hart Publishing.

This legal gap was addressed with the Treaty of Amsterdam, which renumbered Article 119 as Article 141 EC and introduced new paragraphs. Conversely, Article 141(4) EC explicitly authorised Member States to adopt or maintain measures providing specific advantages to the underrepresented sex in working life. This addition signalled for the first time that the Treaties provided a clear legal foundation for positive action, transforming it from an exception within the judicial framework into a legitimate policy tool for achieving substantive equality that addressed the collective disadvantages of women as a group.<sup>10</sup>

Following the Lisbon Treaty, these provisions were consolidated as Article 157 TFEU, which now reads:

“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.”<sup>11</sup>

This evolution was further consolidated in Directive 2006/54/EC, known as the Recast Directive.<sup>12</sup>

The directive, as Böttner and Blanke note, explicitly confirms that positive action is permissible where necessary to ensure full equality in practice, thereby aligning secondary legislation with the amended Treaty framework.<sup>13</sup>

### ***1.2.2 Art. 21 and Art. 23 of the Charter of Fundamental Rights: Non-Discrimination and Transformative Equality***

The CFR has introduced a new constitutional layer to the EU’s legal order, elevating gender equality beyond secondary legislation into the sphere of fundamental rights. Two provisions are particularly significant in this context: Article 21 CFR and Article 23 CFR.<sup>14</sup>

Article 21 CFR establishes a general prohibition against discrimination on numerous grounds, including sex, and applies across the entire field of EU law. As Peers et al. note, it stands as a sound

---

<sup>10</sup> Treaty establishing the European Community (Nice consolidated version). (2002, December 24). *Official Journal of the European Communities*, C 325, 47–48; Dorssemont et al., (2019); Böttner & Blanke, (2023).

<sup>11</sup> Treaty on the Functioning of the European Union (TFEU). (2012). *Consolidated version of the Treaty on the Functioning of the European Union*. Official Journal of the European Union, C 326, 47–390.

<sup>12</sup> European Parliament & Council of the European Union. (2006). *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 (recast)*. Official Journal of the European Union, L 204, 23–36.

<sup>13</sup> Böttner & Blanke. (2023).

<sup>14</sup> European Union. (2012). *Charter of Fundamental Rights of the European Union* (2012/C 326/02), Articles 21 & 23. Official Journal of the European Union, C 326, 391–407.

protection, serving as a key reference in many CJEU rulings involving gender equality.<sup>15</sup> However, Article 21 primarily imposes negative obligations, requiring Member States and EU institutions to refrain from discriminatory conduct, but it does not assert positive duties to achieve substantive or transformative equality. Its enforcement thus remains largely reactive and dependent on individual litigation, which limits its effectiveness as a tool for systemic change.

By contrast, Article 23 CFR represents a significant evolution in EU equality law. It declares that “equality between women and men must be ensured in all areas, including employment, work and pay,” and explicitly states that the principle of equality “shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the underrepresented sex.” Unlike Article 21’s general prohibition, Article 23 is framed in affirmative language, imposing a clear obligation on both EU institutions and Member States to ensure gender equality.<sup>16</sup> As Dorssemont et al. highlight, this signals a shift from a formal understanding of equality towards a transformative approach, whose focus is not only to prevent discrimination but to actively dismantle structural inequalities collectively without leaving the victims to deal with it by themselves.<sup>17</sup> Similarly, Šimonović Einwalter and Selanec argue that the language of Article 23 implies that such positive measures are to be required to achieve substantive gender equality.<sup>18</sup> Coherently, Peers et al. argue, that the Charter’s language implies that failure to adopt measures addressing persistent inequalities could itself amount to non-compliance with fundamental rights obligations.<sup>19</sup>

Nevertheless, doctrinal debates remain regarding the enforceability of Article 23. Dorssemont et al. observe that despite its ambitious wording, the CJEU has rarely used Article 23 as a direct source of enforceable rights, and national courts frequently treat it more as a programmatic norm than a self-executing provision.<sup>20</sup> Furthermore, while Article 23 embeds positive action, the Court’s case law remains careful, typically treating such measures as exceptions requiring strict proportionality and individual assessments, as exemplified by the *Kalanke* and *Marschall* judgments.<sup>21</sup>

Importantly, Article 23 extends the scope of gender equality beyond the employment sphere. While historically linked to Article 157 TFEU and equal pay, its reference to “all areas” suggests a broader mandate, capable of addressing societal structures and stereotypes that sustain gender disparities. Yet,

---

<sup>15</sup> Peers, S., Hervey, T., Kenner, J., & Ward, A. (Eds.). (2021). *The EU Charter of Fundamental Rights: A commentary* (2nd ed.). Hart Publishing/Bloomsbury Publishing.

<sup>16</sup> Peers et al. (2021).

<sup>17</sup> Dorssemont, F., et al. (2019).

<sup>18</sup> Šimonović Einwalter, T., & Selanec, G. (2015). *Alignment of the law on prohibition of discrimination with the EU acquis* (Human Rights Paper No. 9). Heinrich Böll Stiftung; Sarajevski otvoreni centar. ISSN 2303-6079.

<sup>19</sup> Peers et al. (2021).

<sup>20</sup> Dorssemont, F., et al. (2019).

<sup>21</sup> *Kalanke v. Freie Hansestadt Bremen*, (C-450/93); Court of Justice of the European Union. (1997). *Marschall v Land Nordrhein-Westfalen* (Case C-409/95). ECLI:EU:C:1997:533.

as Peers et al. warn, excessive reliance on Article 157 TFEU when interpreting Article 23 risks narrowing its transformative potential, restricting it to economic considerations and undermining its broader social ambition.<sup>22</sup>

From the perspective of enforcement, Articles 21 and 23 collectively illustrate the EU's progression from a framework based on formal equality and prohibition of discrimination towards a model aspiring to transformative equality. However, the practical impact of these provisions remains constrained. While Article 21 underpins litigation, it is largely reactive, and Article 23, despite its promise, lacks a robust record of direct judicial enforcement.

### ***1.2.3 The CJEU as an Enforcement Actor***

The CJEU has played a central role in transforming the Treaties' principles into practical enforcement tools. The Court's jurisprudence has progressively shaped the meaning and scope of gender equality obligations, giving legal effect to concepts like equal pay, indirect discrimination, and positive action. A turning point in this trajectory was the above mentioned *Defrenne v. Sabena* decision, in which the Court held that Article 119 of the Treaty of Rome, guaranteeing equal pay for equal work, had direct effect.<sup>23</sup> This meant that individuals could invoke the provision before national courts without requiring transposition into domestic law. The ruling established gender equality, at least in the context of pay, as a constitutional principle of EU law. As De Schutter notes, the *Defrenne* decision carried a dual logic: on one hand, it recognised gender equality as a matter of fairness; on the other, it justified intervention through a market rationale, arguing that unequal pay could distort the EU's market competition.<sup>24</sup>

#### ***Indirect Discrimination***

Alongside its early jurisprudence on direct effect and equal pay, the Court has been instrumental in developing the concept of indirect discrimination, acknowledging that formally neutral rules can have disproportionate adverse effects on women. As De Shutter highlights, *Jenkins* introduced the idea that differences in pay for part-time work, largely performed by women, could be discriminatory if not objectively justified.<sup>25</sup> The Court refined this approach in *Bilka-Kaufhaus*, by ruling that once it is shown that a policy negatively affects a specific group, it is up to the employer to hold the burden of

---

<sup>22</sup> Peers et al. (2021).

<sup>23</sup> Case 43/75, *Defrenne v. Sabena* (Defrenne II), EU:C:1976:56.

<sup>24</sup> De Schutter, O. (2006). Three models of equality and European anti-discrimination law. *Maastricht Journal of European and Comparative Law*, 13(3), 193–220. <https://doi.org/10.1177/1023263X0601300302>.

<sup>25</sup> Court of Justice of the European Union (CJEU). (1981). *Jenkins v. Kingsgate (Clothing Productions) Ltd*, Case 96/80, ECLI:EU:C:1981:80; De Schutter, O. (2006).

proof.<sup>26</sup> Employers had thus to demonstrate that the measure in question was appropriate and necessary to achieve a legitimate aim, such as economic efficiency.

### *Burden of Proof*

This burden-shifting logic was further refined in *Danfoss* and *Enderby*, which established that statistical evidence could suffice to trigger the need for objective justification.<sup>27</sup> Indeed, once a prima facie case of discrimination is made, especially through statistical evidence, the employer must prove that pay differentials are inserted in objective, gender-neutral criteria. These principles were later embedded in Directive 97/80/EC, which formalised burden-shifting procedures in cases of sex-based discrimination.<sup>28</sup>

### *Positive Action*

From this basis, the CJEU developed key doctrines on positive action, initially taking a restrictive stance in *Kalanke* by removing automatic gender quotas, but then allowing more nuanced forms of preferential treatment in *Marschall*, provided that individual assessments remain possible. Specifically, in *Marschall*, the CJEU introduced an important aspect: policies may give preference to women in sectors where they are underrepresented, but they also guarantee an individualised assessment of each candidate's qualifications. This aspect ensures proportionality while allowing Member States to pursue corrective equality policies.<sup>29</sup> Later cases, such as *Badeck*, further clarified the acceptable scope of gender-sensitive interventions in public recruitment and training schemes. Indeed, it allowed the use of positive measures, such as setting targets, guaranteeing interview access, or reserving training opportunities, albeit the non-exclusion of evaluating employees over individual merit.<sup>30</sup> Scholars such as De Schutter and Peers et al. interpret these developments as a significant shift towards transformative equality, recognising that true equality may require proactive measures that go beyond mere formal neutrality.<sup>31</sup>

This interpretation aligns with the analysis of Šimonović Einwarter and Selanec, who contend that positive action should not be seen as an exception to the equality principle, but rather as its necessary

---

<sup>26</sup> Court of Justice of the European Union (CJEU). (1986). *Bilka-Kaufhaus GmbH v. Weber von Hartz*, Case 170/84, ECLI:EU:C:1986:204.

<sup>27</sup> Court of Justice of the European Union. (1989). *Handels- og Kontorfunktionærernes Forbund i Danmark v. Dansk Arbejdsgiverforening, acting on behalf of Danfoss*, Case C-109/88, ECLI:EU:C:1989:383; Court of Justice of the European Union. (1993). *Enderby v. Frenchay Health Authority and Secretary of State for Health*, Case C-127/92, ECLI:EU:C:1993:859.

<sup>28</sup> European Union. (1997). *Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex*. Official Journal of the European Communities, L 14, 6–8.

<sup>29</sup> Case C-409/95, *Marschall*, EU:C:1997:533.

<sup>30</sup> Court of Justice of the European Union. (2000). *Land Hessen v. Hilde Kreil (Badeck)*, Case C-158/97, ECLI:EU:C:2000:84.

<sup>31</sup> De Schutter, O. (2006); Peers et al. (2021).

expression under conditions of structural disadvantage.<sup>32</sup> In this view, failing to adopt corrective measures where inequality persists may constitute non-compliance with the Charter's obligations. Although the Court has often used more formalist lens, cases like *Marschall* and *Badeck* illustrate its capacity to interpret equality dynamically when institutional design accommodates proportionality and procedural fairness.<sup>33</sup>

### *Remedies and Sanctions*

Beyond defining the scope of positive action, the CJEU has also clarified the remedial dimension of effective enforcement. The Court has long established that, in order to give effect to the principle of equal treatment, compensation for breaches must be adequate in relation to the damage sustained. Considerations of equality of opportunity informed the Court's decision in *Marshall II*, which held that reparation for discriminatory dismissal may not be limited by a fixed upper ceiling.<sup>34</sup> Subsequent case law, now codified in Article 18 of Directive 2006/54, has softened this approach, allowing limitations where the employer can demonstrate that the only damage suffered was the refusal to consider the job application.<sup>35</sup> This evolution reflects the Court's broader effort to balance effective protection with proportionality, while underscoring that remedial mechanisms remain central to making equality rights a reality.<sup>36</sup>

### *Limits of Judicial Enforcement*

While the EU's jurisprudence has made significant progress since the *Defrenne* case, by recognising positive action and developing the concept of indirect discrimination, it has also revealed important shortcomings.

Peers addresses that the need to identify a valid comparator (someone in a similar job with whom a worker can compare their treatment) has limited the effectiveness of enforcement, especially in situations like fragmented labour markets or outsourced work. In such cases, workers doing similar tasks may be employed by different companies or under different contracts, making it difficult to find a direct comparator.<sup>37</sup>

---

<sup>32</sup> Šimonović Einwalter, T., & Selanec, G. (2015).

<sup>33</sup> Case C-409/95, *Marschall*, EU:C:1997:533; Case C-158/97, *Badeck*, EU:C:2000:163.

<sup>34</sup> Court of Justice of the European Union. (1986). *Marshall v. Southampton and South-West Hampshire Area Health Authority (Teaching)* (Case 152/84, EU:C:1986:84).

<sup>35</sup> Directive 2006/54/EC, 2006, art. 18

<sup>36</sup> Koukiadaki, A. (2022). *Remedies and sanctions*. In A. Koukiadaki & K. Lörcher (Eds.), *Effective enforcement of EU labour law* (1st ed., pp. 35–56). Oxford: Hart Publishing.

<sup>37</sup> Peers et al. (2021)

This was the case for instance in *Lawrence* and *Allonby*, where differences in employer or employment structure prevented the courts from recognising valid comparisons, blocking discrimination claims even when gender pay gaps or unequal treatment were present.<sup>38</sup>

Another aspect that must be considered is the EU's limited engagement with intersectional discrimination, i.e. the recognition that gender inequalities often intersect with other forms of disadvantage, such as race, religion, or disability. While Article 21 of the Charter prohibits discrimination on multiple grounds, and Article 23 affirms gender equality, the Court of Justice has yet to explicitly acknowledge or develop intersectionality as a doctrinal tool. This limitation is evident in recent employment cases involving the dismissal or sanctioning of women for wearing Islamic headscarves. In these rulings, the Court assessed the issue solely through the lens of religious discrimination, failing to consider how, for instance, such workplace policies disproportionately affect Muslim women at the intersection of both gender and religion.<sup>39</sup> Peers thus argues that Article 23 CFR should compel the Court to adopt an intersectional lens in future cases, ensuring that transformative equality does not remain merely rhetorical.<sup>40</sup>

With regard to national case law, practical examples such as *Elbal Moreno* illustrate how the Court has addressed national measures that result in indirect discrimination against women, such as Spanish pension rules that disproportionately affected part-time workers.<sup>41</sup> In contrast, the *Leone* case shows that formally neutral rules can sometimes lead to unintended advantages for women, highlighting the need for careful judicial balancing to ensure fairness and proportionality in enforcement.<sup>42</sup>

Overall, despite the Court's significant doctrinal contributions, the limits of purely judicial enforcement remain evident: the Court tends to act cautiously, demanding proportionality, individualised assessments, and avoiding reforms without specific legislative backing. As a result, enforcement remains largely individualised and reactive, often insufficient to dismantle structural barriers to gender equality.

---

<sup>38</sup> Court of Justice of the European Union. (2002). *Lawrence and Others v. Regent Office Care Ltd and Others*, Case C-320/00, ECLI:EU:C:2002:498; Court of Justice of the European Union. (2004). *Allonby v. Accrington & Rossendale College*, Case C-256/01, ECLI:EU:C:2004:18.

<sup>39</sup> Court of Justice of the European Union. (2017). *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV*, Case C-157/15, ECLI:EU:C:2017:203; Court of Justice of the European Union. (2021). *IX v. WABE eV and MH Müller Handels GmbH v. MJ*, Joined Cases C-804/18 and C-341/19, ECLI:EU:C:2021:594.

<sup>40</sup> Peers et al. (2021).

<sup>41</sup> Court of Justice of the European Union. (2013). *Elbal Moreno v. Instituto Nacional de la Seguridad Social (INSS)*, Case C-385/11, ECLI:EU:C:2013:683.

<sup>42</sup> Court of Justice of the European Union. (2012). *Leone v. Commissione Nazionale per le Società e la Borsa (Consob)*, Case C-173/09, ECLI:EU:C:2012:21.

### ***1.2.4 National and Administrative Enforcement Challenges***

While the CJEU has laid the doctrinal foundations for the enforcement of gender equality law, practical implementation ultimately depends on national judicial, administrative, and collective mechanisms. EU labour law relies predominantly on directives, which harmonise but do not unify Member State legislation. Directives frequently establish minimum standards and leave significant discretion in transposition, and many provisions lack horizontal direct effect, limiting their application in disputes between private parties. As a result, the effectiveness of EU gender equality law is deeply reliant upon national legal systems and procedural frameworks.<sup>43</sup>

At the national judicial level, enforcement remains individualised and reactive. Workers seeking to affirm their rights must usually initiate civil or administrative proceedings, facing high procedural and financial barriers. Litigation can be costly, time-consuming, and risky, particularly in systems where losing parties bear significant costs. Trade unions and legal insurers may offer support, but both resources and willingness can be limited, often due to strategic considerations. Employees are also reluctant to start litigations against current employers out of fear of retaliation or damaging the employment relationship, meaning that most claims arise only post-dismissal, when harm may already be irreparable. These barriers are compounded by national variation in access to justice due to legal aid, collective redress, limitation periods, and procedural rules differ widely, producing a persistent lack of a level playing field in the enforcement of EU labour rights.<sup>44</sup>

Given the constraints of purely judicial avenues, administrative enforcement serves as a crucial complement. Labour inspectorates and, increasingly, national equality bodies are tasked with monitoring compliance with EU labour and anti-discrimination law. Yet these institutions are often under-resourced, narrowly mandated, and politically constrained. Inspection probabilities can be extremely low, sometimes only one in several hundred thousand enterprises per year, and inspectorates may lack the authority or expertise to address complex patterns of pay discrimination or structural inequality. Even where individuals or trade unions can solicit inspections, the impact remains limited without robust investigatory powers and enforcement mandates.<sup>45</sup>

Collective actors also play an important role in the enforcement of EU labour law, particularly in the field of equality and non-discrimination. Under Articles 7(2) of Directive 2000/43, 9(2) of Directive

---

<sup>43</sup> Jacobs, A. (2022). The enforcement structure for EU labour law. In A. Koukiadaki, K. Lörcher, & R. Jagodzinski (Eds.), *Effective enforcement of EU labour law: Rethinking the EU's economic and social governance* (pp. 13-33). Hart Publishing.

<sup>44</sup> Lörcher, K. (2022). Strategic enforcement of EU litigation. In A. Koukiadaki, K. Lörcher, & R. Jagodzinski (Eds.), *Effective enforcement of EU labour law: Rethinking the EU's economic and social governance* (pp. 144-164). Hart Publishing.

<sup>45</sup> Jacobs, A. (2022).



2000/78, and 17(2) of Directive 2006/54, trade unions, associations, and other organisations with a legitimate interest in ensuring compliance may engage in judicial or administrative procedures either on behalf or in support of the complainant, with the complainant's approval.<sup>46</sup> This model of indirect representation reflects the EU legislature's preference for collective action as a complement to individual litigation, while maintaining the privacy of the victim's consent. In practice, as Dossermont contends, this approach is limited by two structural assumptions: that violations will always affect an identifiable victim, and that the victim will be willing to initiate or permit proceedings. As a result, collective actors often remain reactive rather than proactive, and systemic violations, such as pay discrimination, may remain unchallenged unless supported by strategic litigation. The effectiveness of collective enforcement thus varies significantly across Member States, depending on national rules governing trade union standing, NGOs involvement, and the scope of collective agreements, reinforcing the uneven and nationally mediated nature of EU gender equality enforcement.<sup>47</sup>

These weaknesses are exacerbated also by the fragmentation of remedies and sanctions highlighted in the previous section. EU labour law enforcement has historically exhibited horizontal fragmentation, relying on private litigation, administrative oversight, and complementary tools (such as public procurement conditions, whistleblowing, and naming-and-shaming). At the same time, vertical fragmentation arises from the EU's reliance on Member States' procedural autonomy, producing uneven remedies and dissuasive effects. Although the CJEU has long required that sanctions be effective, proportionate, and dissuasive, as affirmed in *Marshall II* and *Feryn*, in practice, damages are often low, sanctions symbolic, and judicial application cautious, particularly in first-instance cases or novel legal contexts, limiting their capacity to induce behavioural change.<sup>48</sup>

In sum, the interaction of judicial, administrative, and collective enforcement mechanisms reveals a system that is fragmented, reactive, and nationally mediated. Without coordinated and well-resourced mechanisms at both EU and national levels, the formal rights established in EU law risk remaining only partially effective in practice.

---

<sup>46</sup> Articles 7(2) of Directive 2000/43/EC, 9(2) of Directive 2000/78/EC, and 17(2) of Directive 2006/54/EC. See: European Union. (2000). *Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin* (OJ L 180, 19.7.2000, pp. 22–26). European Union. (2000); *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation* (OJ L 303, 2.12.2000, pp. 16–22); European Union. (2006). *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 (recast)* (OJ L 204, 26.7.2006, pp. 23–36). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0054>.

<sup>47</sup> Dossermont, F. (2022). Collective actors enforcing EU labour law. In A. Koukiadaki, K. Lörcher, & R. Jagodzinski (Eds.), *Effective enforcement of EU labour law: Rethinking the EU's economic and social governance* (pp. 363–383). Hart Publishing.

<sup>48</sup> Case 152/84, (*Marshall*), EU:C:1986:84; Court of Justice of the European Union. (2008). *Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryn NV* (Case C-54/07, EU:C:2008:397).

### 1.3 From Soft Law to Retrenchment: The Limits of EU Gender Equality Enforcement

Effective enforcement of labour law has traditionally been understood through the lens of judicial and administrative mechanisms, where access to courts, successful litigation, and the availability of full remedies are seen as the primary forms of “effective enforcement.” Yet courts are reactive institutions, relying on individual claims, often by weaker parties, leaving systemic violations largely unaddressed. Even successful individual cases do not guarantee long-term compliance, though they may have deterrent effects if they gain sufficient visibility among rights-holders and duty-bearers. Due to this, EU governance has increasingly relied on soft-law mechanisms as complements to hard-law enforcement. Soft methods, such as peer pressure, public benchmarking, and “naming and shaming”, do not carry the immediate coercive force of judicial or administrative action, but they aim to promote gradual, collective, and stable compliance. They operate in a hybrid enforcement model, where non-binding tools interact with binding obligations, putting emphasis over social, political, and reputational pressures to secure compliance over time. In the European context, this dual approach reflects the logic of the European Social Model, which combines hard norms with soft coordination to encourage compliance across diverse Member State systems.<sup>49</sup>

This hybrid logic underpinned the EU’s first major experiment with soft governance in employment and gender equality policy: the European Employment Strategy (EES), launched in 1997.<sup>50</sup>

#### 1.3.1 Soft Governance: from the European Employment Strategy to the European Semester

The European Employment Strategy (EES), launched at the Luxembourg Summit in 1997, marked the EU’s first significant attempt to coordinate national employment policies through soft-law mechanisms. Gender equality was established as one of the four pillars of the EES, implemented through guidelines and National Action Plans. However, the initial strategy remained predominantly qualitative, relying on mutual learning and political persuasion without concrete enforcement mechanisms or quantifiable targets.<sup>51</sup>

A major shift occurred with the Lisbon Strategy in 2000, which aimed to transform the EU into the world’s most competitive and knowledge-based economy by 2010. For the first time, the Lisbon Strategy introduced specific quantitative targets relevant for gender equality, including raising the

---

<sup>49</sup> Kollonay-Lehoczky, C. (2022). *Soft methods of enforcement of European labour law standards*. In A. Koukiadaki, K. Lörcher, & R. Jagodzinski (Eds.), *Effective enforcement of EU labour law: Rethinking the EU’s economic and social governance* (pp. 119-142). Hart Publishing.

<sup>50</sup> European Commission. (1997). *The European Employment Strategy: Investing in people – The Luxembourg process*. Office for Official Publications of the European Communities.

<sup>51</sup> Smith, M., & Villa, P. (2009). The ever-declining role of gender equality in the European Employment Strategy. *International Review of Sociology*, 19(3), 529–543.

female employment rate to 60% by 2010 and expanding childcare coverage to at least 33% for children under three.<sup>52</sup> These targets entailed an evolving enforcement paradigm, embedding gender equality into economic governance rather than isolating it as a social policy concern.<sup>53</sup>

The 2005 relaunch of the EES further consolidated these objectives, creating the “Integrated Guidelines” that merged employment and economic policy goals, while reinforcing the importance of gender indicators such as the gender employment gap, the gender pay gap, and the employment impacts of parenthood.<sup>54</sup> Yet, even with these technical improvements, scholars observed persistent enforcement weaknesses. As Dieckhoff and Gallie note, many Member States interpreted the post-2005 changes as a downgrade of gender equality priorities, shifting focus toward economic competitiveness and labour market flexibility.<sup>55</sup>

Empirical data from this period underscores the mixed effectiveness of these frameworks as enforcement tools. By 2009, 14 Member States exceeded the 60% female employment target, while four remained more than 10 percentage points below the benchmark, reflecting significant disparities in national compliance.<sup>56</sup> Childcare targets also fell short: only five of the 27 Member States met the 33% childcare coverage target, while another five were approaching it.<sup>57</sup> While these figures suggest that soft-law frameworks could encourage progress, they also highlight the limits of voluntary compliance as an enforcement mechanism, particularly in areas requiring significant structural investment or cultural change, such as universal childcare or shifting male breadwinner social norms.<sup>58</sup>

Furthermore, while the relaunch introduced quantifiable indicators to track gender equality, including data on pay gaps, part-time employment, and parental leave, scholars such as Smith and Villa highlight that women’s employment growth during this period often occurred in non-standard, precarious jobs, undermining the quality of gender equality achievements.<sup>59</sup> Thus, even where

---

<sup>52</sup> Smith, M., & Villa, P. (2009); Gender equality as EU strategy. In L. Addabbo, E. di Bella, & S. Preti (Eds.), *Measuring gender equality: A multidisciplinary analysis of some EU countries*, Springer.

<sup>53</sup> Leon, M. (2009). Gender equality and the European Employment Strategy: The work/family balance debate. In S. Bretherton & M. Mannin (Eds.), *The European Union and the Social Dimension of Globalization: How the EU Influences the World* (pp. 121–139). Palgrave Macmillan.

<sup>54</sup> Commission of the European Communities. (2006c). *Implementing the renewed Lisbon Strategy for growth and jobs: A year of delivery* (COM(2006) 816 final).

<sup>55</sup> Dieckhoff, M., & Gallie, D. (2007). The renewed Lisbon Strategy and social exclusion policy. *International Journal of Comparative Sociology*, 48(6), 480–502.

<sup>56</sup> Leon (2009).

<sup>57</sup> Villa and Smith (2009); Preti and Di Bella (2023).

<sup>58</sup> Villa and Smith (2009).

<sup>59</sup> Villa and Smith (2009).

quantitative targets were met, substantive equality in terms of working conditions, pay equity, and job security remained elusive.<sup>60</sup>

The Open Method of Coordination (OMC) served as the principal enforcement mechanism for the EES, relying on instruments such as National Action Plans, peer review, and soft pressure through Country-Specific Recommendations (CSRs) and “Points-to-Watch”. However, its effectiveness as an enforcement tool remained uneven. For example, between 2007 and 2008, 16 countries received CSRs or Points-to-Watch concerning gender equality, but only seven developed concrete policy initiatives in response, while six offered minimal changes, illustrating the variable impact of soft governance.<sup>61</sup>

While proponents of soft law frameworks underscore their flexibility in accommodating national diversity,<sup>62</sup> critics argue that this same flexibility can mitigate accountability. Mailand and Falkner et al. have shown that without binding obligations, many Member States simply re-establish existing policies under EU headings.<sup>63</sup> Even hard law instruments, such as Directives on equal pay, have seen highly uneven implementation due to national legal inertia or ideational misfit.<sup>64</sup> Indeed, the European Commission’s own reviews revealed substantial variation in the application of the principle of equal pay across Member States, highlighting the difficulty of achieving effective transposition even under hard law.<sup>65</sup> For gender equality specifically, the dominance of soft law tools, such as benchmarking and peer review, reflects broader critiques that EU governance has prioritised competitiveness over social cohesion.<sup>66</sup>

The subsequent establishment of the European Semester in 2011 further integrated the EES and Lisbon targets into a broader annual governance cycle that includes fiscal surveillance, macroeconomic policy coordination, and social policy recommendations. While gender equality has occasionally appeared in CSRs under the Semester, scholars such as Jacquot argue that

---

<sup>60</sup> Leon (2009).

<sup>61</sup> Leon (2009).

<sup>62</sup> Mosher, J. S., & Trubek, D. M. (2003). *Alternative Approaches to Governance in the EU: EU Social Policy and the European Employment Strategy*. *Journal of Common Market Studies*, 41(1), 63–88.

<sup>63</sup> Falkner, G., Treib, O., Hartlapp, M., & Leiber, S. (2007). *Complying with Europe: EU harmonisation and soft law in the member states*. Cambridge University Press.

<sup>64</sup> Lopez-Santana, M. (2009). Having a say and acting: Assessing the effectiveness of the European Employment Strategy as an intra-governmental coordinative instrument. *European Integration Online Papers*, 13.

<sup>65</sup> European Commission. (2009a). *Report on the application of Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation* (COM(2009) 409 final).

<sup>66</sup> Hermann, C., & Hofbauer, I. (2007). The European social model: Between competitive modernisation and neoliberal resistance. *Capital & Class*, 31(3), 125-139; van Apeldoorn B., (2009) The contradictions of ‘embedded neoliberalism’ and Europe’s multilevel legitimacy crisis: The European project and its limits. In: van Apeldoorn B, Drahokoupil J, Horn L (eds) *Contradictions and Limits of Neoliberal European Governance: From Lisbon to Lisbon*. Basingstoke: Palgrave, 21–43.

macroeconomic priorities frequently overshadow gender objectives, limiting the Semester's role as an effective enforcement mechanism.<sup>67</sup> In practice, the Semester remains primarily focused on fiscal consolidation and budgetary discipline, with social considerations treated largely as secondary constraints rather than autonomous objectives of governance. Moreover, the involvement of the European Parliament, national parliaments, social partners, and civil society in its processes is minimal, reflecting what observers describe as a “new intergovernmentalism” in the EU's social governance.

Van der Vleuten et al. similarly observe that despite improved monitoring tools, significant enforcement gaps persist, as the Semester remains fundamentally a soft-law instrument, reliant on political pressure rather than binding legal obligations.<sup>68</sup>

Overall, the evolution from the EES through the Lisbon Strategy and into the European Semester demonstrates both the innovative potential of soft-law frameworks and their structural limitations as enforcement tools. While they have succeeded in raising the importance of gender equality within EU economic governance, persistent reliance on non-binding mechanisms and low Member State compliance continued to challenge the EU's capacity to function as a genuine enforcement agent for transformative gender equality in the labour market.

### ***1.3.2 The Crisis and Gendered Retrenchment (2010–2015)***

The decade beginning in 2010 was a key period with respect to the trajectory of EU gender equality policy. While the Lisbon Treaty reaffirmed equality between women and men as a foundational EU value, the post-2008 financial crisis triggered a shift from social objectives to fiscal consolidation. This period of austerity, institutional retrenchment, and deregulatory reform fundamentally altered the EU's enforcement. As Jacquot addresses it, this constituted the “crisis phase” of gender equality governance, in contrast to the more expansive “genesis” and “established” periods from the 1970s to the early 2000s.<sup>69</sup>

A key structural weakness exposed during this time was the fragile institutionalisation of gender mainstreaming, both at the EU and Member State levels. Although formally endorsed in the Amsterdam Treaty and reiterated throughout the 2000s, mainstreaming had never been fully embedded in fiscal, legal, or macroeconomic planning. As a result, it was among the first principles that were left out of consideration when the crisis intensified. The 2008 European Economic Recovery

---

<sup>67</sup> Jacquot, S. (2010). ‘The paradox of gender mainstreaming. Unanticipated effects of new modes of governance in the gender equality domain’. *West European Politics*, 33(1): 118-135.

<sup>68</sup> Van der Vleuten, A., Guerrina, R., & Masselot, A. (2023). *Gender equality and the European Union: Politics, policy and legal mobilization*. Palgrave Macmillan.

<sup>69</sup> Jacquot, S. (2015).

Plan (EERP), a €200 billion stimulus package, contained no reference to “gender,” “women,” or “equality”, despite its large scope and implications for employment, care services, and labour markets.<sup>70</sup> The Commission’s failure to include gender-sensitive provisions in this response revealed an important gap in the EU’s enforcement architecture: gender equality was neither mainstreamed, monitored, nor safeguarded in emergency economic governance.

Parallel to this omission, was the narrowing of priorities within the European Commission’s Gender Equality Unit. Rather than addressing the systemic labour market effects of austerity, such as job quality, care burdens, and rising precarity, the Commission focused its attention on two initiatives: the Women on Boards Directive, aimed at increasing female representation in economic decision-making, and efforts to combat female genital mutilation (FGM).<sup>71</sup> While both were important in their own right, they covered only a limited spectrum of gender inequality, leaving broader structural concerns largely unaddressed during the most critical years of adjustment.

Legal commitments to equality remained on paper but lost enforcement meaning. The Strategy for Equality between Women and Men 2010–2015 outlined ambitious goals but lacked dedicated enforcement instruments, funding streams, or institutional coordination.<sup>72</sup> Its midterm evaluation highlighted insufficient monitoring of EU funding, a lack of integration with the European Semester, and inadequate attention to job quality and women’s poverty. The subsequent Strategic Engagement for Gender Equality 2016–2019 marked a further downgrade, issued only as a staff working document without formal adoption by the College of Commissioners or Member State obligations.<sup>73</sup>

Meanwhile, the post-crisis European Semester became the central framework of EU economic governance, yet it largely failed to support gender equality. As Gomez Urquijo demonstrates, gender-related Country-Specific Recommendations (CSRs) made up less than 6% of total recommendations issued between 2011 and 2019.<sup>74</sup> When included, they often reflected a market-oriented logic, promoting flexible work or childcare access to support women’s labour market participation. More transformative issues, such as pay equity, care infrastructure, occupational segregation, or

---

<sup>70</sup> Karamessini, M., & Rubbery, J. (Eds.) (2013). *Women and austerity. The economic crisis and the future for gender equality*. London/New York: Routledge.

<sup>71</sup> European Commission, *Towards the Elimination of Female Genital Mutilation*, COM(2013) 833 final, 25 November 2013; Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures, *Official Journal of the European Union*, L 315, 7 December 2022, pp. 44–56.

<sup>72</sup> European Commission. (2010). *Strategy for equality between women and men 2010–2015* (COM(2010) 491 final).

<sup>73</sup> European Commission. (2015). *Strategic engagement for gender equality 2016–2019* (SWD(2015) 278 final).

<sup>74</sup> Gomez Urquijo, L. (2023). The progressive gendering of the European Union’s economic governance architecture. *European Constitutional Law Review*, 19(1), 1–28.

discrimination, were systematically ignored. These gender-related CSRs were also non-binding, lacked quantifiable targets, and were repeated across years without enforcement.

As Efstathiou et al. argue, the Annual Growth Surveys (AGSs) that underpin the Semester reflected a dominant economic paradigm that excluded reproductive labour from macroeconomic analysis. Both unpaid or publicly funded care work was either invisible or framed as a cost. Women were treated as “second earners,” and investment in social infrastructure was considered a threat to fiscal balance rather than a foundation of economic resilience. This conceptual hierarchy, between “economic” and “social” goals, helped justify austerity and reinforced a model of governance in which gender equality was treated as expendable.<sup>75</sup>

The social impacts were also catastrophic. Women bore the brunt of cuts to public services, both as primary users and as workers, since over 70% of EU public sector employees were female. Reductions in health, childcare, and eldercare services shifted reproductive labour back into the household, disproportionately increasing the unpaid care burden. The erosion of welfare supports and of labour protections led to a rise in precarious employment, particularly in feminised sectors, often without adequate union representation or legal recourse. While the gender employment gap narrowed, it did so not because women’s position improved, but because men’s employment rates collapsed, what scholars have termed a process of “equalising downwards”.<sup>76</sup>

Gender equality institutions also faced defunding and marginalisation. Several Member States eliminated national equality bodies or drastically cut their budgets, while EU-level oversight weakened. Although the European Pillar of Social Rights (EPSR) was introduced in 2017 to re-anchor social goals within EU governance, its provisions remained non-binding, and its Social Scoreboard, though disaggregated by gender, lacked any legal effect in shaping macroeconomic priorities.<sup>77</sup>

Overall, the crisis years did not merely deprioritize gender equality, they exposed the structural limits of the EU’s capacity to enforce it. Gender objectives were subordinated to fiscal discipline, gender mainstreaming was hollowed out, and the EU’s economic governance model re-centered market logics over rights-based frameworks. Even as political momentum returned in the post-2019 period, the institutional damage of this era continues to shape the way enforcement strategies now operate.

---

<sup>75</sup> Efstathiou, D., Dukelow, F., & Murphy, M. (2021). Dead ends and blind spots in the European Semester: The epistemological limits of the EU’s social and economic governance framework. *Socio-Economic Review*, 19(4), 1329–1353.

<sup>76</sup> Rubery, J. (2013). Public sector adjustment and the threat to gender equality, in Daniel Vaughan-Whitehead (ed.), *Public Sector Shock*, (pp. 43-83), Edward Elgar Publishing.

<sup>77</sup> European Commission. (2017). *European Pillar of Social Rights*.

### 1.3.3 The EPSR and MFF 2014–2020

In the second half of the 2010s, the EU sought to restore its social legitimacy following years of austerity and policy retrenchment by adopting a series of non-legislative instruments. The most relevant among them were the European Pillar of Social Rights (EPSR), proclaimed in 2017, and the 2014–2020 Multiannual Financial Framework (MFF). While these tools signalled a renewed rhetorical commitment to gender equality, they exposed enduring structural weaknesses in the EU's enforcement architecture.

The adoption of the EPSR was closely tied to the failure to integrate social rights into the new architecture of the Economic and Monetary Union (EMU), created after the financial and public debt crises. It articulated a wide range of principles, including equal pay for work of equal value, pension equality, and work-life balance, many of which directly addressed gendered labour market disparities. Yet, as Ales observes, the distinction between rights and commitments within the Pillar is often blurred. While rights imply direct entitlements, many provisions in the Pillar are framed as general goals to be fulfilled by third parties, primarily public authorities. These commitments aim to ensure access to social goods, support the achievement of social objectives, and prevent negative outcomes such as exclusion or poverty.<sup>78</sup> However, most social rights in the EPSR require active state intervention to be effective, and even judicial recognition does not guarantee their practical enforcement if the public support is lacking. This enforcement gap is also reinforced by the Pillar's status as a non-binding recommendation. The EPSR thus reflects the EU's broader enforcement logic: soft coordination is intended to drive social and employment convergence, yet experience since the EES shows that without a binding social floor, such "soft" convergence rarely leads to effective compliance.

This lack between aspirations and enforceability was equally evident in the 2014–2020 MFF.<sup>79</sup> Although gender equality was included as a cross-cutting objective, actual funding allocations were minimal. As Samek Lodovici highlights, less than 0.6% of total EU resources were directed toward gender equality initiatives.<sup>80</sup> Key programmes like Horizon 2020 and COSME offered little efforts with respect to gender-sensitive budgeting or measurable outcomes. The European Regional Development Fund (ERDF) also failed to systematically apply gender criteria, with wide

---

<sup>78</sup> Ales, E. (2017). The European Pillar of Social Rights: An ambitious 'soft-law guide' to efficient employment and social outcomes. In R. Singer & T. Bazzani (Eds.), *European employment policies: Current challenges* (pp. 43–63).

<sup>79</sup> Council of the European Union. (2020). *Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027*. Official Journal of the European Union, L 433I, 11–22.

<sup>80</sup> Samek Lodovici, M. (2020). *EU funding for gender equality: The need for a gender responsive budget* (Policy Department for Citizens' Rights and Constitutional Affairs). European Parliament.



discrepancies in national and regional implementation. The European Social Fund (ESF) was a partial exception, requiring gender-disaggregated data and including investment priorities for equality. However, its overall impact remained constrained by weak monitoring and inconsistent national uptake. These funding gaps demonstrate that rhetorical mainstreaming, absent enforceable conditionality or oversight, does not translate into structural change.

Together, the EPSR and MFF illustrate the limitations of relying on soft law and voluntary coordination in the pursuit of gender equality. Despite elevated discourse and some institutional innovation, these tools lacked the binding force necessary to address persistent labour market inequalities. Their shortcomings set the stage for a more assertive policy turn in the following period, marked by the introduction of binding transparency mechanisms, financial conditionality, and stronger regulatory oversight.

## **1.4 A New Era of Enforcement (2019–2024)**

Some critics argue that with the Juncker commission (2014–2019) there was a gradual dismantling of the social dimension of the EU. Scholars like Hubert indeed assert that while formal commitments to equality remained in place, they were increasingly disconnected from effective implementation.<sup>81</sup> Soft governance mechanisms, such as benchmarking, voluntary guidelines, and strategy documents, offered little resistance in addressing persistent labour market disparities. The result was a form of symbolic policymaking: gender equality was thus affirmed rhetorically but operationalised inconsistently, particularly in the domain of employment and care.

### ***1.4.1 Political Momentum and Institutional Shift***

The 2019 European elections triggered a notable shift in the EU's approach to gender equality. The cumulative pressure of structural inequalities, the #MeToo movement, and growing feminist mobilisation, especially among younger voters, created momentum for moving beyond symbolic rhetoric. Ursula von der Leyen's appointment as Commission President, alongside the creation of a dedicated Commissioner for Equality (Helena Dalli), marked a new political framing of gender equality not as an auxiliary social goal, but as a core principle of Union governance.<sup>82</sup>

The Gender Equality Strategy 2020–2025 reflects this shift in tone and ambition. Unlike prior strategies, it explicitly acknowledges structural causes of gender inequality, adopts intersectionality

---

<sup>81</sup> Hubert, A. (2021). *The European Union and gender equality*. In G. Abels & J. Mushaben (Eds.), *The Routledge Handbook of Gender and EU Politics* (pp. 25–35). Routledge.

<sup>82</sup> Debusscher, P. (2023). The EU Gender Equality Strategy 2020–2025: The beginning of a new season? In B. Vanhercke, S. Sabato, & S. Spasova (Eds.), *Social policy in the European Union: State of play 2022 — Policymaking in a permacrisis* (pp. 91–110). ETUI & OSE.

as a guiding principle, and ties gender justice to broader labour market and welfare reforms. However, Debusscher highlights the gap between policy ambition and institutional compliance, pointing to administrative issues, legislative delays, and limited mainstreaming in areas like the European Green Deal and the Recovery and Resilience Facility (RRF).<sup>83</sup>

#### ***1.4.2 COVID-19: Exposing Fragilities in Enforcement***

The COVID-19 pandemic constituted both a great challenge for the European Social Model, but also a wake-up call for EU gender equality governance. As Rubery and Tavora demonstrate, the crisis heightened the visibility of women's labour, particularly in health, care, and essential services, yet simultaneously exposed the deep undervaluation of feminised sectors.<sup>84</sup> Care workers, often underpaid and operating without adequate protective equipment, were publicly praised but rarely rewarded with long-term structural change. While some Member States such as France and Hungary, offered pay increases or permanent contracts, these gains were uneven, and in countries like Ireland and Finland, nurses and care workers remained on precarious or under-compensated terms.<sup>85</sup>

From an enforcement perspective, the pandemic revealed persistent gaps in social protection coverage, with female-dominated employment sectors, such as domestic work, part-time and informal labour, often excluded from job retention schemes, sick pay, and income supports. As Rubery and Tavora note, over 60% of “mini-jobbers” in Germany, most of whom are women, were outside of unemployment protection schemes. Similarly, migrant women in irregular work, who provide essential domestic and care labour, were left without legal or economic support. These omissions reflected enforcement failures in social rights, demonstrating that legal commitment alone is insufficient without institutional capacity and inclusion mechanisms. The work-care environment also deteriorated. Across Europe, school and childcare closures dramatically intensified women's unpaid labour burdens, exacerbating the gender division of care and forcing many women out of the workforce.<sup>86</sup>

Although 20 EU Member States introduced special parental leave schemes, many were either unpaid or paid at substandard levels, disproportionately harming single mothers and low-income women. For example, Bulgaria implemented a policy requiring single-parent households to use maternal leave, thereby assuming that the caregiver would be the mother. Importantly, Rubery and Tavora emphasize

---

<sup>83</sup> Debusscher, P. (2023).

<sup>84</sup> Távora, I., & Rubery, J. (2021). *The Covid-19 crisis and gender equality: risks and opportunities*. In B. Vanhercke, S. Spasova, & B. Fronteddu (Eds.), *Social policy in the European Union: state of play 2020: Facing the pandemic* (pp. 71–96). European Trade Union Institute (ETUI) and European Social Observatory (OSE).

<sup>85</sup> Távora, I. & Rubery, J. (2021).

<sup>86</sup> Távora, I. & Rubery, J. (2021).

that these gendered effects were a coherent reflection of the institutional inertia and failures in enforcement design. The uneven implementation of parental leave, the lack of gender-disaggregated emergency planning, and the absence of care infrastructure investments all indicate the fragility of gender-sensitive enforcement mechanisms during periods of systemic stress. The authors argue that the post-pandemic recovery represents a decisive point. Without systematic gender mainstreaming of the Next Generation EU recovery package, including the Recovery and Resilience Facility (RRF), the EU risks repeating the same neglect of women's rights seen after 2008. Policies such as universal social protection, shorter full-time work models, and binding childcare provision are essential for promoting economic independence and avoiding the regression of gender equality.<sup>87</sup>

### ***1.4.3 Financial Infrastructure: MFF 2021–2027 and Beyond***

In the wake of COVID-19, the EU introduced a more structured financial framework aimed at gender equality. The 2021–2027 Multiannual Financial Framework (MFF) and the NextGenerationEU recovery instrument incorporated for the first time a gender tagging system to evaluate the gender relevance of all EU-funded programmes. The Recovery and Resilience Facility (RRF) also included mandatory gender impact reporting in national recovery plans, largely due to civil society and European Parliament pressure.<sup>88</sup>

Compared to the 2014–2020 MFF, which dedicated just 0.6% of the budget to explicitly gender-focused actions, the new MFF represents a step forward in visibility and monitoring.

Under the Commission's gender-mainstreaming methodology, each spending line is classified as: Score 2, where gender equality is a principal objective; Score 1, where it is a significant goal among others; or Score 0\*, where gender relevance exists in theory but the programme has no targeted design.<sup>89</sup> Gender equality as a principal objective (Score 2) now accounts for about 2% of the budget, with another 9% allocated to measures where it is a significant goal. The European Social Fund Plus (ESF+) allocated €1.3 billion to principal gender actions and over €27 billion to mixed-purpose interventions between 2021 and 2023. Similarly, the RRF directed nearly €8 billion toward gender-specific aims, including investments in care infrastructure and women's entrepreneurship. To make this evolution clearer, Figure 1 presents a stacked comparison of the 2014–2020 and 2021–2023 periods, highlighting both the overall increase and the internal distribution across Score 2, Score 1, and Score 0\*. The comparison demonstrates the increased visibility of gender mainstreaming in the

---

<sup>87</sup> Tavora, I. & Rubery, J. (2021).

<sup>88</sup> Debusscher, (2022).

<sup>89</sup> European Commission. (n.d.). *Gender equality mainstreaming in the EU budget*. Retrieved September 10, 2025, from [https://commission.europa.eu/strategy-and-policy/eu-budget/performance-and-reporting/horizontal-priorities/gender-equality-mainstreaming\\_en](https://commission.europa.eu/strategy-and-policy/eu-budget/performance-and-reporting/horizontal-priorities/gender-equality-mainstreaming_en).

EU budget while highlighting the persistence of a large untargeted share. Yet, these numbers also reveal limitations. Over two-thirds of EU spending still carries no meaningful gender dimension. Moreover, key programmes, like InvestEU, remain underutilised for gender equality goals, receiving a “0\*” score (potential impact but no targeted design). Moreover, there are no binding spending targets, and implementation remains fragmented across Member States.

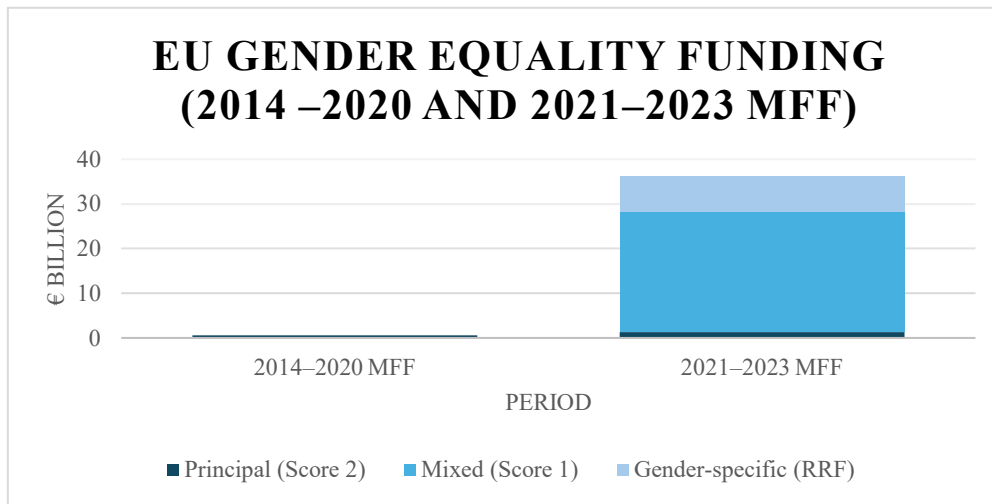


Figure 1. Source: Author’s elaboration based on European Commission gender-budgeting data.

## 1.5 Key Findings and Analytical Implications

This literature review has traced the evolution of gender equality within EU law and policy, moving from market-based equal treatment toward a broader ambition of transformative equality, now enshrined in the Charter of Fundamental Rights. This trajectory reflects an increasing recognition that achieving substantive gender equality requires not only prohibiting discrimination but also proactively dismantling structural barriers, as envisaged by Article 23 CFR and positive action measures under EU law.

Yet, the review reveals a persistent enforcement paradox: the European Union has developed a sophisticated legal framework, but effective enforcement remains fragmented, reactive, and nationally mediated.

Three key findings emerge from the literature:

### *I. Fragmentation and judicial limits: the need for integrated enforcement*

EU gender equality law continues to operate through both horizontal and vertical fragmentation. Horizontally, private litigation, administrative oversight, and collective mechanisms often function in isolation, producing patchy and reactive enforcement. Vertically, the Union relies heavily on Member

State procedural autonomy, resulting in divergent access to justice, inconsistent remedies, and uneven sanctions. This fragmented landscape is compounded by the limits of judicial enforcement: while the CJEU has progressively advanced doctrines such as indirect discrimination, burden-shifting, and positive action, court-driven enforcement remains reactive, individualised, and often inaccessible to the most vulnerable workers. Effective and transformative enforcement therefore requires integrated, multi-channel mechanisms that combine judicial remedies with administrative inspections, equality body interventions, and collective representation.

## *II. Institutional capacity and national implementation*

Even the most ambitious EU measures are mediated through national legal cultures and administrative frameworks. Access to justice, equality body resources, inspectorate powers, and the role of collective bargaining differ significantly across Member States, producing uneven enforcement outcomes. This national mediation means that the impact of EU law depends not only on its formal design but also on the willingness and capacity of domestic institutions to implement it effectively.

## *III. Discursive and institutional conditions*

The framing of gender equality deeply shapes enforcement. When framed primarily as an economic asset, enforcement tends to rely on soft law, voluntary coordination, and symbolic measures, as seen in the European Employment Strategy and the European Semester. By contrast, rights-based and transformative framings support the adoption of binding directives and integrated enforcement tools, yet their success ultimately depends on national legal culture and administrative capacity. Yet such framings only translate into practice where they are backed by political prioritisation and institutional capacity at both Union and national level.

Recent developments, such as the Pay Transparency Directive and gender-sensitive EU funding mechanisms, indicate a potential shift toward integrated, multi-channel enforcement. However, the Directive's effectiveness will rely on its translation into national practice, particularly through equality bodies, labour inspectorates, and collective redress pathways. This structural fragility sets the stage for the present research. By analysing the Pay Transparency Directive as a potential enforcement paradigm and comparing Italy and Spain as two contrasting national systems, the thesis will assess whether the European Union can genuinely function as an enforcement agent for gender equality in the labour market. The following analysis will present insights over whether the European Union's legal and policy innovations can overcome this enforcement paradox, or whether gender equality in the labour market remains dependent on the uneven commitment of its Member States.

## **Chapter 2 - Research Design & Methodology: How to Assess Enforcement of Gender Equality in the Labour Market**

### **2.1 Research Design: Legal and Policy Framework Analysis**

This thesis seeks to determine whether the European Union can genuinely be regarded as an enforcement agent for gender equality in the labour market. In line with the findings of Chapter One, which traced the evolution of EU gender equality from market-oriented principle to an intersectional transformative under the Charter of Fundamental Rights, the research design adopts a dual-track approach. It combines legal doctrinal analysis with policy and institutional framework assessment, recognising that legal texts and political instruments are inseparable in shaping the Union's enforcement capacity.

To test whether the EU is at present capable of moving beyond symbolic commitments, this research centres on the Pay Transparency Directive. This measure introduces binding obligations on pay reporting, audits, and burden shifting, alongside the empowerment of equality bodies and collective enforcement mechanisms. It therefore provides a concrete analysis' lens through which to evaluate whether the Union can translate normative ambition into actionable enforcement. Moreover, the Directive is particularly suited to be analysed through the tripartite framework developed by Koukiadaki, distinguishing between private and public enforcement, and evaluating remedies through their remedial, compensatory, punitive, and preventive functions.<sup>90</sup> Applying this framework enables the thesis to systematically assess whether the Directive's innovations merely extend existing doctrines, or whether they amount to a qualitatively new enforcement paradigm within EU gender equality law.

The research design incorporates also a comparative national perspective, reflecting the insight from Chapter One that EU enforcement capacity is profoundly mediated by domestic legal cultures and institutional readiness. Italy and Spain provide a good comparison of two countries that, despite having the same welfare system, display very different realities. Indeed, while Italy exemplifies a fragmented, reactive model, where compliance is often formalistic and litigation is rare, Spain demonstrates a more proactive environment, leveraging equality plans, collective bargaining, and

---

<sup>90</sup> Koukiadaki & Lörcher (2022).

inspectorate oversight. Analysing the Directive's potential impact, the institutional capacity and the readiness through these national contexts, enables the study to bridge formal EU-level enforcement mechanisms and their practical translation into labour market outcomes. This comparative analysis is structured, once again, through Koukiadaki's framework, ensuring that national implementation is assessed not only in terms of formal transposition but also of its ability to deliver structural change. The best way to do so is by examining in practice what the Directive requires and measuring these obligations against existing national frameworks: to assess whether domestic institutions are sufficient, whether the Directive can generate positive changes, or whether it risks disrupting established models of enforcement.

Finally, the policy and institutional track complement this analysis by examining the governance and discursive frameworks through which the EU operationalises gender equality. As Chapter One highlighted, decades of reliance on soft-law mechanisms, via initiatives such as the EES and the European Semester, produced visibility without consistent compliance. This research therefore extends the analysis to the most recent instruments and discourses that frame the Pay Transparency Directive. It considers the discursive logics through which gender equality is presented, the institutional dynamics among EU actors, and the complementary instruments that provide political, financial, and normative backing—most notably the Gender Equality Strategy 2020–2025, the MFF 2021–2027, and the European Pillar of Social Rights. By situating the Directive within this broader mix of legal norms, institutional dynamics, and financial instruments, the analysis captures the multi-layered nature of EU action, where discourse, political priorities, and mainstreaming tools intersect to condition enforcement capacity.

Through this multi-layered and comparative approach, the research design directly addresses the central question of this thesis: whether the European Union can evolve from a norm setter into a true enforcement agent, capable of driving substantive gender equality across its Member States.

This design responds to the enforcement paradox identified in Chapter One: the EU has developed a sophisticated legal and policy framework for gender equality, yet its effectiveness remains fragmented, reactive, and mediated by national institutions. By placing the Pay Transparency Directive at the centre of the analysis, the study tests whether this moment represents not only another step forward, but a potential paradigm shift in EU gender equality enforcement.

## **2.2 Analytical Framework: Dimensions and Expectations Sustaining the Comprehensive Analysis**

Building on the research design and on the findings of the literature review the analytical framework thus seeks to answer the thesis question by assessing four main lines of analysis. These dimensions translate the enforcement paradox identified in the literature into specific hypotheses that can be examined through the Pay Transparency Directive and its prospective implementation in Italy and Spain.

### *Dimension 1 – Binding legal design and integrated enforcement*

This first line of analysis evaluates whether the Pay Transparency Directive's legal architecture can function as a credible enforcement tool. It focuses on the Directive's structured obligations, such as pay reporting, audits, burden-shifting, and sanctions, and its explicit design for multi-channel enforcement. The PTD relies on equality body oversight, labour inspectorate interventions, and collective representation to complement judicial remedies, seeking to overcome the limits of a litigation-driven model. The analysis considers whether this combination of binding rules and integrated mechanisms is capable of delivering substantive enforcement, or whether its impact will be diluted during national transposition.

### *Dimension 2 – National institutional capacity and implementation*

This second outlook underscores that national legal culture and institutional capacity mediate the EU's enforcement potential. It assesses the resources, procedures, and political commitment available to equality bodies, inspectorates, and collective actors, as well as the broader legal culture in which they operate. The comparison of Italy and Spain provides a focused lens to explore how the same Directive may produce divergent enforcement outcomes in different national contexts.

### *Dimension 3 – Translation of transformative rights into practice*

Finally, the third line of analysis argues that rights-based and transformative framings of gender equality, as embodied in Article 23 of the Charter of Fundamental Rights, will only translate into effective enforcement where national systems are capable of supporting structural change. This dimension therefore situates the Pay Transparency Directive within the Union's wider discursive and institutional environment. The key question is thus whether the Pay Transparency Directive consolidates a transformative rights-based approach or remains constrained by competing logics and limited material support. This dimension therefore situates the Directive within the Union's broader political and institutional landscape, asking whether current mainstreaming efforts, financial



instruments, and governance priorities provide the conditions necessary for enforcement. In this sense, the analysis tests whether the Directive marks a genuine departure from earlier soft-law initiatives, or whether it risks becoming another symbolic commitment.

Overall, these dimensions shall seek to comprehend is thus whether the PTD- Directive and the efforts made by the EU actors to ensure fairer labour practices, mark a genuine paradigm shift in EU gender equality enforcement or whether, like earlier initiatives, they risk remaining largely symbolic commitments rather than a driver of transformative change in practice.

## **2.3 Sources and Materials**

This research relies on a combination of primary legal sources, policy and institutional documents, national-level materials, and academic literature, ensuring a multi-layered approach to evaluating the European Union's capacity to enforce gender equality in the labour market.

The primary legal sources provide the normative foundation for the analysis. Coherently, the Pay Transparency Directive constitutes the central legal reference for this study. While its detailed analysis will be undertaken in Chapter Three, the Directive is methodologically significant because it represents a new generation of EU gender equality legislation, explicitly designed to strengthen the Union's enforcement capacity.

The national sources focus on Italy and Spain, providing concrete evidence of how EU obligations are implemented on the ground. Reports from equality bodies, labour inspectorates, and relevant ministries in each country offer insight into institutional readiness, administrative capacity, and the practical mediation of EU law through domestic legal culture.

The policy and institutional sources capture the governance environment in which EU gender equality law operates. The policy and institutional sources capture the wider governance environment in which EU gender equality law operates. Alongside EU strategies and budgetary tools such as the Gender Equality Strategy 2020–2025 and the Multiannual Financial Framework 2021–2027, the analysis draws on Commission recommendations and reports, as well as expert and academic commentary (e.g. the European Equality Law Review, the CESifo Forum). These materials allow the study to assess how soft-law coordination, political prioritisation, and gender mainstreaming interact with binding measures like the Pay Transparency Directive in shaping enforcement outcomes.

Finally, academic scholarship supports the doctrinal interpretation of legal instruments and situates the analysis within broader debates on EU social governance and labour law enforcement.<sup>91</sup> By

---

<sup>91</sup> See, for example, Peers et al. (2021); Dorsemont, Lörcher, & Clauwaert (2019); Koukiadaki & Lörcher (2022); Rubery & Tavora (2021).

integrating these sources, the research aims to build a rounded evidentiary base that connects EU-level legal commitments to policy frameworks and national practice, providing the foundation for the doctrinal and institutional analysis developed in the following chapters.

## **2.4 Analytical Approach**

As mentioned, the analysis proceeds in three stages: doctrinal analysis of the Directive, comparative case studies of Italy and Spain, and policy-institutional assessment.

The following section therefore sets out the rationale for selecting the Pay Transparency Directive as the core legal case through which the EU's enforcement potential can be examined, followed by the choice of Italy and Spain as contrasting national contexts for assessing how this potential is mediated in practice.

### ***2.4.1 Case Selection Rationale: The Pay Transparency Directive***

The Pay Transparency Directive (Directive (EU) 2023/970) is selected as the central legal case study for this thesis for three reasons.

First, it represents the most recent and comprehensive binding measure in the EU gender equality acquis, adopted in May 2023 as part of the post-2019 “hard law turn” identified in Chapter 1. It addresses a structural enforcement gap in EU labour law: the difficulty of detecting, proving, and remedying pay discrimination and unequal treatment in employment. By introducing binding transparency obligations, it seeks to dismantle information asymmetries that have historically salvaged discriminatory practices from scrutiny.

Secondly, the Directive builds on, codifies, and extends core enforcement doctrines developed by the Court of Justice of the European Union, including burden-shifting in discrimination claims (*Danfoss*, *Enderby*) and the scope of comparators (*Lawrence*, *Allonby*), while adding novel elements such as pre-contractual pay transparency, joint pay assessments, and intersectionality references. This blend of established doctrine and legal innovation makes it an ideal instrument through which to test the hypotheses formulated in section 2.2.

Thirdly, the Directive's design reflects the multi-channel enforcement model identified in the literature review as necessary for transformative equality. Judicial remedies are complemented by the empowerment of equality bodies, the potential role of labour inspectorates, and the strengthening of collective redress mechanisms. This integrated architecture makes the Directive a valuable test case for assessing whether the EU can overcome the horizontal and vertical fragmentation in enforcement

identified in Chapter 1, and whether hard law can drive substantive equality across diverse national legal cultures.

Finally, the Directive is also widely regarded as a potential paradigm shift in EU equality law, and this thesis tests whether such a shift is substantive or merely symbolic.

#### ***2.4.2 Case Selection Rationale: Italy and Spain***

Italy and Spain were selected for their shared roots in the Southern European or “Mediterranean” welfare model and their sharply diverging socio-economic and cultural trajectories over the last two decades. As Bettio et al show, both countries have historically relied heavily on the family as a welfare provider, with low female labour force participation, limited part-time work, and enduring traditional gender norms. Despite these common characteristics, they have evolved in markedly different ways, making them analytically valuable for testing whether EU enforcement tools can deliver comparable outcomes across divergent contexts.<sup>92</sup>

Italy has largely followed a trajectory of continuity. Female labour market integration has changed little, and shifts toward egalitarian, anti-essentialist gender values have been slow. According to European Commission data, Italy’s gender pay gap is among the lowest in Europe at 4.2%.<sup>93</sup> However, Naldini and Saraceno and the European Institute for Gender Equality (EIGE) stress that this figure is misleading, as it reflects low female labour market participation (51.7% in 2022—the second lowest in the EU after Greece) and women’s underrepresentation in higher-paying sectors. Women make up only 42.8% of Italy’s total workforce, signalling persistent structural and cultural barriers to gender inclusion.<sup>94</sup>

Spain, by contrast, presents a fundamental shift from the Southern model. As Bettio et al. note, the 2008 economic crisis catalysed major increases in women’s labour force participation, particularly among less-educated women, and a rapid shift toward egalitarian gender-role attitudes. Spain’s female employment rate reached around 64% in 2022, and attitudinal measures now resemble those in countries like Sweden, rejecting essentialist conceptions of femininity.<sup>95</sup>

---

<sup>92</sup> Bettio, F., Simonazzi, A., & Villa, P. (2023). *Diverging destinies: Women’s work and gender roles in Southern Europe*. Anuario IET de Trabajo y Relaciones Laborales, 10, 122–145.

<sup>93</sup> European Commission. (2022). *Gender pay gap statistics*. Eurostat.

<sup>94</sup> Naldini, M., & Saraceno, C. (2022). *Gender and welfare in Italy: Continuities and changes in patterns of labour division*. Social Politics: International Studies in Gender, State & Society, 29(1), 1–25; European Institute for Gender Equality (EIGE). (2022). *Gender Equality Index 2022: The COVID-19 pandemic and care*. Publications Office of the European Union.

<sup>95</sup> Bettio et al. (2023).

Further comparative insight comes from Ren et al., who situate both countries within the Southern European model but highlight key contrasts.<sup>96</sup> Italy scores lower than Spain on the EIGE Gender Equality Index (69.1 vs. 80.2, EU average 81.3), with especially large gender employment gaps in its vulnerable southern regions. In these regions, the presence of children reduces women's likelihood of paid work, and national childcare reforms, such as the *Piano Straordinario*, have had limited effect.<sup>97</sup> Spain, though still facing inequalities, shows smaller regional gaps and better integration of women into the labour market.<sup>98</sup>

Leoncini further underscores these divergences. In 2018, Italy had one of the lowest female employment rates in the EU (53%), with a gender employment gap almost double Spain's (20.1% vs. 11.5% in 2016). On the Global Gender Gap Index, Italy ranked 70th overall and 118th for job opportunities, while Spain ranked 29th. Societal attitudes differ sharply: 51% of Italians believe a woman's most important role is in home and family care, compared to 24% in Spain. Both countries' "familialist" models mean care burdens fall disproportionately on women, but austerity-era cuts to childcare and eldercare intensified this burden, particularly in Italy's vulnerable regions.<sup>99</sup>

Taken together, these findings establish a revealing contrast. Italy and Spain share structural origins and welfare traditions but diverge sharply in female employment rates, gender attitudes, and institutional capacity. This makes them ideal cases for examining whether the EU's enforcement ambitions, as embodied in the Pay Transparency Directive, can withstand national variation in political will, institutional readiness, and socio-cultural norms.

## 2.5 Limitations of the Study

While this research adopts a multi-layered and rigorous methodology, several limitations must be acknowledged to contextualise its findings. These limitations arise from the scope of the study, the nature of the sources, and the focus of the analytical framework.

First, the study adopts a qualitative and doctrinal approach rather than a quantitative or econometric one. Its objective is to assess the EU's capacity to function as an enforcement agent through legal and policy analysis, rather than to measure the precise statistical impact of gender equality policies on

---

<sup>96</sup> Ren, X., Kanavitsa, E., & León, M. (2023). *Gender inequalities at work in Southern Europe*. Social Inclusion, 11(1), 49–60.

<sup>97</sup> The *Piano straordinario per lo sviluppo dei servizi socio-educativi per la prima infanzia* was first established under L. 27 dicembre 2006, n. 296 (legge finanziaria 2007) and renewed and extended through L. 23 dicembre 2014, n. 190 (legge di stabilità 2015).

<sup>98</sup> Ren et al (2023).

<sup>99</sup> Leoncini, S. (2020). *Gender equality in Europe and intersectionality in times of crisis*. Journal of International Women's Studies, 21(6), 109–124.

labour market outcomes. While figures and indicators are referenced where relevant, the emphasis remains on normative and institutional effectiveness, not on empirical econometric evaluation.

Second, the analysis of national implementation focuses on Italy and Spain as illustrative case studies. These countries were chosen because they represent contrasting legal cultures and enforcement models, which allow for meaningful testing of the fourth hypothesis. However, this comparative focus is not intended to be fully representative of all twenty-seven Member States. Findings related to national mediation and legal culture must therefore be interpreted as contextual insights rather than universal conclusions.

Third, the study is necessarily limited by the availability and recency of sources. While EU legal and policy documents are comprehensive, national-level reports, particularly those produced by equality bodies and labour inspectorates, are uneven in coverage and timeliness. This can affect the depth of the comparative analysis, especially regarding ongoing implementation of the Pay Transparency Directive, which remains at an early stage.

Finally, the research primarily addresses gender equality in the labour market, as framed in EU law and policy. Other dimensions of gender inequality, such as intersectionality with race, migration status, or class, are acknowledged but not systematically analysed. Similarly, the study focuses on enforcement capacity, leaving broader questions of policy effectiveness or social outcomes, for instance, the long-term impact on the gender pay gap, beyond its scope.

By recognising these limitations, the thesis maintains a methodologically coherent framework, ensuring that its conclusions about the EU's role as an enforcement agent are accurate within their intended analytical boundaries.

## **Chapter 3- Current Enforcement: National and Supranational Evaluation of Gender Equality in the Labour Market**

### **3.1 The Pay Transparency Directive as a New Enforcement Paradigm**

Building on the historical and methodological framing set out in Chapters 1 and 2, this chapter now turns to Directive (EU) 2023/970 as a concrete test of the EU's enforcement capacity. The following section therefore seeks to understand the Directive's architecture and positioning it within the broader evolution of EU gender equality law, asking whether it can overcome the fragmentation, judicial limits, and discursive constraints identified earlier.

#### ***3.1.1 Pay Transparency as a Legal and Enforcement Concept***

##### *Definition and function*

In EU labour law, pay transparency entails a set of legally defined measures that require the disclosure and structured accessibility of remuneration information to ensure that equal-pay rights can be identified, monitored, and enforced in practice. The European Commission's 2014 Recommendation offered an important toolkit in this sense, highlighting the Union's understanding of transparency as both a substantive and a procedural aspect for equal pay.<sup>100</sup> While non-binding, this Recommendation catalysed national experimentation and signalled the Union's view that transparency was key to making equal pay rights actionable. The Pay Transparency Directive builds directly over these notions, transforming voluntary guidance into binding obligations.

##### *Doctrinal foundations in primary law*

The legal basis for equal pay (upon which the Directive taken into analysis builds) is strongly anchored to a series of international and EU-specific legal instruments and evaluations. These include Article 11 of the UN Convention on the Elimination of Discrimination against Women, mandating equal remuneration and treatment.<sup>101</sup> Within the EU, this is reinforced by Articles 2 and 3(3) of the Treaty on European Union<sup>102</sup> and Articles 8, 10, and 157 of the Treaty on the Functioning of the European Union,<sup>103</sup> all of which require measures to eliminate inequalities and ensure equal treatment and pay between genders. The Charter of Fundamental Rights consolidates this trajectory: indeed

---

<sup>100</sup> European Commission. (2014). *Recommendation on strengthening the principle of equal pay between men and women through transparency* (2014/124/EU). OJ L 69/112; OECD. (2021). *Pay Transparency Tools to Close the Gender Wage Gap*. OECD Publishing.

<sup>101</sup> United Nations. (1979). *Convention on the Elimination of All Forms of Discrimination against Women*, Article 11.

<sup>102</sup> Treaty on European Union, Articles 2 and 3(3), 2012 OJ C 326/13.

<sup>103</sup> Treaty on the Functioning of the European Union (2012), Articles 8, 10, 157, 2012 OJ C 326/47.

Article 21 CFR prohibits discrimination and Article 23 CFR mandates equality between women and men in “all areas”, including pay, providing the normative baseline that transparency seeks to make effective as analysed in Chapter 1.<sup>104</sup>

### *Judicial logic linking transparency and enforcement*

As noted in Chapter 2, the Directive also codifies principles elaborated by the CJEU. *Danfoss* introduced the shift of the burden of proof to the employer, while *Enderby* established that statistical evidence can suffice to show a presumption of discrimination.<sup>105</sup> At the same time, *Lawrence* and *Allonby* exposed the difficulties of establishing comparators in fragmented labour markets.<sup>106</sup> Transparency directly addresses these issues by generating reliable, gender-disaggregated pay data; by clarifying “work of equal value” through objective, gender-neutral criteria; and by supporting comparisons that go beyond one firm’s reality when disparities stem from a single source.<sup>107</sup>

### *A proactive enforcement multiplier*

Conceptually, transparency is not a mere addition to litigation; it re-balances information asymmetries before disputes arise and strengthens all three enforcement channels identified in Chapter One: judicial, administrative, and collective. Public disclosure makes disparities visible and ensures preventive action on the employer’s side whilst also enforcing public oversight; furthermore, reputational pressure (“name-and-shame”) has been empirically associated with reporting compliance.<sup>108</sup> Worker and union access to gender-disaggregated pay data empowers individual and collective claims and bargaining strategies.<sup>109</sup> Likewise, well-resourced equality bodies and inspectorates can use reported data to monitor, investigate, and steer corrective measures.<sup>110</sup> In this sense, transparency converts the Treaties’ and Charter’s abstract guarantees into actionable enforcement.<sup>111</sup>

---

<sup>104</sup> Arts 21–23 CFR.

<sup>105</sup> Case C-109/88, *Danfoss*, EU:C:1989:383; Case C-127/92, *Enderby*, EU:C:1993:859.

<sup>106</sup> Case C-320/00, *Lawrence*, EU:C:2002:498; Case C-256/01, *Allonby*, EU:C:2004:18.

<sup>107</sup> Arabadjieva, K., & Kotsoni, M. (2021). *Mind the Gap: Emerging Standards on Equal Pay and Pay Transparency*. ETUI Policy Brief No. 2/2021.

<sup>108</sup> Carlson, L. (2022). *The EU Pay Transparency Proposed Directive – General Overview and Some Comments on the Rules on Enforcement and Sanctions*. *European Equality Law Review*, Issue 2/2022, 57–68. ISSN 2443-9606.

<sup>109</sup> Arabadjieva, K., & Kotsoni, M. (2021).

<sup>110</sup> OECD. (2021). *Pay Transparency Tools to Close the Gender Wage Gap*. OECD Publishing.

<sup>111</sup> Art. 157 TFEU; Arts. 21–23 CFR.

### 3.1.2 Precedent EU Framework on Pay Transparency

Before the adoption of Directive (EU) 2023/970,<sup>112</sup> the EU legal framework on equal pay was centred on Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women with respect to employment and occupation. While this instrument consolidated earlier legislation and CJEU case law, it remained reactive in nature, relying on individual litigation and national procedural rules to give effect to the principle of equal pay.

#### *Directive 2006/54/EC: reactive enforcement model*

The Directive contained provisions on compensation or reparation,<sup>113</sup> equality bodies,<sup>114</sup> social dialogue,<sup>115</sup> penalties,<sup>116</sup> prevention of discrimination,<sup>117</sup> and gender mainstreaming.<sup>118</sup> However, the European Parliament repeatedly criticised the Directive for failing to address the structural causes of the gender pay gap.<sup>119</sup>

In 2008, Parliament highlighted that the concept of equal pay should cover not only hourly wage differentials but also disparities arising from job classification, productivity, and professional experience. It also highlighted the gendered consequences of seniority-based pay systems, given women's more frequent career interruptions and overrepresentation in part-time and lower-paid sectors.<sup>120</sup>

The Commission's 2013 report on the Directive's application confirmed these concerns, noting that Member States had largely failed to modernise their national frameworks. Significant incongruities were found in the definition of "pay", in the scope of equal treatment in occupational pensions, and in approaches to gender reassignment. More importantly, the report identified three persistent obstacles to effective enforcement:

- I. Lack of clarity on the concept of "work of equal value" and the absence of mandatory gender-neutral job evaluation and classification systems.

---

<sup>112</sup> Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay between men and women through pay transparency and enforcement mechanisms, 2023 OJ L 132/21.

<sup>113</sup> Directive 2006/54/EC, 2006, art. 18.

<sup>114</sup> Directive 2006/54/EC, 2006, art. 20.

<sup>115</sup> Directive 2006/54/EC, 2006, art. 21.

<sup>116</sup> Directive 2006/54/EC, 2006, art. 25.

<sup>117</sup> Directive 2006/54/EC, 2006, art. 26.

<sup>118</sup> Directive 2006/54/EC, 2006, art. 29.

<sup>119</sup> Mignano, C. (2023). *Gender Pay Gap: The Protection of the Right to Equal Pay under the Pay Transparency Directive*. European Equality Law Review, (2), 57–68. ISSN 2443-9606.

<sup>120</sup> European Parliament. (2008). *Resolution of 18 November 2008 on the application of Directive 2006/54/EC*. P6\_TA (2008)0521.



- II. Lack of transparency in pay structures, with congruent national rules on access to pay information.
- III. Procedural barriers, including limited access to relevant information, high costs and length of proceedings, weak sanctions, inadequate compensation, fear of retaliation, and restrictive limitation periods.<sup>121</sup>

Although Article 19 of the Directive required the shifting of the burden of proof once discrimination was presumed, national implementation was uneven, with some systems imposing additional obstacles.<sup>122</sup> Equality bodies, where established, were often under-resourced and lacked clear mandates or public visibility.

*The 2014 Commission Recommendation: soft-law approach*

In response to the European Parliament's calls for reform, the Commission did not propose a legislative revision but adopted a non-binding Recommendation on strengthening the principle of equal pay between men and women through transparency.<sup>123</sup> The Recommendation urged Member States to:

- I. Grant employees the right to request gender-disaggregated pay information for categories of comparable workers;
- II. Introduce company-level reporting on average remuneration by category and gender;
- III. Require large employers to conduct pay audits, including analysis of pay gaps, job evaluation systems, and action plans;
- IV. Promote equal-pay bargaining and gender-neutral job evaluation/classification systems.

The Commission's 2017 evaluation found low willingness from the member states to actually endorse some of these provisions. Indeed, only eleven Member States had adopted some form of pay-transparency legislation, and only Sweden had implemented all the measures in the Recommendation's toolbox. The diversity of approaches reinforced both vertical fragmentation (divergent national enforcement capacities) and horizontal fragmentation (misalignment between judicial, administrative, and collective channels).<sup>124</sup>

---

<sup>121</sup> European Commission. (2013). *Report on the application of Directive 2006/54/EC*. COM(2013) 861 final.

<sup>122</sup> Directive 2006/54/EC, 2006, art. 19.

<sup>123</sup> European Commission. (2014). *Recommendation on strengthening the principle of equal pay between men and women through transparency*. 2014/124/EU, OJ L 69/112.

<sup>124</sup> European Commission. (2017). *Evaluation Report on the Implementation of the 2014 Pay Transparency Recommendation*. SWD(2017) 170 final; Mignano, C. (2023). *Gender Pay Gap: The Protection of the Right to Equal Pay under the Pay Transparency Directive*. *European Equality Law Review*, (2), 57–68. ISSN 2443-9606.

### *Enforcement weaknesses and the case for reform*

The pre-PTD framework thus exhibits the enforcement deficits identified in Chapter 1:

- I. Non-binding measures produced limited and uneven uptake, with no uniform baseline for transparency obligations.
- II. Divergent definitions of “equal work”, variable procedural rules, and inconsistent equality-body mandates produced an uneven level of protection across the Union.

These weaknesses meant that the right to equal pay, though embedded in EU primary law, was often procedurally unenforceable in practice. The combination of insufficient transparency, weak institutional support, and reliance on individual litigation left structural pay inequalities largely unsettled, preparing the stage for the adoption of binding transparency measures in Directive (EU) 2023/970.<sup>125</sup>

#### ***3.1.3 Normative Content and Legal Innovations***

Adopted on 10 May 2023 and published in the Official Journal on 17 May 2023, the Pay Transparency Directive was proposed by the European Commission in March 2021 as part of the EU Gender Equality Strategy 2020–2025.<sup>126</sup> It sets binding minimum standards for pay transparency and equal pay enforcement, while allowing Member States to maintain or introduce more favourable provisions. Transposition is required by 7 June 2026, with the Commission mandated to review its application by 2031.

Building on the limitations identified in the previous section, the PTD represents a decisive move away from the reactive, litigation-heavy and uneven framework of Directive 2006/54/EC and the 2014 Commission Recommendation. It translates soft-law principles into binding, multi-channel obligations that address both the horizontal and vertical fragmentation highlighted in 3.1.2.

Arguably, one key update is the recognition of intersectional discrimination: Recital 25 underscores an intersectional approach without expanding employers’ data duties, while Article 3(2)(e) specifies intersectional discrimination. Historically, EU law focused mainly on gender pay discrimination.<sup>127</sup> This concept is deconstructed by asserting that discrimination can be multifaceted, involving not just gender but also other characteristics like racial or ethnic origin, religion, disability, age, or sexual orientation. This change aligns with international legal developments that recognize equal pay rights

---

<sup>125</sup> Directive (EU) 2023/970.

<sup>126</sup> Directive (EU) 2023/970

<sup>127</sup> Directive (EU) 2023/970, Art. 3(2)(e).

on multiple grounds, beyond just sex. This provision allows for a more comprehensive consideration of these intersecting factors without altering the scope of employers' existing obligations under the directive, specifically noting that employers are not required to collect data on grounds other than sex. This adjustment aims to enhance the understanding and addressing of the gender pay gap by recognizing the complexity of individual discrimination experiences. In doing so, it closes a conceptual gap in earlier EU law, which often kept sex discrimination away from other protected grounds, and therefore struggled to address root issues at the base of gender discrimination.

As analyzed by Dr Lahuerta, the legislative act uses individual and collective measures to better enforce transparency. Respectively, the former entail greater effort by employers to address pay inequity, whereas the latter confers a greater array of instruments for workers to face pay inequity.<sup>128</sup>

An example of an individual claim can be found in Article 5, which mandates transparency about pay before employment begins.<sup>129</sup> Employers shall indeed ensure this with job vacancy notices or during the initial job interview process, restraining pay discrimination by fostering equal negotiation leverage between all candidates, regardless of gender. Moreover, employers are prohibited from asking about a candidate's previous salary, a straightforward yet vital measure to break the cycle of undervaluing work based on gender biases. This obligation to provide initial pay levels or ranges before hiring, together with the ban on pay-history questions, directly answers the information asymmetry problem noted in 3.1.2, setting a uniform EU baseline that limits Member State procedural divergence (vertical fragmentation).

On the other hand, Article 14 guarantees access to court, while Article 15 empowers enables associations, equality bodies and workers' representatives to bring or support claims on behalf of workers, granting them a more precise role in EU legal frameworks to also ensure a more communal approach to wage equality.<sup>130</sup> In this realm, labour unions and national agencies, such as labour inspectorates, are also given greater responsibilities to monitor and enforce compliance.<sup>131</sup> This is reinforced by Article 7, which grants workers the right to request both individual and average pay levels by sex, and allows unions or equality bodies to make such requests on their behalf.<sup>132</sup> By embedding these rights in hard law, the PTD compensated for the voluntary, uneven uptake of similar

---

<sup>128</sup> Lahuerta, S. B. (2023). *EU transparency legislation to address gender pay inequity: What is on the horizon and its likely impact in Ireland* (UCD Working Papers in Law, Criminology & Socio-Legal Studies Research Paper No. 16/2023). University College Dublin.

<sup>129</sup> Directive (EU) 2023/970, Art. 5.

<sup>130</sup> Directive (EU) 2023/970, Arts 14-15.

<sup>131</sup> Art. 152 TFEU.

<sup>132</sup> Directive (EU) 2023/970, Art. 7.

rights under the 2014 Recommendation, tackling horizontal fragmentation between individual litigation and collective action.

Articles 28–29 further strengthen institutional coordination. The novelty of Article 29 is the establishment of a monitoring body in each Member State to oversee equal pay implementation to further ensure compliance. The directive also introduces EU and national pay equality plans, setting targets and measures to tackle labour market biases and segregation. These monitoring bodies are designed to coordinate with equality bodies and labour inspectorates, generating and publishing pay-gap data in accessible formats, thereby institutionalising cooperation channels that were previously ad hoc (horizontal fragmentation).<sup>133</sup>

Furthermore, Article 19 broadens the scope of equal pay claims by allowing comparisons across different employers, not just within a single company.<sup>134</sup> This means that workers can demonstrate pay disparities even when they do not have a direct colleague as a comparator, provided that pay conditions are determined by the same source, such as a parent company, central management, or a collective agreement. In this way, a “real-life” comparator within the same workplace is no longer strictly necessary. This reform, which reflects the CJEU’s *Tesco* judgment, tackles one of the main weaknesses of the earlier framework by addressing comparator bottlenecks in gender-segregated sectors and extending enforceability beyond the single-employer model of Directive 2006/54/EC.<sup>135</sup>

The directive also shifts the burden of proof in wage discrimination cases from the employee to the employer and reallocates legal and judicial costs, which could significantly reduce the financial and psychological barriers for employees seeking justice. Under the new directive, once a claimant establishes a *prima facie* case of discrimination, it is then the responsibility of the defendant to prove that no unlawful discrimination has occurred, coherent with the case law produced by the CJEU. The step taken further by the directive is that if an employer fails to meet the pay transparency requirements, the claimant is not required to establish a *prima facie* case at all; instead, the burden of proof automatically shifts to the employer to demonstrate compliance.<sup>136</sup> Complementing this, Article 21 introduces a minimum three-year limitation period for claims,<sup>137</sup> while Article 16(4) mandates full compensation without caps.<sup>138</sup> On costs, the proposal had been praised for departing from the loser-pays principle in favour of claimants, but in the final Directive this provision was moderated: national courts are instead required to assess whether unsuccessful claimants had reasonable grounds before

---

<sup>133</sup> Directive (EU) 2023/970, Arts 28–29.

<sup>134</sup> Directive (EU) 2023/970, Art. 19.

<sup>135</sup> Court of Justice of the European Union. (2021). *Case C-624/19, K and Others v. Tesco Stores Ltd* (EU:C:2021:429).

<sup>136</sup> Directive (EU) 2023/970, Art. 18.

<sup>137</sup> Directive (EU) 2023/970, Art. 21.

<sup>138</sup> Directive (EU) 2023/970, Art. 16(4).

exempting them from costs.<sup>139</sup> Taken together, these measures thus form an ‘access to justice’ package that directly responds to the high procedural barriers seen in the previous 3.1.2 section.

Finally, the Directive integrates deterrence and structural remediation through public enforcement tools absent from the prior framework: Article 23 requires Member States to impose effective and proportionate penalties;<sup>140</sup> Article 24 instead enables exclusion from public procurement where unjustified pay gaps  $\geq 5\%$  persist.<sup>141</sup>

In doing so, Article 24 reflects a preventive and deterrent rationale, making pay equality not only a legal requirement but also a condition for economic competitiveness. Finally, Article 10 mandates joint pay assessments with worker representatives when significant gaps cannot be objectively justified.<sup>142</sup> These provisions collectively operationalise the shift from symbolic to enforceable standards, signalling a recalibration of EU intervention from soft coordination to binding, multi-actor enforcement.

### ***3.1.4 Enforcement Architecture and Legal Significance***

As outlined in 3.1.3, the Pay Transparency Directive introduces a series of normative innovations intended to address the structural weaknesses of the pre-existing equal pay framework. Yet the Directive’s true significance emerges in its enforcement architecture, which operationalises these innovations through a multi-channel design. This design directly targets the dual fragmentation identified in Chapter One: horizontally, by integrating and coordinating multiple enforcement actors; and vertically, by establishing EU-wide procedural guarantees that constrain the dilutive effects of Member State procedural autonomy.

Drawing on the distinction by Koukiadaki between private enforcement (driven by rights-holders through judicial or administrative action) and public enforcement (conducted by state or quasi-state bodies), the PTD blends these approaches.<sup>143</sup> The framework proposed by Koukiadaki also introduces a third line of analysis, which focuses not on who enforces but on the justice functions that remedies and sanctions are meant to serve. In this view, enforcement tools can be understood as remedial (ending infringements), compensatory (restoring victims), punitive (deterring and sanctioning), or preventive (reducing future risks). Because enforcement of gender equality is fragmented and difficult to grasp through a single lens, this tripartite framework offers a rare comprehensive approach: it

---

<sup>139</sup> Directive (EU) 2023/970, Art. 22; Carlson, L. (2022).

<sup>140</sup> Directive (EU) 2023/970, Art. 23.

<sup>141</sup> Directive (EU) 2023/970, Art. 24.

<sup>142</sup> Directive (EU) 2023/970, Art. 10.

<sup>143</sup> Koukiadaki, A. (2022). *Remedies and sanctions*. In A. Koukiadaki & K. Lörcher (Eds.), *Effective enforcement of EU labour law* (1st ed., pp. 35–56). Oxford: Hart Publishing.

allows the PTD's mechanisms to be assessed simultaneously in terms of actors, channels, and justice functions. In doing so, it ensures all the dimensions of enforcement are included.

### *Private enforcement*

Private enforcement is enhanced through rights to information,<sup>144</sup> burden-shifting<sup>145</sup> and minimum limitation periods.<sup>146</sup> These procedural guarantees address the transparency and asymmetries that have hindered equal pay litigation, creating a harmonised baseline across Member States and reducing vertical fragmentation. Judicial enforcement remains central: Articles 18, 21 and 22 dilute procedural barriers that have disproportionately deterred vulnerable workers from litigating.<sup>147</sup>

### *Public enforcement*

On the other hand, public enforcement is operationalised via labour unions, social partners, equality bodies, labour inspectorates and national monitoring bodies.

#### *a) Labour unions and social partners*

The Directive explicitly recognises their dual role as both enforcers and implementers. Articles 13, 15 and 30 define this role by securing their involvement in social dialogue, empowering them to bring or support collective claims, and allowing, in some cases, the transposition of Directive obligations through collective agreements.<sup>148</sup> The capacity of unions to monitor and enforce equal pay varies with national industrial relations models, union density, and the scope of collective agreements. In highly coordinated systems, such as Sweden's single-channel model with 70% union density, unions' historical and structural roles in wage-setting make them powerful actors for closing gender pay gaps.<sup>149</sup> The Tesco litigation illustrates their potential: collective claims can have system-wide impact, giving a voice to thousands of workers and securing compensation in back pay.<sup>150</sup>

#### *b) Equality bodies*

These bodies have long been under resourced and undervalued in European labour law; as indeed shown in a 2021 Commission staff working document, shortcomings of equality bodies were found in their resources, independence, and legal standing. Under the PTD, they can request pay data,<sup>151</sup>

---

<sup>144</sup> Directive (EU) 2023/970, Arts. 5, 7.

<sup>145</sup> Directive (EU) 2023/970, Art. 18.

<sup>146</sup> Directive (EU) 2023/970, Art. 21.

<sup>147</sup> Directive (EU) 2023/970, Arts. 16(3) – (4), 17, 18, 21, 22.

<sup>148</sup> Directive (EU) 2023/970, Arts. 13, 15, 30.

<sup>149</sup> Carlson, L. (2022).

<sup>150</sup> Case C-624/19, *K v Tesco Stores*, EU:C:2021:429.

<sup>151</sup> Directive (EU) 2023/970, Art. 7.

receive and contribute to joint pay assessments<sup>152</sup> and trigger suspension of limitation periods.<sup>153</sup> This hard-law mandate strengthens their role from an advisory to a proactive enforcement actor, albeit sufficient national resourcing.

*c) Labour inspectorates*

Defined in Article 3(1)(k),<sup>154</sup> they gain formal authority to obtain pay data, request clarifications, and cooperate in remedial actions.<sup>155</sup> Joint pay assessments must be made available to them, and their involvement can suspend limitation periods.<sup>156</sup>

*d) Monitoring bodies*

Article 29 mandates a dedicated body in each Member State to aggregate data from transparency measures, publish it in accessible formats, and report annually to the Commission.<sup>157</sup> These bodies are also tasked with analysing structural causes of the gender pay gap and providing analytical tools to employers, particularly SMEs. This institutionalises continuous oversight and creates a systemic feedback loop, in contrast to the fragmented monitoring seen under the previous framework.

Crucially, the Directive requires coordination across enforcement actors. Article 28 calls for equality bodies, inspectorates, and social partners to cooperate, while Article 29 introduces monitoring bodies tasked with aggregating data and liaising with these actors.<sup>158</sup> By embedding such cooperation into binding law, the Directive directly addresses the horizontal fragmentation identified in Chapter One, ensuring that litigation, inspections, and collective mechanisms no longer operate in isolation.

This classification of enforcement actors and fragmentation addressed is summarised in Table 1.

---

<sup>152</sup> Directive (EU) 2023/970, Art. 10.

<sup>153</sup> Directive (EU) 2023/970, Art. 21.

<sup>154</sup> Directive (EU) 2023/970, Art. 3(1)(k).

<sup>155</sup> Directive (EU) 2023/970, Art. 10.

<sup>156</sup> Directive (EU) 2023/970, Art. 21.

<sup>157</sup> Directive (EU) 2023/970, Art. 29.

<sup>158</sup> Directive (EU) 2023/970, Arts. 28,29.

**Table 1: Articles refer to Directive (EU) 2023/970, OJ L 132, 17.5.2023.**

Source: Author's elaboration based on Koukiadaki & Loercher (2022), Effective enforcement of EU labour law. Oxford: Hart Publishing.

<b>Directive Article</b>	<b>Primary Enforcement Actor(s)</b>	<b>Fragmentation Type Addressed</b>
<b>Art. 5 – Pay transparency before employment</b>	Employers, Courts	Vertical
<b>Art. 7 – Right to information</b>	Workers, Equality Bodies, Unions	Horizontal & Vertical
<b>Art. 8 – Pay gap reporting</b>	Employers, Monitoring Bodies	Vertical
<b>Art. 10 – Joint pay assessment</b>	Employers, Worker Representatives, Inspectorates, Equality Bodies	Horizontal
<b>Art. 13 – Social dialogue</b>	Social Partners (Unions, Employers)	Horizontal
<b>Art. 15 – Representation (collective claims)</b>	Equality Bodies, Unions, Worker Representatives	Horizontal
<b>Art. 18 – Burden of proof</b>	Courts	Vertical
<b>Art. 21 – Limitation periods</b>	Courts, Equality Bodies, Inspectorates	Vertical
<b>Art. 22 – Legal costs</b>	Courts	Vertical
<b>Art. 23 – Penalties</b>	Inspectorates, Equality Bodies	Horizontal & Vertical
<b>Art. 24 – Public procurement exclusions</b>	Contracting Authorities	Horizontal
<b>Art. 28 – Equality bodies (cooperation duties)</b>	Equality Bodies, Inspectorates, Social Partners	Horizontal
<b>Art. 29 – Monitoring bodies</b>	Monitoring Bodies	Horizontal
<b>Art. 30 – Collective agreements (role of social partners)</b>	Unions, Employers	Horizontal



### *Justice functions*

When considered together, these actors constitute the Directive's multi-channel enforcement architecture. Yet to fully appreciate the significance of this design, it is not enough to ask who enforces; it is also necessary to ask what kind of justice the Directive seeks to deliver.

Applying this third layer to the PTD reveals that its enforcement architecture spans all four justice functions outlined above.

Remedial justice is provided by Article 17, which empowers courts to issue injunctions and structural orders to end ongoing violations.<sup>159</sup>

Compensatory justice is guaranteed by Article 16(3) – (4), which requires Member States to ensure full, uncapped compensation covering back pay, bonuses, lost opportunities, moral damages, intersectional discrimination, and interest.<sup>160</sup>

Punitive justice is reflected in Article 23, requiring Member States to impose effective, proportionate and dissuasive penalties, including aggravated sanctions for repeat breaches, and in Article 24, which allows for the exclusion of non-compliant employers from public procurement procedures where unjustified pay gaps persist.<sup>161</sup>

Preventive justice is advanced through Articles 5–10, which impose *ex ante* transparency duties such as pay reporting, joint pay assessments, and the right to information, as well as by Articles 18, 21 and 22, which lower procedural barriers to litigation. Article 24 which combines punitive (exclusion from procurement) and preventive (economic deterrence) functions.<sup>162</sup>

Taken together, these provisions illustrate that the Directive does not privilege a single mode of justice but integrates remedial, compensatory, punitive and preventive elements into a consistent scheme which moves beyond the litigation-heavy characteristic of the previous framework.

In sum, the PTD constructs a layered enforcement architecture that moves beyond symbolic commitments toward an operational regime combining judicial, administrative, and collective channels. By linking transparency duties to both remedial and deterrent measures, embedding procedural guarantees to improve access to justice, and coordinating multiple enforcement actors, it attempts to transform equal pay from an aspirational principle into a monitored and enforceable standard across the Union.

---

<sup>159</sup> Directive (EU) 2023/970, Art. 17.

<sup>160</sup> Directive (EU) 2023/970, Art. 16(3) – (4).

<sup>161</sup> Directive (EU) 2023/970, Arts. 23, 24.

<sup>162</sup> Directive (EU) 2023/970, Arts. 5–10, 18, 21–22, 24.

**Table 2: Articles refer to Directive (EU) 2023/970, OJ L 132, 17.5.2023.**

Source: Author’s elaboration based on Koukiadaki & Loercher (2022), Effective enforcement of EU labour law. Oxford: Hart Publishing.

<b>JUSTICE FUNCTION</b>	<b>DIRECTIVE ARTICLE(S)</b>
<b>REMEDIAL JUSTICE</b>	<i>Art. 17</i> – Injunctions & structural orders <i>Art. 16(4)</i> – Corrective effect with compensation
<b>COMPENSATORY JUSTICE</b>	<i>Art. 16(3)–(4)</i> – Full uncapped compensation: back pay, bonuses, opportunities, moral damages, intersectional discrimination, interest
<b>PUNITIVE JUSTICE</b>	<i>Art. 23</i> – Effective, proportionate penalties <i>Art. 24</i> – Exclusion from public procurement
<b>PREVENTIVE JUSTICE</b>	<i>Arts. 5–10</i> – Transparency & reporting duties <i>Art. 18</i> – Burden of proof <i>Art. 21</i> – Limitation periods <i>Art. 22</i> – Costs <i>Art. 24</i> – Procurement as deterrent

### **3.1.6 Legal Challenges and Doctrinal Issues**

Despite the Directive’s innovations, significant doctrinal challenges remain which directly relate to enforcement considerations.

#### *Comparators and their limits*

The role of comparators within the EU’s judicial heritage illustrates both progress and persistent limits. Following *Tesco*, the CJEU confirmed the “single-source” principle, broadening the scope for workers to rely on comparators from different establishments where pay is set by a common source.<sup>163</sup> The PTD codifies this approach by explicitly allowing hypothetical comparators where no real comparator exists, thereby addressing the lack of male comparators in feminised and undervalued

<sup>163</sup> Case C-624/19, *K and Others v. Tesco Stores Ltd*, EU:C:2021:429.

sectors such as care work.<sup>164</sup> Yet, this tool is limited when it comes to cross-sectoral comparisons, presenting structural undervaluation of “women’s work” and thus relegating potential enforcement to a more limited dimension. As Pilliger indeed explains, this issue stems from the fact that current job evaluation schemes are sectoral and thus, it is difficult to have cross-sectors comparison even if the evaluation of the work is based on similar responsibilities or skills.<sup>165</sup>

Moreover, the McCarthy judgment highlights the risks of allowing comparisons across different time periods.<sup>166</sup> In their revision of the directive, Business Europe argued that non-contemporaneous comparisons disregard the evolving dynamics of companies and also generate legal uncertainty. The issue is also further complicated by the lack of judicial enforcement with respect to the comparators. If indeed the past non-discrimination directives have constructed a formal legal precedent with respect to hypothetical comparators, the latter has not been operationalised that often by the ECJ.<sup>167</sup>

### *Competence Frictions*

At a deeper level, the Directive raises competence and subsidiarity concerns. By mandating joint assessments, reporting obligations,<sup>168</sup> and extending equality body powers,<sup>169</sup> the PTD risks centralising authority over wage-setting mechanisms historically governed by social partners at national or sectoral level. This could bring collectively bargained pay structures under the jurisdiction of the CJEU, unsettling established labour relations models. In Sweden, for example, where wage negotiations are predominantly managed through collective bargaining with minimal state intervention, the Directive’s requirements may disrupt well-functioning arrangements by imposing unfamiliar procedures. This creates both subsidiarity concerns i.e. the interference with national labour relations and proportionality doubts, as uniform EU duties may exceed what is necessary to secure transparency.<sup>170</sup> Finally, critics have been made over the limitations period imposed by the Directive. Indeed, as asserted by Business Europe’s report, the three-year limitation seems far too specific as one shall consider the labour litigation system of the MS.<sup>171</sup>

### *Institutional enforcement gaps*

---

<sup>164</sup> Directive (EU) 2023/970, Art. 19(3).

<sup>165</sup> Pilliger, J. (2023). *The Pay Transparency Directive: The role of hypothetical comparators in determining equal pay for work of equal value*. ETUI Policy Brief: European Economic, Employment and Social Policy, 2/2023. European Trade Union Institute.

<sup>166</sup> Court of Justice of the European Union. (1980). *Macarthys Ltd v. Smith* (Case 129/79, ECLI:EU:C:1980:103).

<sup>167</sup> BusinessEurope. (2021, May 5). *Position paper: Pay transparency*. BusinessEurope.

<sup>168</sup> Directive (EU) 2023/970, Art. 10

<sup>169</sup> Directive (EU) 2023/970, Arts. 28,29.

<sup>170</sup> BusinessEurope. (2021, May 5).

<sup>171</sup> BusinessEurope. (2021, May 5).

Even with stronger EU rules, institutional capacity remains a very important aspect to consider. Indeed, equality bodies, inspectorates, and unions, remain structurally under-resourced and vulnerable to political interference, raising doubts about whether they can deliver on their expanded mandates. As highlighted by the working commission paper published by the EC in 2022<sup>172</sup>, equality bodies have been proven to lack the facto independence as some of them are budgeted by the government or some ministries, weakening their role in terms of workers' defenders. Similarly, they lack funding with respect to litigations, and they risk producing high legal costs. In some MS they further do not have the power to enforce sufficiently deterrent sanctions. Trade unions, on the other hand, could play a decisive role in pushing for cross-sectoral comparisons or initiating collective claims, yet this will depend on their willingness and resources. These gaps highlight possible uneven institutional enforcement across Member States and the risk that transposition will produce highly variable enforcement outcomes. In France, for example, pay disclosure is already negotiated within the social partners, but the Directive requirements' over public reporting might risk altering the balance between collective bargaining and EU transparency obligations.<sup>172</sup>

#### *Scope and harmonisation limits*

Beyond doctrinal issues, the PTD's transformative potential is constrained by its threshold design. Obligations to report apply only to employers with at least 250 workers, with phased duties for those with 100–249 employees. The European Parliament had initially proposed lowering the threshold to 50, which would have captured a greater share of SMEs.<sup>173</sup> This choice ultimately leaves significant portions of the female workforce, outside the Directive's preventive transparency regime, instituting an enforcement practice that would not practically be functional to actually preserve women's rights. Indeed, while obligations may incur through value chains when large firms demand compliance from contractors, this indirect diffusion risks fragmenting enforcement and privileging women in larger firms over those in smaller enterprises.

#### **3.1.7 Assessment of Binding Legal Design**

The analysis of the Directive under Dimension 1 shows that binding legal design is not an end in itself but a framework that must be judged by its enforceability. At the same time, the Directive illustrates that binding design can recalibrate enforcement by embedding transparency duties, comparators, and procedural guarantees directly into hard law, but “binding” does not mean “self-executing.”

---

<sup>172</sup> BusinessEurope. (2021, May 5).

<sup>173</sup> European Parliament. (2022, March 22). *Amendment 111 to proposal for a directive on strengthening 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* (A9-0056/2022).

Moreover, the PTD exposes three important issues that condition the value of legal design for enforcement: (i) doctrinal tools such as hypothetical comparators remain under-used and vulnerable to restrictive interpretation; (ii) subsidiarity and national wage-setting traditions limit how far EU law can structure pay transparency; and (iii) institutional disparities create uneven national capacity to apply the Directive's mandates. Binding law, therefore, is necessary to establish a common baseline and to raise the floor of protection, but it cannot alone equalise enforcement across the Union. Its effectiveness will ultimately depend on national activation, institutional resourcing, and political prioritisation, showing both the ambition and fragility of the EU's role as an enforcement agent.

### **3.2 Evaluating the Directive's Enforcement Potential in Italy and Spain**

This section evaluates how the Pay Transparency Directive (PTD) introduces the enforcement of gender equality in the labour market applying Koukiadaki's tripartite framework to assess its translation into national systems. Each subparagraph places Italy and Spain side by side under the Directive's main enforcement elements, analysed in 3.1, before a comparative synthesis in 3.2.6 draws together convergences and divergences. In doing so, the analysis tests whether the PTD can function as a genuine enforcement paradigm across different domestic contexts or whether its effectiveness will remain uneven and reliant upon national implementation.

#### ***3.2.1 Pre-PTD Legal Baseline***

##### *Italy*

Italy's commitment to gender equality in employment is engrained first of all in its constitutional framework. The Constitution not only enshrines the principle of formal equality in Article 3,<sup>174</sup> but also extends it to substantive equality by obliging the Republic to remove material and social barriers to participation. Article 37 goes further by guaranteeing women equal rights and equal pay for equal work, while simultaneously acknowledging maternity as a sphere that shall entail special protection.<sup>175</sup> In parallel, Article 51 contains the principle of equal access to public office, laying the groundwork for affirmative action in political and institutional life.<sup>176</sup>

The key engulfment of gender equality norms can however be found mostly within the Equal Opportunities Code of 2006 (Legislative Decree 198/2006), which merged a multitude of provisions into a coherent framework.<sup>177</sup> Among its most significant innovations was the consolidation of earlier

---

<sup>174</sup> Constitution of the Italian Republic, (1948). Art. 3. *Gazzetta Ufficiale*, 27 December 1947, No. 298.

<sup>175</sup> Constitution of the Italian Republic, (1948), Art. 37.

<sup>176</sup> Constitution of the Italian Republic, (1948), Art. 51.

<sup>177</sup> Legislative Decree No. 198 of 11 April 2006. *Code of Equal Opportunities between Women and Men*. *Gazzetta Ufficiale*, 31 May 2006, No. 125.

reporting duties introduced in the 1970s. Accordingly, employers with more than one hundred employees were required to submit biennial reports on staff composition and pay structures, disaggregated by gender. In principle, these reports could be requested and scrutinised by the Regional Labour Office, which also held powers to suspend contributory benefits in cases of non-compliance. In practice, however, compliance was uneven and sanctions rare.

Such issues were a focal point of Law 162/2021, which marked an important attempt to rethink Italy's transparency regime.<sup>178</sup> Indeed, by lowering the reporting threshold from one hundred to fifty employees, the law extended coverage to a much wider segment of firms. It also required far more detailed data collection, ranging from initial salaries and contractual roles to bonuses, benefits, and work-life balance indicators. For the first time, workers and unions gained direct access to these reports, enabling them to rely on the data in legal actions. Alongside these changes, the law also introduced an entirely new instrument: the gender equality certification system.<sup>179</sup> This voluntary scheme rewards companies that meet benchmarks on remuneration, career progression, and reconciliation measures. Certified companies enjoy reductions in social security contributions and preferential access to public procurement, shifting enforcement logic away from sanctions toward reputational and financial incentives.<sup>180</sup>

The National Recovery and Resilience Plan (PNRR) reinforced this incentive-based model by embedding gender equality as a cross-cutting criterion in EU-funded projects.<sup>181</sup> Certification became a means of gaining bonus points in tender evaluations, demonstrating how EU financing priorities can influence national enforcement pathways. Yet while this architecture expanded transparency and created clear economic incentives for compliance, it also highlighted Italy's reliance on positive reinforcement rather than deterrence as the main mechanism of enforcement.

An aspect which is worth mentioning is the country's judicial practice in the field of equal pay. Beyond isolated precedents, Italian courts have not developed the concept of "work of equal value" or applied hypothetical comparators, leaving litigation fragmented. These limitations are explored more fully in section 3.2.2, as they underline the limited judicial elaboration of substantive equality rights.

---

<sup>178</sup> Law No. 162 of 5 November 2021. *Modifications to the Equal Opportunities Code*. Gazzetta Ufficiale, 18 November 2021, No. 275 (Italy).

<sup>179</sup> UNI. (2022). *Prassi di Riferimento UNI/PdR 125:2022 – Linee guida sul sistema di gestione per la parità di genere*. Ente Italiano di Normazione.

<sup>180</sup> Izzi, D. (2024). Contrasto al gender gap nel lavoro e regole di trasparenza. *Lavoro e diritto*, 38(4), 645–661.

<sup>181</sup> Presidenza del Consiglio dei Ministri. (2021). *Missione 5 "Inclusione e coesione" del Piano Nazionale di Ripresa e Resilienza (PNRR): parità di genere come criterio trasversale per i progetti cofinanziati con risorse UE*. Governo Italiano.

With specific regard to the transposition timeline, Law No. 15/2024 (Legge di Delegazione Europea) is the main reference. While Italy traditionally adopts EU directives late in the cycle through delegation laws, this instrument signalled a more proactive approach.<sup>182</sup> Article 9 of this legislative tool instructs the Government to transpose the PTD by June 2026 and goes beyond simple “copy-out” by setting substantive criteria: aligning national law with the EU Gender Equality Strategy 2020–2025, developing gender-neutral job evaluation methodologies in consultation with social partners, and strengthening pay transparency through expanded access to data and potential automation using administrative databases.<sup>183</sup> Importantly, these criteria were not present in the Government’s initial draft but were inserted during the parliamentary process, reflecting a deliberate political choice to embed the Directive within Italy’s wider equality policies. The Chamber of Deputies later emphasised this novelty in its 2025 report on “Legislazione e politiche di genere,” highlighting the potential role of equality councils and inspectorates as monitoring bodies under Article 28 PTD.<sup>184</sup>

Despite these advancements, there are also significant weaknesses that it’s important to note.

Indeed, the 2025 gender report analysis has noted that the 2014 Commission Recommendation on pay transparency has not been effectively applied, and that many of the Directive’s key innovations remained absent in practice. In particular, Italy lacked formal job evaluation and analysis systems, and collective agreements were only occasionally monitored for gender bias.<sup>185</sup> More broadly, the European Parliamentary study over Reporting obligations observed that, despite reforms such as Law 162/2021, the equal pay principle still occupies a low profile in Italy’s policy agenda.<sup>186</sup> This weak prioritisation generates problems of awareness, especially among wage bargainers, and underlines the need for stronger dissemination of information and political commitment to gender equality.

Italy’s baseline thus shows both ambition and fragility: on the one hand, a legislative pathway that seeks to integrate the Directive into a wider gender-equality strategy; on the other, persistent institutional and political deficits in monitoring, job evaluation, and agenda-setting.

## Spain

---

<sup>182</sup> Lavorosi.it. (2024, February 21). *Camera dei Deputati: Gender pay gap, le modalità di recepimento della direttiva*. Retrieved September 9, 2025, from <https://www.lavorosi.it/rapporti-di-lavoro/retribuzione/camera-dei-deputati-gender-pay-gap-le-modalita-di-recepimento-della-direttiva/#:~:text=citata%20Direttiva%2C%20al%20fine%20di,46%2F2024>

<sup>183</sup> Lavorosi.it. (2024, February 21).

<sup>184</sup> Camera dei Deputati. (2025). *Legislazione e politiche di genere: Relazione 2025*. Rome: Camera dei Deputati.

<sup>185</sup> Renga, S. (2025). *Country report: Gender equality – Italy (Reporting period 1 January 2024 – 1 January 2025)*. European Commission, Directorate-General for Justice and Consumers. Publications Office of the European Union.

<sup>186</sup> Profeta, P., Passador, M. L., & Caló, X. (2021). *Reporting obligations regarding gender equality and equal pay: State of play among Member States and avenues for upgrading and implementing legal sanctions towards companies* (PE 698.641). Policy Department for Citizens’ Rights and Constitutional Affairs, European Parliament.

Spain entered the Pay Transparency Directive with one of the most legally extensive gender equality frameworks among EU Member States. The 1978 Constitution lays the normative foundations: Article 14 guarantees equality before the law and prohibits sex-based discrimination, while Article 9.2 obliges public authorities to promote conditions for real and effective equality.<sup>187</sup> These principles were given institutional depth by the Organic Act 3/2007 on Effective Equality between Women and Men (Equality Law), which mainstreamed gender considerations across policymaking, created gender units in all ministries, and established the Inter-Ministerial Commission for Equality.<sup>188</sup> The Equality Law also authorised affirmative action through Article 11, requiring specific measures in favour of women to correct manifest inequalities, a mandate later operationalised through periodic Strategic Plans for Equal Opportunities.<sup>189</sup>

Within the labour market, Spain has codified equal pay for work of equal value in Article 28 of the Workers' Statute.<sup>190</sup> Another important piece of legislation comes from the Royal Decree-Law 6/2019, which introduced a more detailed definition of "work of equal value."<sup>191</sup> This definition obliged courts and employers to look beyond job titles and assess equivalence in tasks, professional and educational requirements, training, and working conditions, thereby limiting the risk of indirect bias in favour of male-dominated categories. Parallely, Article 22 of the Statute was amended to require that classification systems themselves needed to be free from gender discrimination, addressing the structural undervaluation of feminised roles.<sup>192</sup>

Transparency has also been introduced within this framework. In fact, since 2019, all employers have been required to maintain pay registers disaggregated by sex and professional group, covering not only basic pay but also supplements and non-salary elements. Where pay differences of 25% or more emerge, employers must justify them in writing with objective, gender-neutral reasons. These obligations were further consolidated by Royal Decree 902/2020, which introduced binding methodologies for pay audits and gender-neutral job evaluation, accompanied by a digital tool jointly developed by the Ministry of Labour and the Institute of Women.<sup>193</sup> Spain also expanded the scope of equality plans: if at first they were initially reserved for large firms, they became mandatory for

---

<sup>187</sup> Constitución Española [Spanish Constitution]. (1978). *Boletín Oficial del Estado* (B.O.E.), núm. 311, 29 December 1978.

<sup>188</sup> Organic Act 3/2007 of 22 March on Effective Equality between Women and Men. (2007). *Boletín Oficial del Estado* (B.O.E.), núm. 71, 23 March 2007.

<sup>189</sup> Organic Act 3/2007, Art 11.

<sup>190</sup> Workers' Statute, Royal Legislative Decree 2/2015 of 23 October. (2015). *Boletín Oficial del Estado* (B.O.E.), núm. 255, 24 October 2015.

<sup>191</sup> Royal Decree-Law 6/2019 of 1 March on Urgent Measures to Guarantee Equal Treatment and Opportunities between Women and Men in Employment and Occupation. (2019). *Boletín Oficial del Estado* (B.O.E.), núm. 57, 7 March 2019.

<sup>192</sup> Workers' Statute, (2015), Art.22

<sup>193</sup> Royal Decree 902/2020 of 13 October on equal pay between women and men. (2020). *Boletín Oficial del Estado* (B.O.E.), núm. 272, 14 October 2020.



companies with 50 or more employees under Royal Decree-Law 6/2019, whilst Royal Decree 901/2020 regulated their negotiation, registration, and monitoring.<sup>194</sup> Equality plans thus must include concrete measures on recruitment, promotion, remuneration, work–life balance, and harassment, creating a holistic compliance framework that goes beyond transparency.

Spanish jurisprudence has also advanced equal pay principles. The Constitutional Court and Supreme Court have ruled repeatedly on indirect discrimination, double wage scales, and the undervaluation of feminised categories, gradually elaborating the meaning of “work of equal value” in litigation. These rulings have shaped the interpretation of statutory reforms and helped deepen equal pay within collective bargaining practice. The richness of this case law, however, will be assessed more fully in 3.2.2, where judicial enforcement is analysed in detail.

Spain therefore entered the PTD’s enforcement era with one of the most comprehensive gender equality regimes in the EU. The combination of constitutional guarantees, the Equality Law, detailed statutory definitions of “work of equal value,” binding pay registers, and mandatory equality plans positioned it as an early mover in embedding transparency into labour law. Yet even this advanced framework revealed important shortcomings. The 25% justification threshold for pay gaps was significantly higher than the PTD’s 5% trigger for joint assessments, transparency duties did not extend to job applicants or cover the public sector with the same breadth, and monitoring and sanctioning mechanisms remained uneven across regions and sectors. Moreover, while Spanish courts have played an active role in elaborating equal pay doctrines, enforcement in practice continues to depend on litigation and the social partners, leaving preventive justice underdeveloped. At the time of writing, a draft transposition bill is not expected until late 2025. The Directive thus poses less a question of innovation than one of consolidation: whether Spain can transform its ambitious legal framework into a consistently enforced system that meets the Directive’s higher bar for deterrence and multi-channel effectiveness.

### ***3.2.2 Private and Public Enforcement’s Dimensions***

#### *Italy’s Private Enforcement*

Private enforcement in Italy formally anticipates several guarantees later codified in Directive 2023/970, but it remains underdeveloped in practice.

Private enforcement in Italy is primarily driven by individual workers, though collective actors also have standing. Article 37 of Legislative Decree 198/2006 (Equal Opportunities Code) empowers

---

<sup>194</sup> Royal Decree-Law 6/2019; Royal Decree 902/2020 of 13 October on equal pay between women and men. (2020). *Boletín Oficial del Estado* (B.O.E.), núm. 272, 14 October 2020.

equality counsellors (Consigliere di Parità) to bring cases on behalf of victims, while Article 38 gives trade unions similar powers.<sup>195</sup> In practice, however, these collective channels are rarely mobilised. Equal pay disputes remain almost exclusively individualised, confirming the Directive's diagnosis that collective standing mechanisms are underutilised unless backed by resources and institutional support.

*a) Doctrinal development of “work of equal value” and the burden of proof*

Italian courts have developed little jurisprudence on equal pay beyond reaffirming the basic principle. In terms of alignment with the directive, Article 40 of the Equal Opportunities Code (Legislative Decree 198/2006) provides partial shift of the burden of proof once a *prima facie* case of discrimination is established.<sup>196</sup> However, litigation is constrained by the need for an actual comparator and rarely challenges structural undervaluation in feminised sectors.

In fact, Article 28 of the Equal Opportunities Code does not contain the “would be” comparator language of Directive 2006/54/EC, and disputes are resolved by assessing the identity or objective value of functions, which practically means that Italian courts require an actual, concrete comparator within the firms.<sup>197</sup> This approach contrasts with the PTD's take on standardised job evaluation tools (Arts. 4–6), which aim to mitigate precisely these issues.

Italian jurisprudence on equal pay similarly, does not provide a comprehensive case law framework, with few Supreme Court precedents.<sup>198</sup> In *Cass.* 1444/1986, the Court confirmed the principle of equal pay for equal work, but subsequent jurisprudence did not advance the notion of “work of equal value.”<sup>199</sup> A dispute involving Fiat/FCA in 2012 highlighted the evidentiary barriers to proving discrimination and further failed to articulate broader principles.<sup>200</sup> This judicial inertia has been repeatedly flagged by international monitoring bodies. The European Committee of Social Rights has underlined that the lack of effective pay transparency in Italy constitutes a violation of the European Social Charter, most recently in the *UWE v. Italy* collective complaint.<sup>201</sup> It found that job classification systems were not effectively applied to prevent discrimination, that the concept of “equal value” remained undefined in domestic case law, and that victims could not access the

---

<sup>195</sup> Legislative Decree No. 198 of 11 April 2006 (*Equal Opportunities Code*). *Gazzetta Ufficiale*, 31 May 2006, No. 125, Arts. 37–38.

<sup>196</sup> Legislative Decree No. 198 of 11 April 2006 (*Equal Opportunities Code*). *Gazzetta Ufficiale*, 31 May 2006, No. 125, Art. 40.

<sup>197</sup> Legislative Decree 198/2006, Art. 28.

<sup>198</sup> Directive (EU) 2023/970, Arts. 4–6.

<sup>199</sup> Corte di Cassazione, Sez. Lavoro, 27 February 1986, No. 1444.

<sup>200</sup> Fiat/FCA case, Tribunal of Turin, 2012.

<sup>201</sup> European Committee of Social Rights (ECSR). (2020). *University Women of Europe (UWE) v. Italy, Complaint No. 133/2016, Decision on the Merits (6 December 2019)*. Strasbourg: Council of Europe.

information necessary to bring cases to court. The ILO Committee of Experts has also raised similar concerns about the absence of gender-neutral job evaluation systems.<sup>202</sup> Law 162/2021 has thus been the main legislative outcome, which lowered the reporting threshold from 100 to 50 employees and expanded the obligation to disclose gender-disaggregated data on pay and career progression as mentioned. The Ministry of Labour also introduced digital tools to standardise company reports.<sup>203</sup> Yet the European Committee of Social Rights has maintained that, despite these changes, Italy remains in non-conformity because pay transparency is still not ensured in practice and enforcement remains weak.<sup>204</sup>

#### *b) Limitation periods*

Italy does not impose special time limits for discrimination claims beyond the general rules: five years for contractual wage claims and ten years for extra-contractual damages. These periods are relatively generous compared to some Member States, and they align with the PTD's requirement that limitation periods must not make enforcement "virtually impossible or excessively difficult." However, the Italian framework still relies heavily on individual litigation, which is slow and often discourages claimants from pursuing their rights.

#### *c) Litigation costs and access to justice*

Access to justice is further undermined by structural barriers. Although equality counsellors (*consigliere di parità*) and trade unions have standing to support victims,<sup>205</sup> once again most cases remain individualised, proceedings are slow, and evidentiary burdens remain heavy despite the formal reversal of proof. Reports consistently highlight the lack of equal pay claims. The discouragement of women is often amplified by a lack of confidence within judicial proceedings, low awareness of rights, and sanctions such as the nullification of discriminatory acts which may provide no tangible benefit to victims.<sup>206</sup>

Financial obstacles are particularly relevant as well. Equality advisors often lack adequate funding for legal activities: Decree 151/2015 does not explicitly cover trial expenses, leaving local governments to bear costs despite limited resources.<sup>207</sup> While Article 18 of Decree 198/2006 provides allowances for national equality advisors, project-based funding to support litigation was

---

<sup>202</sup> International Labour Organization. (2021). *Observation on Italy: Equal Remuneration Convention, 1951 (No. 100)*. Committee of Experts on the Application of Conventions and Recommendations (CEACR). Geneva: ILO.

<sup>203</sup> Law No. 162 of 5 November 2021. *Modifications to the Equal Opportunities Code*. *Gazzetta Ufficiale*, 18 November 2021, No. 275.

<sup>204</sup> European Committee of Social Rights (ECSR). (2022). *Conclusions 2022 – Italy: Article 4§3 (Right to a fair remuneration, non-discrimination between women and men with respect to remuneration)*. Strasbourg: Council of Europe.

<sup>205</sup> Legislative Decree 198/2006, Arts. 37–38.

<sup>206</sup> Renga, S. (2025).

<sup>207</sup> Legislative Decree No. 151/2015 (*Parental Leave and Equal Opportunities Decree*).

discontinued in 2015.<sup>208</sup> Progressive budget cuts have further weakened the ability of equality counsellors to assist victims effectively. As a result, litigation costs remain a serious deterrent, diverging from the PTD's mandate to reduce financial risks for claimants.

Overall, Italy mirrors several elements of Directive 2023/970: burden-shifting, broad limitation periods, and the theoretical availability of collective standing through unions and equality counsellors. In practice, however, enforcement is undermined by a lack of comparator doctrine and case law, and weak financial support for equality bodies. This confirms the Directive's elaboration that private enforcement alone cannot guarantee compliance.

### *Italy's Public Enforcement*

#### *a) Trade unions*

Under Article 38 of the Equal Opportunities Code, trade unions are able to bring discrimination claims before courts on behalf of workers, including through urgent procedures.<sup>209</sup> They are also entitled to receive the biennial company reports required under Article 46, which contain detailed information on recruitment, training, career opportunities, mobility, remuneration, and dismissals.<sup>210</sup> These reports can, in principle, serve as a compelling base for equal pay claims. Unions are further represented in the Equal Opportunities National Committee (Comitato Nazionale Di Parità), where they contribute to the design of positive action programmes.<sup>211</sup> Collective agreements are not binding instruments for the implementation of EU gender equality law, and no systematic data exist on potential extrajudicial settlements negotiated by unions.<sup>212</sup> This implies that even where unions may intervene informally to resolve disputes, the lack of documentation or monitoring makes it impossible to assess their real impact on pay equality enforcement. This discrepancy underscores the PTD's concern that representative standing may remain underutilised unless backed by stronger incentives for collective mobilisation.<sup>213</sup>

#### *b) Social partners*

Social partners play a preventive role in gender equality enforcement, particularly since the adoption of Law 162/2021, which made equality plans mandatory for companies with at least fifty employees. These plans must include measures on pay audits, recruitment, promotion, training, work-life balance, and harassment prevention.<sup>214</sup> BusinessEurope has noted that Italian collective agreements

---

<sup>208</sup> Legislative Decree 198/2006, Art. 18.

<sup>209</sup> Legislative Decree No. 198/2006 (*Equal Opportunities Code*), Art. 38; Renga, S. (2025).

<sup>210</sup> Legislative Decree 198/2006, Art. 46.

<sup>211</sup> Renga, S. (2025).

<sup>212</sup> Renga, S. (2025).

<sup>213</sup> Directive (EU) 2023/970, Art. 15.

<sup>214</sup> Renga, S. (2025).

already embed technical job evaluation procedures for pay audits, which means that Italy partly anticipated the PTD's requirements for preventive measures.<sup>215</sup> Under Article 44 of the Equal Opportunities Code, employers and unions can also access funding for voluntary positive action plans, with priority given to those agreed collectively.<sup>216</sup> Yet evaluations emphasise that equality clauses in agreements are often generic, that follow-up monitoring is weak, and that collective agreements are not systematically used to implement EU gender equality law. As such, Italy's social partners formally align with the Directive's preventive and collective-action model but fall short in ensuring that equality plans and collective clauses translate into effective practice.<sup>217</sup>

*c) Equality bodies (Consiglieri di parità and the Comitato Nazionale di Parità)*

In Italy, equality counsellors (Consiglieri di parità) and the Equal Opportunities National Committee (Comitato Nazionale Di Parità) are the key actors of the gender equality enforcement framework.<sup>218</sup> Established under Legislative Decree 198/2006, the Comitato Nazionale Di Parità is part of the Ministry of Labour and is tasked with preparing an annual programme of positive action, monitoring implementation, and fostering dialogue with NGOs and EU institutions.<sup>219</sup> It includes representatives of trade unions, employers' organisations, women's associations, and the National Equality Counsellor, reflecting the Directive's emphasis on integrated social dialogue.<sup>220</sup> Equality counsellors operate at national, regional, and provincial levels, tasked with the role to bring collective discrimination claims before courts or to intervene in proceedings.<sup>221</sup> Judges, when upholding these appeals, may order not only compensation (including non-pecuniary damages) but also require employers to draft a plan to remove discrimination within a set timeframe, after consultation with unions and equality bodies.<sup>222</sup>

Equality counsellors also have preventive and conciliatory powers: before going to court, they can request the discriminator to submit a plan to remove the violation within 120 days; if this is deemed suitable, the agreement can be signed by the parties and turned into an enforceable decree by a judge. Their institutional role has been further strengthened by Decree 151/2015, which enhanced

---

<sup>215</sup> BusinessEurope (2021); Directive (EU) 2023/970, Art. 13.

<sup>216</sup> Legislative Decree 198/2006, Art. 44.

<sup>217</sup> Izzì (2024).

<sup>218</sup> Ministero del Lavoro e delle Politiche Sociali. (n.d.). *Comitato nazionale di parità*. Ministero del Lavoro e delle Politiche Sociali. Retrieved September 11, 2025, from <https://www.lavoro.gov.it/temi-e-priorita/parita-e-pari-opportunita/focus-on/Comitato-Nazionale-Parita/Pagine/default.aspx>.

<sup>219</sup> Renga, S. (2025).

<sup>220</sup> Directive (EU) 2023/970, Art. 13.

<sup>221</sup> Legislative Decree 198/2006, Art. 37.

<sup>222</sup> Renga, S. (2025).

collaboration with labour inspectorates, and since January 2020, counsellors have been connected via a digital platform hosted by the Ministry of Labour to share practices and coordinate interventions.<sup>223</sup>

However, there are significant structural weaknesses. In fact, the Consiglieri di Parità and the Comitato Nazionale Di Parità lack separate legal personality and are financially dependent on the Ministry of Labour or local government bodies, which appoint counsellors and decide on their allowances and resources.<sup>224</sup> This dependence compromises their autonomy and leads to uneven resourcing across regions. Funding has also been inconsistent because, as mentioned above, project-based funding was discontinued in 2015, limiting their operational capacity.<sup>225</sup> Scholars have warned that this resource fragility leaves equality counsellors “formally central but substantively marginal” in enforcement.<sup>226</sup>

In comparative terms, Italy mirrors Article 15 PTD by empowering equality bodies with judicial standing and aligns with Article 28 PTD by formally guaranteeing independence. Yet, in practice, resource dependency and fragmentation undermine their ability to deliver strategic, systemic interventions.

#### *d) Labour inspectorates*

The Ispettorato Nazionale del Lavoro (INL) is empowered to verify compliance with the reporting duties of Article 46 EO Code, imposing fines for false or incomplete reports and suspending contributory benefits for one year if non-compliance persists beyond twelve months.<sup>227</sup> It also has protective functions: ordering adjustments to pregnant workers’ duties or extending compulsory maternity leave where necessary, and validating the resignations of mothers and fathers during the first three years of a child’s life to prevent coercion.<sup>228</sup> Under the PNRR framework, companies with 15–49 employees that fail to submit gender reports are barred from tenders for twelve months, creating a procurement-based deterrent that aligns with the provisions set in Article 24 PTD.<sup>229</sup>

Inspectorates collaborate closely with equality counsellors through information exchange, training, and joint initiatives.<sup>230</sup> Yet, as multiple reports note, sanctions are rarely imposed, inspectorate priorities are over other issues, and monitoring remains reactive and reliant on employer self-

---

<sup>223</sup> Renga, S. (2025).

<sup>224</sup> European Committee of Social Rights (ECSR). (2020).

<sup>225</sup> Renga, S. (2025).

<sup>226</sup> Izzi, (2024).

<sup>227</sup> European Committee of Social Rights (ECSR). (2020).

<sup>228</sup> Law No. 92/2012 (*Labour Market Reform*), *Gazzetta Ufficiale*, 3 July 2012, No. 153, Supplemento Ordinario No. 136.

<sup>229</sup> Renga, S. (2025).

<sup>230</sup> European Committee of Social Rights (ECSR). (2020).

reporting.<sup>231</sup> This means that, despite broad legal powers that formally align with Articles 13 and 23 PTD, inspectorate action in practice is patchy and insufficiently dissuasive.<sup>232</sup>

#### *e) National Monitoring*

As outlined in section 3.2.1, Law 162/2021 expanded reporting obligations under Article 46 of the Equal Opportunities Code, lowering the threshold to fifty employees and introducing the gender equality certification system.<sup>233</sup> In principle, these reforms aligned Italy with the preventive and monitoring ambitions of the PTD. In practice, however, compliance with biennial reporting remains uneven, and Italy lacks a consolidated national authority mandated to publish and evaluate pay-transparency data in a systematic way.<sup>234</sup>

The certification mechanism, while innovative, illustrates these shortcomings. It is managed by private accredited bodies and based on 33 Key Performance Indicators across six areas, requiring a minimum overall score of 60%.<sup>235</sup> Although uptake has been rapid, critics stress its limitations. Izzi asserts that certification risks becoming a “sterile, highly bureaucratised procedure” pursued for reputational or financial purposes rather than substantive equality. Ambiguities in the KPIs allow certification despite serious deficiencies in key areas such as remunerative equity, while the governance model has been described as “blatantly privatistic,” marginalising the roles of trade unions and equality counsellors.<sup>236</sup>

These flaws reveal a fundamental misalignment with Articles 28–29 PTD, which emphasise independent, public monitoring coordinated with equality bodies and social partners.<sup>237</sup> Italy’s model creates visibility and economic incentives but risks reinforcing fragmentation rather than reducing it, leaving the monitoring pillar of public enforcement weaker than the Directive’s integrated design intends.

#### *Spain’s Private Enforcement*

While trade unions or equality associations may intervene with the worker’s consent, litigation is for the majority pursued on an individual basis. The 2025 Country Report highlights that collective

---

<sup>231</sup> Renga, S. (2025).

<sup>232</sup> Directive (EU) 2023/970, Arts. 13, 23.

<sup>233</sup> Law 162/2021, Art. 46, Equal Opportunities Code; UNI/PdR 125:2022.

<sup>234</sup> Renga, S. (2025).

<sup>235</sup> Renga, S. (2025).

<sup>236</sup> Izzi (2024).

<sup>237</sup> Directive (EU) 2023/970, Arts. 28–29.

mechanisms are rarely activated in practice, leaving enforcement fragmented and once again individualised.<sup>238</sup>

*a) Doctrinal development of “work of equal value”*

Spanish constitutional and supreme court jurisprudence have developed the principle of equal pay for work of equal value in ways that align with the PTD. Firstly, STC 145/1991 condemned pay gaps between cleaners (a feminised job) and warehouse workers, holding that a difference in pay between the two groups could amount to indirect discrimination. The Court highlighted that even when employers rely on apparent-neutral criteria, such as job classification or physical effort, they in reality could be entailing structural bias if they consistently disadvantage women compared to men.<sup>239</sup> Later, STC 2/1998 reaffirmed that collective bargaining (under Article 37.1 of the Constitution) is entitled to pay differentiation only when objectively justified, such as by seniority.<sup>240</sup> These rulings mirror the PTD’s take on gender-neutral job evaluation. Yet the notion of comparators has been not developed. Article 28 of the Workers’ Statute does not refer to hypothetical comparators, and while Article 6 of the Law on Effective Equality implicitly touch upon their notion, Spanish courts have never developed this doctrine.<sup>241</sup> Indeed, Spanish courts resolve equal pay disputes by examining whether the jobs involve identical functions or functions of equal value, but they do not rely on the concept of a hypothetical comparator, even though national law does not expressly exclude this possibility.<sup>242</sup>

Spanish experience confirms the fragility of relying exclusively on courts to secure structural change. In *Elbal Moreno*,<sup>243</sup> the CJEU held that Spain’s pension rules for part-time workers were indirectly discriminatory (contrary to Directive 79/7/EEC on equal treatment in social security)<sup>244</sup>, yet many domestic courts refused to apply the judgment until Parliament amended the law, leaving female part time workers without immediate remedy. Similarly, in *Porras Guisado* (on pregnancy dismissal during collective redundancies), regional courts split: Catalonia confirmed the employer’s decision of dismissal, rejecting horizontal effect of the Charter, while Castile and León followed the CJEU and

---

<sup>238</sup> Ramos Quintana, M. I. (2025). *Country report: Gender equality – Spain (Reporting period 1 January 2024 – 1 January 2025)*. European Commission, Directorate-General for Justice and Consumers. Publications Office of the European Union.

<sup>239</sup> Tribunal Constitucional [Constitutional Court], *Sentencia 145/1991, de 1 de julio* (STC 145/1991).

<sup>240</sup> Tribunal Constitucional [Constitutional Court], *Sentencia 2/1998, de 12 de enero* (STC 2/1998); Constitución Española, Art. 37.1.

<sup>241</sup> Workers’ Statute, Art. 28; Organic Act 3/2007, Art 6.

<sup>242</sup> Böök, B., Burri, S., Senden, L., & Timmer, A. (2023). *A comparative analysis of gender equality law in Europe – 2022*. European network of legal experts in gender equality and non-discrimination. Directorate-General for Justice and Consumers, European Commission. Publications Office of the European Union.

<sup>243</sup> Court of Justice of the European Union, *Elbal Moreno* (C-385/11).

<sup>244</sup> 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, O.J. L 6, 10 January 1979, pp. 10–13.



applied EU standards.<sup>245</sup> These divergences underscore the Directive's rationale: even where rights exist, enforcement might not be implemented if national courts fail to internalise EU norms.

*b) The Burden of proof*

Spanish law codifies the reversal of the burden of proof in labour proceedings, aligning with Article 18 PTD.<sup>246</sup> In principle, this should reduce informational asymmetries. Yet empirical evidence shows uneven application. In 2019, the European Committee of Social Rights has requested further information on how frequently courts apply the burden shift, noting that judges often resist recognising prima facie evidence of discrimination without detailed statistical comparators.<sup>247</sup> This gap between law and practice exemplifies the Directive's concern that burden-shifting must be both formal and effective.

*c) Limitation periods*

Spain does not impose specific limitation periods for discrimination beyond the general rules of labour law. These are considered generous compared to some Member States, consistent with Article 21 PTD's requirement that time limits not render enforcement virtually impossible.<sup>248</sup> However, there is no harmonised standard ensuring minimum access across sectors, leaving reliance on general labour rules.

*d) Litigation costs and access to justice*

Victims of discrimination are entitled to free legal aid if they meet income thresholds, which reduces financial obstacles to litigation and reflects Article 22 PTD's mandate to mitigate claimant risks.<sup>249</sup> Yet, in practice, access to justice is still undermined by evidentiary barriers and the difficulty of proving moral damages.

Private enforcement in Spain thus combines strong doctrinal foundations with persistent effectiveness gaps. On paper, rights to judicial access, burden-shifting, generous limitation periods, and access to legal aid all reflect the Directive's model. Spanish courts have been pioneers in articulating the principle of equal pay for work of equal value. Yet collective standing is rarely mobilised, burden-shifting is inconsistently applied, comparators are doctrinally weak, and sanctions lack deterrent effect. More broadly, as the European Committee of Social Rights stresses, pay transparency can only

---

<sup>245</sup> Court of Justice of the European Union. (2018). *Case C-103/16, Porras Guisado v. Bankia SA and Others*. ECLI:EU:C:2018:187.

<sup>246</sup> Ley 36/2011, de 10 de octubre, reguladora de la jurisdicción social (LRJS). (2011). *B.O.E.*, núm. 245, 11 October 2011, Art. 96; Directive (EU) 2023/970, Art. 18.

<sup>247</sup> European Committee of Social Rights (ECSR). (2020). *Conclusions XXII-1 – Spain: Article 1 of the 1988 Additional Protocol*, Council of Europe.

<sup>248</sup> Directive (EU) 2023/970, Art. 21.

<sup>249</sup> Directive (EU) 2023/970, Art. 22.

function as a precondition to equal pay enforcement when legal provisions are backed by jurisprudence and practice.<sup>250</sup> Spain therefore illustrates the Directive's rationale: even advanced systems require EU-level harmonisation to close the gap between formal alignment and effective enforcement.

### *Spain's public enforcement*

#### *a) Trade unions (Sindicatos de Trabajadores)*

Trade unions represent a key public enforcement channel in Spain. Article 11bis of the Civil Procedure Act grants them special standing to bring discrimination claims even where the victims are indeterminate or difficult to identify as individuals, for instance, where a discriminatory pay practice affects a broad category of workers rather than specific named persons.<sup>251</sup> This special legitimacy was designed to allow representative bodies to be proactive actors in defence of equality, without depending on individual workers to initiate claims. In parallel, Article 17.2 of the Act Regulating Social Jurisdiction entitles trade unions that are sufficiently established in the relevant area to intervene in any process where collective labour interests are at stake, including equal pay disputes.<sup>252</sup> Taken together, these provisions directly mirror Article 15 PTD, which requires Member States to empower representative bodies to litigate on behalf of workers.<sup>253</sup> Yet, as the 2025 Country Report underlines, unions rarely apply these mechanisms in the field of pay discrimination. Collective action remains the exception, with most disputes being individual claims.<sup>254</sup>

#### *b) Social partners*

Beyond unions, the broader social partners are tasked with embedding equality through collective bargaining. Article 85(1) of the Workers' Statute obliges agreements to include provisions on gender equality, while Royal Decree-Law 6/2019 extended mandatory equality plans to all firms with at least fifty workers.<sup>255</sup> Royal Decrees 901/2020 and 902/2020 further specified the contents of these plans, including pay audits, gender-neutral job evaluation, recruitment, promotion, training, work-life balance, female underrepresentation, and harassment prevention.<sup>256</sup> This anticipates the preventive approach of Articles 13 and 15 PTD, which emphasise equality plans and audits as enforcement tools. Yet evaluations show uneven practice: many agreements contain generic equality clauses, and equality plans often lack remedial content. As BusinessEurope observes, Spain already mandates pay

---

<sup>250</sup> European Committee of Social Rights (ECSR). (2020).

<sup>251</sup> Civil Procedure Act, Ley 1/2000, de 7 de enero. (2000). *B.O.E.*, núm. 7, 8 January 2000, Art. 11bis.

<sup>252</sup> LRJS, Ley 36/2011, de 10 de octubre. (2011). *B.O.E.*, núm. 245, 11 October 2011, Art. 17.2.

<sup>253</sup> Directive (EU) 2023/970, Art. 15.

<sup>254</sup> Ramos Quintana, (2025).

<sup>255</sup> Royal Decree-Law 6/2019 (2019); Workers' Statute, Art. 85(1) (2015).

<sup>256</sup> Royal Decree 901/2020 (2020); Royal Decree 902/2020 (2020).

audits and equality plans with technical support, but implementation risks becoming a compliance formality rather than a transformative mechanism.<sup>257</sup>

*c) Equality bodies (Instituto de las Mujeres)*

Spain's equality body is the Institute of Women (Instituto de las Mujeres), created in 1983. Its mandate is broad: assisting victims, receiving complaints, publishing studies, managing EU funds, and coordinating public awareness campaigns. These competences align in part with Articles 28–29 PTD, which task equality bodies with victim support, compliance promotion, and data collection.<sup>258</sup> Yet the Institute lacks core enforcement powers. Although formally “autonomous,” it is subordinated to the Ministry of Equality; its Director General is government-appointed; and staff shortages underscore its enforcement capacity. In fact, in 2023, only 76 of the 119 established civil-service posts were filled, and although this increased to 87 in 2024, the body still faced a 27 % deficit.<sup>259</sup>

The Institute's competences are defined in Law 16/1983. It may receive complaints and channel them to other administrative bodies and promote protective measures for victims of sex discrimination.<sup>260</sup> However, this assistance is limited: complainants are generally suggested to approach the Labour Inspectorate, and the Institute does not provide case-specific legal support as envisaged by Article 6 of Directive 2024/1500.<sup>261</sup> On the data side, the Institute produces reports and statistics, most notably the “Women and Men in Spain” series in cooperation with the National Statistics Institute, but these cover only certain topics (e.g. employment, health, education).<sup>262</sup> Notably, there is no systematic collection of complaints or decisions, nor analysis of the causes, forms, or scope of discrimination.

Most importantly, the Institute lacks legal standing as it cannot bring cases to court on behalf of identified or unidentified victims. This divergence from Article 15 PTD results from the failure to amend its competences following Law 3/2007 on Effective Equality. Under Spanish law, trade unions and recognised NGOs may represent victims in civil and administrative proceedings, and since the 2022 Equal Treatment Law, a new Independent Authority for Equal Treatment and Non-Discrimination was supposed to be created with full litigation powers, including for diffuse victims.<sup>263</sup> Yet as of 2024, this authority still did not exist.

---

<sup>257</sup> BusinessEurope. (2021, May 5).

<sup>258</sup> Directive (EU) 2023/970, Arts. 28–29.

<sup>259</sup> Ramos Quintana, (2025).

<sup>260</sup> Ley 16/1983, de creación del Instituto de la Mujer. (1983). *B.O.E.*, núm. 256, 26 October 1983, Arts. 3b–3c.

<sup>261</sup> Directive (EU) 2024/1500 of 29 April 2024, on equality bodies, O.J. L 202, 31 July 2024, Art. 6.

<sup>262</sup> Ramos Quintana, (2025).

<sup>263</sup> Law 15/2022, of 12 July, Comprehensive Law for Equal Treatment and Non-Discrimination (2022), *B.O.E.*, núm. 167, 13 July 2022, esp. Arts. 40–44 on the Independent Authority for Equal Treatment; European Network of Legal Experts in Gender Equality and Non-Discrimination. (2022). *New Spanish comprehensive anti-discrimination law: Summary*, European Commission, DG Justice and Consumers.

#### *d) Labour inspectorates*

The Labour and Social Security Inspectorate, reorganised under Law 23/2015, is the main public enforcement authority.<sup>264</sup> It has its own legal personality and budget, with powers to investigate, sanction, and require equality plans. In design, this corresponds to the monitoring mandate of Article 13 PTD and the sanctioning duties of Article 23 PTD.<sup>265</sup> Yet outcomes fall short of the Directive's requirement for dissuasive penalties. Between 2015 and 2017, nearly 5,000 inspections produced only 92 violations and just over €900,000 in fines, numbers that suggest limited impact from the inspection system. The 2025 Report notes that the Inspectorate's actions are heavily shaped by political priorities, with gender equality not consistently emphasised.<sup>266</sup> This reliance on political will rather than a structural mandate reflects precisely why the PTD insists on systematic, dissuasive enforcement.

#### *e) National monitoring*

Spain lacks a dedicated monitoring body with the consolidated mandate required under Article 29 PTD. Monitoring remains fragmented: the Institute of Women, together with the National Statistics Institute, publishes the *Women and Men in Spain* report, but it omits crucial enforcement indicators such as complaints, sanctions, or judicial outcomes, and does not analyse the causes of inequalities.<sup>267</sup> The Labour Inspectorate provides partial data on inspections and fines but without systematic, disaggregated, or accessible reporting. The 2025 Report stresses this gap: without a central authority to coordinate and publish comprehensive data, Spain falls short of the Directive's ambition for transparent, national-level monitoring.<sup>268</sup>

Spain's public enforcement framework is relatively advanced in design but underpowered in practice. Trade unions and social partners are formally empowered but seldom mobilise their capacities; the Institute of Women has a broad mandate but lacks independence, resources, and litigation powers; the Labour Inspectorate is structurally competent but produces weak deterrent outcomes; and national monitoring remains fragmented. Spain thus mirrors the Directive's institutional architecture in form but falls short of its enforcement ambitions in practice.

---

<sup>264</sup> Ley 23/2015, de 21 de julio, ordenadora del Sistema de Inspección de Trabajo y Seguridad Social (2015), *B.O.E.*, núm. 174, 22 July 2015.

<sup>265</sup> Directive (EU) 2023/970, Arts. 13, 23.

<sup>266</sup> Ramos Quintana, (2025).

<sup>267</sup> Instituto Nacional de Estadística, 'Mujeres y Hombres en España' (Women and men in Spain), statistical series and summary reports: [https://www.ine.es/ss/Satellite?L=es\\_ES&c=INEPublicacion\\_C&cid=1259924822888&p=1254735110672&pagename=ProductosYServicios%2FPYSLayout&param1=PYSDetalleGratis](https://www.ine.es/ss/Satellite?L=es_ES&c=INEPublicacion_C&cid=1259924822888&p=1254735110672&pagename=ProductosYServicios%2FPYSLayout&param1=PYSDetalleGratis).

<sup>268</sup> Ramos Quintana, (2025).

### 3.2.3 Justice Functions

As mentioned, The Pay Transparency Directive conceptualises enforcement through a multidimensional framework of justice: remedial, compensatory, punitive, preventive, and deterrent functions. This model acknowledges that gender equality litigation cannot rely solely on compensating individual harms, but must also generate systemic compliance incentives.

#### *Italy's justice functions*

Italian law mirrors the Directive's remedial guarantees. All discriminatory acts are declared null and void under the Equal Opportunities Code, and dismissals on grounds of sex, pregnancy, or marriage are invalid, triggering reinstatement under Article 18 of the Workers' Statute.<sup>269</sup> Courts may also order employers to adopt plans to remove discrimination, sometimes after consultation with unions and equality counsellors, echoing Article 17 PTD's injunctions and structural orders. Remedies against collective discrimination can include positive action measures or the revocation of public benefits.<sup>270</sup> While the formal remedial framework is strong, structural remedies such as revising company-wide classification systems or equality plans remain rare in practice, limiting the systemic reach of remedial justice.

With respect to compensatory justice, Italian legislation ensures uncapped compensation, consistent with Article 16 PTD. Victims of discrimination can recover both pecuniary and non-pecuniary damages under contractual or extra-contractual liability rules, with limitation periods of five years for wage claims and ten years for damages.<sup>271</sup> In principle, this framework seems comprehensive: there is no statutory ceiling on damages, which aligns with the CJEU's requirement of "real, effective and proportionate" reparation.<sup>272</sup> Yet in practice, few equal pay cases are brought before the courts, and moral damages remain modest and rare, making the compensatory function weak despite its strong formal basis.

Thirdly, Italy's punitive framework is relatively developed, although it displays some fallacies that need to be addressed. Following the 2016 decriminalisation law code, minor criminal sanctions for gender discrimination were replaced with administrative fines, aiming to lighten criminal courts' workload,<sup>273</sup> lacking the deterrent effect of criminal law and the special restorative procedure that

---

<sup>269</sup> Equal Opportunities Code, Legislative Decree 198/2006; Workers' Statute, Art. 18; Renga, S. (2025).

<sup>270</sup> Directive (EU) 2023/970, Art 17.

<sup>271</sup> Directive (EU) 2023/970, Art 16.

<sup>272</sup> Tobler, C. (2005). *Remedies and sanctions in EC non-discrimination law*. European Network of Legal Experts in the Non-discrimination Field.

<sup>273</sup> Decree No. 8 of 15 January 2016; (2016); *Disposizioni in materia di depenalizzazione*. *Gazzetta Ufficiale*, 22 January 2016, No. 17; Renga, S. (2025).

were engulfed within Decree No. 124/2004.<sup>274</sup> Employers who submit false or incomplete biennial reports may face sanctions, including the suspension of contributory benefits for up to a year, and companies obstructing equality rights may lose access to gender equality certification under Law 162/2021.<sup>275</sup> These sanctions give Italy a broader punitive toolkit than Spain, combining financial and reputational consequences. Yet the application of penalties is inconsistent and the overall volume of sanctions low, casting doubt on their dissuasiveness in line with Article 23 PTD.<sup>276</sup>

Ultimately, Italy has taken ambitious steps in preventive enforcement, partly exceeding the Directive's baseline. Biennial gender reports, mandatory equality plans for companies with more than fifty employees, and the certification system together constitute a transparency infrastructure akin to Articles 5–10 PTD.<sup>277</sup> As mentioned, certified companies benefit from tangible incentives such as reduced social security contributions and preferential treatment in public procurement. As discussed above in section 3.2.1, critics warn that certification risks bureaucratisation and reputational compliance rather than substantive equality.<sup>278</sup> These concerns illustrate the limits of Italy's preventive framework, which, despite ambitious tools, risks drifting into formalism.

Finally, the deterrent function is where Italy diverges most sharply from the Directive. Article 24 PTD requires Member States to exclude non-compliant companies from public procurement as a sanction. Italy instead uses a system of positive incentives: certified firms gain bonus points in tenders and fiscal reductions, while non-certified firms are not automatically excluded.<sup>279</sup> This model thus may encourage voluntary compliance, but it lacks the punitive edge envisaged by the Directive. Procurement in Italy motivates compliance through rewards but does not penalise persistent non-compliance, raising doubts about its alignment with the Directive's deterrent logic.

Overall, Italy's justice functions display a pattern of formal alignment but weak activation. Remedies and compensation exist in law but are rarely applied; sanctions are available but inconsistently enforced; preventive measures are ambitious but at risk of becoming box-ticking exercises; and deterrence relies on incentives rather than exclusion. The 2016 decriminalisation, while streamlining enforcement, reduced deterrence, and certification risks substituting bureaucratic compliance for substantive equality. These features confirm the Directive's rationale: harmonisation is needed not only to elevate states which do not encompass properly their justice functions, but also to recalibrate

---

<sup>274</sup> Decree No. 124 of 23 April 2004; (2004); *Razionalizzazione delle funzioni ispettive in materia di previdenza sociale e di lavoro*. *Gazzetta Ufficiale*, 26 May 2004, No. 121; Renga, S. (2025).

<sup>275</sup> Renga, S. (2025).

<sup>276</sup> Directive (EU) 2023/970, Art 23.

<sup>277</sup> UNI/PdR 125:2022; Directive (EU) 2023/970, Arts. 5,10.

<sup>278</sup> Izzi (2024).

<sup>279</sup> Directive (EU) 2023/970, Art. 24.

systems like Italy's, which prioritise symbolic or incentive-based mechanisms over dissuasive enforcement.

### *Spain's justice functions*

Spanish law strongly reflects the Directive's remedial logic. Coherently, acts of discrimination are declared null and void, and dismissals based on sex discrimination led to reinstatement. This goes beyond the Directive's minimum guarantees by restoring the employment relationship rather than merely awarding damages. Legislative Royal Decree 2/2015 further reinforces this remedial framework by establishing that any collective agreement, individual contract, or unilateral employer decision that contradicts the principle of equality and equal pay is null and void.<sup>280</sup> In theory, this grants courts robust tools to strike down discriminatory practices at both individual and collective levels. Yet in practice, broader structural remedies, such as orders to revise job classification systems or to implement equality plans, remain underutilised, leaving the systemic dimension of remedial justice largely dormant.

Secondly, the Directive requires full and uncapped compensation. Spain meets this requirement on paper: damages are not capped and may include moral damages. In practice, however, as highlighted in the 2025 Report on Gender Equality, moral damages are difficult to prove and often symbolic, raising doubts about whether compensation is "real, effective and proportionate" in the Directive's sense.<sup>281</sup> Moreover, the sanctions provided under the Law of Offences and Penalties can only be imposed by the Labour Inspectorate, which, as found, does not consistently prioritise gender discrimination. Structural obstacles also reduce the effectiveness of compensatory justice: claims are few, due to difficulties in detecting pay discrimination, lack of awareness among workers, and the precarious conditions that discourage them from litigating. Where claims are brought, judicial doctrine on damages remains fragmented, with ambiguous criteria leading to inconsistent awards and reinforcing the perception that compensation is uncertain and largely symbolic.

Furthermore, administrative sanctions under the Spanish labour law framework reach up to €187,515 in serious cases of wage discrimination,<sup>282</sup> which is formally consistent with Article 23 PTD.<sup>283</sup> In addition, several other sanctions may apply simultaneously, reflecting the compatibility of remedial, compensatory, and punitive mechanisms. First, if a dismissal occurs on grounds of sex discrimination, the employer's decision is declared null and void, with the immediate effect of reinstatement under the same conditions. Secondly, the worker may seek compensation for damages, including moral

---

<sup>280</sup> Workers' Statute (2015), Art. 28.

<sup>281</sup> Ramos Quintana, (2025).

<sup>282</sup> LISOS, Real Decreto Legislativo 5/2000, de 4 de agosto (2000), *B.O.E.*, núm. 189, 8 August 2000, Art. 40(1)(c).

<sup>283</sup> Directive (EU) 2023/970, Art 23.

damages, through the courts. Thirdly, pursuant to Articles 7(5) and 40(1)(b) of the Law of Offences and Penalties in the Social Order, the employer may be found guilty of serious misconduct and ordered to pay an administrative fine ranging from €626 to €6,250.<sup>284</sup> Despite this layered framework, sanctions are imposed infrequently and in relatively low amounts, undermining their dissuasive effect. As the 2025 Report observes, enforcement outcomes depend heavily on the shifting priorities of the Labour Inspectorate rather than on a systematic strategy, which weakens the deterrent capacity of the Spanish system.<sup>285</sup>

It's also important to re-stress that Spain has one of the most advanced preventive frameworks in the EU. This is shown due to the presence to the rules which regulate pay registers, pay audits, gender-neutral job evaluation tools, and mandatory equality plans for firms with fifty or more workers reflect, and in some respects exceed, the Directive's obligations. Pursuant to section 28.3 of the Workers' Statute (as amended), where a firm with at least fifty employees shows an average salary difference of 25% or more between women and men, the employer must provide a documented explanation for the gap, based on objective, non-gender-related factors. Equal pay reporting obligations further require that registers be audited and that corrective measures be adopted if unjustified differences are detected. In this way, the law obliges companies to undertake factual assessments of the work performed, determine whether it is of equal value, and identify potential sources of inequality.<sup>286</sup> Yet important gaps persist. The justification threshold of 25% is far higher than the Directive's 5% trigger for joint pay assessments, meaning significant disparities may remain unexamined. Moreover, equality plans are often treated as formalistic compliance exercises rather than transformative strategies for structural change.

Finally, Spain has not yet operationalised the Directive's deterrent vision. While Law 9/2017 allows equality-promoting clauses in public procurement, exclusion for non-compliance with pay transparency obligations has not been applied. As a result, procurement remains a symbolic rather than dissuasive enforcement tool.<sup>287</sup>

Taken together, Spain illustrates the Directive's insight that justice in gender equality cannot be assessed only in terms of legal availability but also of functional effectiveness. While remedial and preventive measures are strong in design, compensatory, punitive, and deterrent functions are weak

---

<sup>284</sup> Law on Offences and Penalties in the Social Order, Real Decreto Legislativo 5/2000, de 4 de agosto (2000), *B.O.E.*, núm. 189, 8 August 2000, Arts. 7(5), 40(1)(b).

<sup>285</sup> Ramos Quintana, (2025).

<sup>286</sup> Workers' Statute (2015), Art. 28.3.

<sup>287</sup> Law 9/2017, de 8 de noviembre, de Contratos del Sector Público (2017), *B.O.E.*, núm. 272, 9 November 2017.



in practice. This imbalance underscores why EU-level harmonisation was deemed necessary even for advanced Member States.

### *3.2.4 Critical Assessment of the case studies*

The comparison between Italy and Spain highlights both the potential and the fragility of the Pay Transparency Directive as an enforcement paradigm. The Directive was designed to address national weaknesses, yet the case studies show that its effectiveness is not only dependent on timely transposition but also amplified or undermined by pre-existing legal cultures, institutional capacities, and political priorities. Both countries demonstrate that national frameworks, even when formally advanced, cannot guarantee transformative enforcement on their own.

Italy and Spain represent two contrasting approaches to enforcement. On one hand, Italy relies heavily on incentive-driven mechanisms such as gender equality certification and procurement-based rewards. This model prioritises market-based incentives over sanctions and deterrence. The main issue with this is that it risks degenerating into a symbolic exercise, producing compliance on paper without shifting actual patterns of inequality. Enforcement remains weak because the main actors (equality counsellors, labour inspectorates, and equality bodies) lack both resources and autonomy. In this context, the Directive's insistence on effective penalties, procurement exclusion for repeat offenders, and structural remedies could exercise a corrective change. By shifting emphasis from voluntary certification to mandatory sanctions, the Directive creates pressure to re-orient Italian enforcement away from symbolic incentives and toward genuine deterrence. The Italian parliament itself seemed to recognise this need, broadening the government's initial mandate in Law No. 15/2024 to embed the Directive more firmly within national equality policy signalling that pay transparency should be treated as a relevant and timely priority and delegating detailed implementation to the executive.<sup>288</sup> Yet, despite this encouragement, the Government has so far taken no concrete steps to act on the mandate.

Spain, by contrast, has adopted binding obligations on pay registers, audits, and equality plans. This architecture formally mirrors the Directive's spirit of preventive, firm-level duties. Yet implementation remains uneven: equality plans are often generic, audits are rarely transformative, and inspectorates impose only modest sanctions. Unions have standing to litigate but rarely do so in the field of pay discrimination. Here too, the Directive can be helpful: by requiring joint pay assessments when gaps persist, instructing cooperation with equality bodies and inspectorates, and linking compliance to procurement eligibility, it confers tools to convert Spain's formal obligations

---

<sup>288</sup> Law 15/2024.

into effective deterrence. As Lahuerta in fact notes, even in countries like Spain that already combine individual rights and collective measures, gaps remain, particularly in recruitment.<sup>289</sup> The Directive addresses this by prohibiting salary history inquiries and requiring transparency in advertised pay, innovations absent from both Italy and Spain.

Overall, in both cases the Directive's core innovations are only as strong as the institutions that implement them. Where institutions are weak, as in Italy, or where they are put to the side, as in Spain, the Directive's ambition is at risk of collapsing into formalism.

Doctrinally, both cases also amplify the Directive's most contested features. The introduction of hypothetical comparators and cross-employer comparisons was meant to remove barriers to litigation in highly segregated labour markets. Yet Italy has no doctrinal tradition of using comparators, and Spanish courts, while familiar with "equal value" reasoning, have not embraced hypothetical comparators. If national judges are reluctant to deploy these tools, the Directive cannot ensure their correct enforcement. By explicitly codifying hypothetical and cross-employer comparators, the Directive creates openings in those areas where national traditions remain reluctant. This could be instrumental in gender-segregated sectors, such as care and domestic work, where real-life comparators are unavailable and where women's work has historically been undervalued.

It's important to assess that the Directive's thresholds with respect to obligations apply mainly to firms with more than 100 employees, that in turn privilege women in larger firms, while excluding much of the female workforce employed in SMEs. This limitation is relevant particularly in Italy, where SMEs dominate, and where the majority of women work in sectors that will remain outside the Directive's transparency obligations. Spain's economy is less SME-dependent, but the persistence of the 25% justification threshold for pay differences further weakens the alignment between EU and national frameworks, creating dual standards and reinforcing enforcement gaps. Yet the Directive's requirement that Member States provide technical support and ready-made templates for smaller employers has the potential to extend transparency into SME-dominated economies, even where legal thresholds do not formally apply. If activated, this provision could counteract one of the Directive's most significant structural weaknesses.

Also, in Italy, where collective bargaining plays only a limited role in promoting substantive equality, EU-imposed duties are unlikely to generate strong resistance but may still be implemented passively. In Spain, where equality plans are embedded in collective bargaining, the Directive's requirements

---

<sup>289</sup> Lahuerta, S. B. (2023). *EU transparency legislation to address gender pay inequity: What is on the horizon and its likely impact in Ireland* (UCD Working Papers in Law, Criminology & Socio-Legal Studies Research Paper No. 16/2023). University College Dublin.

risk layering new obligations onto existing structures, creating overlap and administrative burdens without necessarily empowering unions to act more effectively. These national dynamics amplify the Directive's potential to unsettle labour relations traditions without guaranteeing stronger enforcement outcomes, as contested by BusinessEurope.<sup>290</sup>

Ultimately, the comparison reveals that neither Italy's incentive-based model nor Spain's binding obligations can by themselves deliver the kind of transformative enforcement the Directive aspires to. Spain's framework comes closer to the EU's vision of proactive enforcement, but without sanctions and effective institutional support it risks becoming as formalistic as Italy's certification scheme. Italy's reliance on incentives, meanwhile, underscores how easily equality measures can become unpractical with respect to actual enforcement. Taken together, the case studies show that the Directive supplies characteristics that both systems need. In Italy, it injects deterrence into a culture of incentives; in Spain, it adds procedural substance and recruitment transparency to a system otherwise more oriented towards formalism. At the same time, both cases also confirm that the Directive cannot by itself overcome weak institutions, under-resourced inspectorates, or judicial reluctance. Instead of neutralising these weaknesses, it risks mirroring them, producing uneven enforcement across the Union.

The EU, therefore, emerges less as a fully autonomous enforcement agent than as a catalyst. By, harmonising minimum standards and embedding multi-channel enforcement, the Directive raises the floor of protection and reduces space for purely symbolic compliance. As it does so, it also inserts preventive rights where national law is silent, but it cannot substitute for weak domestic institutions. The Italian and Spanish cases confirm that while the Directive represents a significant step forward, its transformative promise will only be realised if Member States provide the institutional acceleration to turn legal rights into factual equality.

### **3.3 Institutional Framing and Political Discourse of the Pay Transparency Directive**

#### ***3.3.1 Discursive Framing of Pay Transparency***

The discursive framing of the Pay Transparency Directive reflects a compromise between the two paradigms analysed by Jaquot.<sup>291</sup> On the one hand, a rights-based paradigm, grounded in Article 23 of the Charter of Fundamental Rights, positions gender equality as a transformative right that requires proactive enforcement. On the other, an economic and competitiveness paradigm frames transparency as a tool to increase market efficiency, justifying high reporting thresholds, SME exemptions, and

---

<sup>290</sup> BusinessEurope. (2021, May 5).

<sup>291</sup> Jaquot, (2015).

proportionality safeguards. The Directive thus embodies both a human-rights logic and an economic logic, reflecting what Jacquot terms the coexistence of market-making, market-correcting, and social-engineering frames.

Within this framing, pay transparency is not merely described as a neutral instrument but discursively constructed as a key enforcement tool. Contributions such as those from the CESifo Forum and the European Equality Law Review underscore how transparency has been positioned in the wider institutional debate: as a necessary precondition for both the visibility of pay inequalities and the credibility of enforcement. These accounts highlight that transparency's importance lies not only in its technical design but also in how it is framed by European actors within broader discourses on equality and competitiveness.

First, it is seen as a mechanism to reduce information asymmetry in the labour market. Transparency measures are defined as “regulatory strategies designed to improve accessibility to pay information,” aimed at redressing the imbalance between employers, who traditionally hold information, and workers or applicants, who do not.<sup>292</sup> The CESifo Forum highlights that a “lack of pay transparency provokes a disparate impact on women and people of color,” since employers exploit wage information asymmetries to obscure discriminatory practices. In economic terms, greater transparency is expected to “decrease information asymmetries in wage bargaining”.<sup>293</sup> This corresponds directly to the Directive's aim of decreasing asymmetries: Article 5 prohibits employers from asking candidates about past salaries and obliges them to disclose the initial pay level or range prior to hiring, thereby ensuring fairer negotiation conditions and addressing intersectional disadvantage.<sup>294</sup>

Second, transparency is discursively framed as a way of exposing gender bias and systemic undervaluation of women's work. The European equality law review notes that the Commission views transparency as a tool to uncover hidden gender bias in pay structures and job classification systems, which often undervalue women's work. By making these patterns visible, transparency is expected to help go against unconscious discrimination mechanisms in wage setting.<sup>295</sup> This also corresponds with the CESifo Forum's identification of the undervaluation of “women's work” as a primary driver of the gender pay gap in developed economies.<sup>296</sup> This discursive claim is

---

<sup>292</sup> Lahuerta, S. B. (2023).

<sup>293</sup> Ceballos, M., Masselot, A., & Burri, S. (2022). Mind the gender pay gap! How men and women get equal working opportunities and wages. *CESifo Forum*, 23(2), 3–12.

<sup>294</sup> Directive (EU) 2023/970, Art. 5.

<sup>295</sup> European Commission, Directorate-General for Justice and Consumers. *European Equality Law Review*, 2022(2), pp. 1–20.

<sup>296</sup> Ceballos, M., Masselot, A., & Burri, S. (2022).

operationalised through the Directive's requirements for gender-neutral job evaluation and joint pay assessments, which oblige employers to review classification systems and justify unjustified pay gaps, closing the blind spots identified in both academic and policy debate.<sup>297</sup>

Third, transparency is framed as an instrument of empowerment. It empowers individuals by giving them the information needed to negotiate, compare, and challenge unfair pay structures.<sup>298</sup> It also empowers collective actors, as the CESifo Forum stresses that access to comparative pay data enables unions and worker representatives to pursue equal pay claims and reinforce bargaining power.<sup>299</sup> The Directive explicitly codifies this empowerment function: Article 7 grants workers the right to request pay information; Article 13 requires social dialogue on equal pay; and Article 15 strengthens the standing of unions and equality bodies to act on behalf of workers.<sup>300</sup> Together, these provisions transform empowerment from a discursive aspiration into a binding legal entitlement.

The discursive framing also highlights how transparency links directly to enforcement capacity. The CESifo Forum makes clear that pay transparency is instrumental to issues such as the gender pay gap, but only when enforcement is properly present.<sup>301</sup> Rather than relying on a single element, as seen, the PTD engulfs private, collective, and public enforcement. Individual transparency rights support workers in contesting pay disparities; collective representation enables unions and equality bodies to act on behalf of groups of workers; and public oversight is strengthened through dedicated monitoring authorities that aggregate and publish pay data, coordinate with equality bodies and inspectorates, and apply reputational and regulatory pressure. In this framing, transparency is not a symbolic disclosure duty but an enforcement architecture that aligns information rights, representative action, and administrative scrutiny.

Comparative cases reinforce this link between discursive framing and enforcement strength. As noted by Ceballos et al., in Austria, pay transparency laws without penalties “had no effect on the gender pay gap or wages”. By contrast, Denmark, the UK, and Iceland show that transparency reduces pay gaps only where penalties and binding obligations exist. Iceland's model of pay equity certification and substantial fines is held up as particularly effective.<sup>302</sup> This comparative evidence underlines the point that transparency is framed not as an end in itself but as a prerequisite for credible enforcement and underlines why the structured, multi-channel enforcement proposed by the PTD is of utmost significance for converting visibility into compliance.

---

<sup>297</sup> Directive (EU) 2023/970, Arts. 4, 10.

<sup>298</sup> Lahuerta, S. B. (2023); *European Equality Law Review*, 2022(2).

<sup>299</sup> Ceballos, M., Masselot, A., & Burri, S. (2022).

<sup>300</sup> Directive (EU) 2023/970, Arts. 7, 13, 15.

<sup>301</sup> Ceballos, M., Masselot, A., & Burri, S. (2022).

<sup>302</sup> Ceballos, M., Masselot, A., & Burri, S. (2022).

A particularly important innovation of the Directive is its explicit recognition of intersectional discrimination. For the first time, EU hard law acknowledges that pay inequality may result from the interaction of sex with other protected grounds. Recital 25 and Article 3(2)(e) of the Directive explicitly recognise that sex discrimination can intersect with other grounds such as race, ethnic origin, disability, age, or sexual orientation.<sup>303</sup> This discursive shift marks an important departure from earlier directives, which only hinted at multiple discrimination in their recitals.

The Equality Law Review highlights that the Directive requires courts and policymakers to fully understand the synergistic nature of intersecting inequalities, which cannot be reduced to the sum of their parts. At the same time, operational challenges remain: Member States are not obliged to collect pay data disaggregated beyond sex, meaning claimants of intersectional discrimination may struggle to establish a *prima facie* case without adequate statistics. National equality bodies and courts will therefore need to develop alternative evidentiary practices.<sup>304</sup>

The Directive's recognition of intersectionality is also likely to encourage claims across other areas of EU equality law, such as employment and access to goods and services, where tools like situation testing could substantively aid claimants. If conducted in an intersectional manner, such testing could demonstrate patterns of discrimination that traditional single-ground analysis tends to not bring forward.<sup>305</sup> As for the above-mentioned analyses, whether this innovation translates into effective enforcement will depend on how national legislatures, equality bodies, and courts integrate intersectional methods of proof into their legal systems.

Overall, PTD's human-rights framing complements market-related logics, reinforcing that the Directive's strength depends on how these competing frames are balanced in practice. At the same time, it also highlights continuity: pay transparency had already been promoted in the 2014 Recommendation and in several national experiments, but without binding force these initiatives had little impact. By transforming transparency from a voluntary instrument into a structural right, the Directive represents both novelty and rupture in EU gender equality discourse.

### ***3.3.2 Institutional Context at EU Level***

The institutional context of the Pay Transparency Directive reflects the interaction of the EU's core legislative institutions, each shaping the final design according to its own priorities. While the broader "velvet triangle" of feminist academics, civil society organisations, and equality bodies continues to

---

<sup>303</sup> Directive (EU) 2023/970, Recital 25, Art. 3(2)(e)).

<sup>304</sup> European Equality Law Review, 2024(1), 43–57.

<sup>305</sup> European Equality Law Review, 2024(1).

provide expertise and advocacy,<sup>306</sup> the Directive itself is largely the product of the Commission's initiative, the Parliament's activism, and the Council's constraints, supported by specialised agencies and new monitoring structures.

The European Commission acted as the principal driver of the Directive. As the only institution with a right of initiative, it proposed the measure in March 2021 as a flagship element of the Gender Equality Strategy 2020–2025. Its initiative was also consistent with its broader efforts to embed gender budgeting within the Multiannual Financial Framework 2021–2027.

The European Parliament played the role of activist and advocate for stronger measures. Through the FEMM Committee and supportive coalitions across political groups, the Parliament pressed for a more comprehensive framework than the Commission's initial proposal. It specifically advocated for lower thresholds, pushing to extend reporting duties to firms with at least 50 workers, and called for clearer rules on comparators to ensure that workers in feminised sectors would not be excluded from protection. It also insisted on recognising intersectional discrimination, recommending that it be explicitly defined and treated as an aggravating factor in sanctions.<sup>307</sup> Although many of these demands were moderated in trilogue negotiations, the Parliament's intervention was very important for the shifting of the Directive away from a minimalist approach and anchoring it more in the rights-based paradigm.

The Council of the European Union, representing the voice of the Member States, acted as a counterweight to the Parliament's activism. As is often the case in the equality field, national governments raised concerns about subsidiarity and proportionality, wary that binding EU duties might interfere with domestic labour relations models or impose excessive administrative burdens on employers. As highlighted in Section 3.1.6, these subsidiarity and proportionality doubts have been a persistent feature of debates around the Directive, particularly with respect to wage-setting traditions and the obligations of SMEs. In this sense, the Council's stance reflects not only its institutional function as co-legislator but also the diversity of national political economies, which frequently temper the ambition of EU gender equality law.

The Directive also reflects the role of specialised agencies and monitoring institutions. The European Institute for Gender Equality (EIGE), has provided methodologies and data, including the Gender Equality Index, which framed the scale of the problem and the need for structural intervention. More

---

<sup>306</sup> Burri, S., & Schiek, D. (Eds.). (2022). *The EU gender equality law and policy handbook*. Edward Elgar Publishing.

<sup>307</sup> European Parliament. (2022). *Report on the proposal for a directive of the European Parliament and of the Council 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* (A9-0056/2022, 22 March 2022). Strasbourg: European Parliament. See Amendment 33 (Recital 25), Amendment 92 (Art. 8(1)), and Amendment 111 (Art. 9(1)).

innovatively, Articles 28–29 of the Directive require each Member State to designate or establish a dedicated monitoring body to aggregate pay data, publish it in accessible form, and coordinate with equality bodies and labour inspectorates.<sup>308</sup> This institutional innovation signals a recognition that enforcement requires ongoing data collection and systemic oversight, not just litigation.

Beyond these core actors, a wider network of institutions and movements shaped the discursive environment in which the Directive was adopted. The European Women’s Lobby (EWL) campaigned on issues of pay equality and care, especially during the COVID-19 recovery. Feminist academics and expert networks supplied the legal and policy analysis that underpinned EU action, while social partners and national equality bodies, coordinated through Equinet, continue to mediate implementation. While not decisive in the Directive’s final legal design, these actors remain extremely relevant to sustaining gender equality as a permanent priority in the EU policy agenda.

### ***3.3.3 Complementary EU Instruments***

The Pay Transparency Directive, while representing the hard-law core of the EU’s recent equality turn, is also coherent with the Commission’s broader equality agenda. It operates alongside complementary instruments that provide the political framing, financial environment, and normative resource for enforcement. In this way, the Directive is not an isolated intervention but part of a coherent package through which the Commission seeks to embed equality objectives across legal, financial, and governance instruments.

The Gender Equality Strategy 2020–2025 sets the political framing by embedding pay transparency within its broader aim of thriving in a gender-equal economy.<sup>309</sup> It links equal pay to labour market participation, care responsibilities, and structural reforms, making clear that transparency is not a technical measure but part of a systemic rethinking of economic governance. The Multiannual Financial Framework 2021–2027 provides the material context. As seen in Chapter 1.4, the introduction of gender tagging and the allocation of substantial resources through instruments like the ESF+ and the Recovery and Resilience Facility represent an advance in visibility and monitoring. Yet distribution remains uneven, with large parts of the budget carrying no meaningful gender dimension and no binding spending targets. This is problematic: without consistent financial backing, the Directive’s obligations risk remaining formally ambitious but materially unsupported. Finally, the European Pillar of Social Rights serves as the normative backdrop. Principle 2 enshrines equal treatment and equal pay as guiding principles of Union policy, but its soft-law character means that

---

<sup>308</sup> Directive (EU) 2023/970, Arts. 28–29.

<sup>309</sup> European Commission, *Gender Equality Strategy 2020–2025* (COM(2020) 152 final).



the Directive must supply the enforceable core.<sup>310</sup> In this sense, the PTD represents the hardening of commitments first articulated in the EPSR, even as the latter continues to provide political legitimacy. Taken together, these complementary instruments illustrate the double face of EU governance: they reinforce the Directive by embedding it in broader strategies and funding frameworks, but they also dilute it through fragmentation, voluntary targets, and reliance on soft coordination. The Directive's effectiveness will therefore depend not only on its legal provisions but also on whether these parallel instruments deliver the institutional and material support necessary for genuine enforcement.

Beyond these specific instruments, gender mainstreaming remains a decisive yet underutilised mechanism. As Rubery argues, mainstreaming is essential to protect against three major risks: inadequate support for unpaid care work, the gendered consequences of green and digital transitions, and the negative impacts of austerity policies.<sup>311</sup> Indeed, the reinstatement of stringent EU fiscal rules raises the prospect of cuts to public services, restraint of public sector wages, and pension reforms that disproportionately harm women. Given women's concentration in public employment and care services, such measures risk undoing progress on equal pay. Without systematic gender mainstreaming, the Directive's transparency obligations may be undercut by broader macroeconomic pressures that devalue women's work and deepen structural gaps. It is part of a broader set of measures designed to improve women's position within the labour market and contribute to a fairer economy. Yet while the Directive aims to provide transparency and mechanisms to challenge pay disparities, its effectiveness will depend on robust implementation and the broader context of gender mainstreaming. If austerity policies lead to the devaluation of public sector pay where women are concentrated, or if the digital transition continues make women's work in platforms invisible, the impact of pay transparency alone may be limited.

### ***3.3.4 From Framing to Enforcement Potential***

The discursive and institutional context traced above provides the foundation for assessing the Directive's enforcement potential.

All of these elements suggest that the Pay Transparency Directive represents a significant departure from earlier soft-law approaches: it hardens transparency into a binding right, strengthens access to justice through burden-shifting and evidence rules, and embeds equality bodies more firmly into enforcement. In this sense, it moves beyond symbolic rhetoric and signals the contours of a new

---

<sup>310</sup> EPSR, Principle 2.

<sup>311</sup> Rubery, J., Insarauto, V., & Sánchez-Mira, N. (2024). *Gender equality in the EU: Why we need a renewed commitment to gender mainstreaming* (ETUI Policy Brief No. 2024.08). Brussels: European Trade Union Institute.

enforcement paradigm. At the same time, the Directive's transformative potential is not fully secured. Indeed, this instrument equips the Union with a sophisticated enforcement framework, but its transformative output will ultimately depend on whether political momentum and fiscal choices sustain it. As past crises and austerity cycles have shown, gender equality can quickly fall off the EU agenda; the challenge is whether this framework will endure beyond the current window of political will and be reinforced, rather than diluted, by future economic governance.

## Conclusions

This thesis has examined whether the European Union can be regarded as an enforcement agent for gender equality in the labour market. The analysis has traced the evolution of EU equality law from its origins as a tool of economic harmonisation toward the rights-based and transformative mandate articulated in Articles 21 and 23 of the Charter of Fundamental Rights. Yet, as the literature review demonstrated, enforcement has long been constrained by fragmentation, judicial limits, and the dependence on national institutions. In relation to this, the Pay Transparency Directive (Directive 2023/970) offered a timely case through which to test the EU's capacity to move beyond symbolic commitments.

The main aim of the elaborate has been to answer whether the European Union can be regarded as an enforcement agent for gender equality in the labour market. To respond, the research design anchored the analysis in three dimensions: (i) binding legal design and integrated enforcement, (ii) national institutional capacity and implementation, and (iii) discursive and institutional framings of equality and tested them through the Pay Transparency Directive (PTD) and a structured Italy–Spain comparison. These dimensions were not chosen arbitrarily but derive from the enforcement paradox identified in the literature: the EU has progressively developed a sophisticated legal and policy framework for gender equality, yet its effectiveness remains fragmented, reactive, and nationally mediated. By situating the PTD at the centre of the analysis, the thesis has been able to test whether this paradox can be overcome through binding law, multi-channel enforcement, and supportive national frameworks.

### *I. Binding legal design and integrated enforcement*

The PTD is the EU's most articulated attempt so far to convert the right to equal pay into operational enforcement. Doctrinally, it consolidates and clarifies the architecture around “work of equal value,” burden-shifting, access to information, and the use of comparators. Institutionally, it translated into hard-law multi-channel enforcement: ex ante transparency duties (pre-contract pay information, pay-setting criteria, worker access to sex-disaggregated pay data), regular reporting and joint pay assessments with worker representatives, collective standing for equality bodies and unions, minimum limitation periods, full compensation, dissuasive penalties, and public procurement leverage. Finally, it attempts to solve information asymmetries by mandating monitoring bodies and regular publication of employer-level gaps.

Analytically, the Directive's stance with respect to enforcement credibility deploys three main outcomes. First and foremost, it reduces vertical fragmentation by setting common procedural floors

that prevent Member State autonomy from intervening too broadly over out equal pay guarantees (for example, rights to information, minimum limitation periods, burden-shifting mechanisms, and procurement consequences).

It also mitigates horizontal fragmentation by requiring cooperation between equality bodies, inspectorates, social partners, and employers, while sequencing transparency duties so that preventive disclosure flows into administrative scrutiny and, if necessary, adjudication.

Thirdly, it engages directly with the issue of structural under-enforcement by introducing system-level triggers (such as mandatory joint pay assessments when unjustified gaps emerge) so that detection and correction no longer depend solely on continuous individual litigation.

Parallely, the PTD's design reveals why binding law is necessary but not sufficient. Coverage thresholds (annual or triennial reporting obligations starting at 250/150/100 workers) leave large parts of feminised, SME-dominated economies outside routine transparency; monitoring bodies will only be as strong as the resources and mandates given domestically; comparators, especially the hypothetical ones, exist on paper but still depend on national adjudicative practice to become effective. Even the Directive's most powerful tools (sanctions and procurement exclusions) require consistent national activation to become truly dissuasive. Overall, the EU has supplied a strong enforcement mechanism, but its output depends on how it is wired into national dimension, whilst raising the floor of enforcement and offering an actionable toolkit.

## *II. National institutional capacity and implementation*

The Italian and Spanish case studies comparison shows how the same EU blueprint produces diverging enforcement effects once it meets distinct legal cultures, administrative capacities, and collective actors.

Italy arrives with stronger incentive-based transparency (lowered reporting thresholds, certification schemes, procurement bonus points), but weak activation of judicial pattern (scarce “equal value” case-law, resistance to the use of comparators) and fragile institutional capacity (resource-dependent equality counsellors; uneven inspectorate priorities). The architecture exists; what it lacks it's actually a solid incentive to properly get it across. Italy thus illustrates an “incentive-heavy, deterrence-light” model: visibility and labels travel are indeed privileged over sanctions or structural remedies.

Spain presents a legally rich and prescriptive baseline (mandatory pay registers, job-evaluation tools, equality plans from 50+ workers, clear statutory definition of “equal value”), and comparatively richer jurisprudence on indirect discrimination. Yet enforcement outcomes remain uneven: under-use of collective standing, variable application of burden-shifting, and inspectorate sanctions that are

sporadic rather than systemic. Spain thus exemplifies owns a model with strong premises and guarantees, whilst delivering mixed dissuasion in practice. Even in this advanced context, however, the Directive adds meaningful innovations, such as the prohibition on requesting previous salaries and the right to pre-contractual pay information, which further empower workers by tackling inequalities at the very entry point into employment. This shows that the PTD does not merely correct weaker systems but also enriches stronger ones, extending enforcement horizons across the Union.

A first consideration to be made is that resourcing and independence of equality bodies and labour inspectorates are key. Where they can audit, demand data, and litigate (or trigger litigation), transparency translates into corrective action; where they cannot, transparency risks becoming a formal requirement. Furthermore, collective actors (unions, equality bodies) are formally empowered but under-mobilised. Without funding, data analysis capacity, and strategic litigation support, representative standing's potential won't be exploited. Also, legal culture mediates comparators and remedies. Jurisdictions that accept hypothetical comparators, sector-wide "single source" logics, and structural orders are more likely to turn transparency into material equalisation, not just information disclosure.

Overall, the PTD's impact is directly related to closing the "activation gap", which is the space between the EU's harmonised inputs and national systems' ability (and will) to process them into sanctions, compensation, and structural change.

### *III. Discursive and institutional framings: translation of transformative rights into practice*

The Pay Transparency Directive represents the EU's clearest attempt to move from rhetorical commitments to operational enforcement of gender equality. Unlike earlier soft-law initiatives, it does not merely set minimum standards for Member States but sets out enforceable procedures, institutional obligations, and systemic triggers designed to make equal pay rights actionable.

Analytically, the Directive advances enforcement credibility by normalising transparency as a structural right. Indeed, pay information is no longer discretionary or voluntary but codified as a baseline duty that shifts the balance of power in wage-setting. Embedding equality into institutional practice is also a very relevant aspect to highlight. By requiring Member States to establish monitoring bodies, mandating structured cooperation between inspectorates, equality bodies, and social partners, and even linking compliance to access to public procurement, the Directive makes equality part of both administration and markets. This mainstreaming move matters discursively: it frames gender equality not as an exceptional claim to be litigated but as an encompassed condition of regulatory oversight and economic participation. Decisively, it also resonates with the Union's broader turn to gender mainstreaming in fiscal policy through instruments like the Multiannual

Financial Framework which can either reinforce or dilute enforcement, depending on how consistently these financial tools are mobilised. Innovatively, the Directive also reframes equality as multi-dimensional: the explicit recognition of intersectional discrimination broadens enforcement horizons, signalling that equality cannot be confined to single axes of disadvantage.

However, it's important to note that historically, during moments of crisis and austerity, the EU has given less prominence to equality over its agenda; the true test for Dimension 3 is whether this time the framework will endure as more than a rhetorical cycle. If political will and gender-sensitive fiscal policies persist, the Directive can anchor equality as a permanent feature of Union governance.

### *Future Prospects for Enforcement*

The next step for both policymakers and scholars is to evaluate in the immediate term the actual institutional capacity of the directive. Indeed, as Member States work toward the June 2026 transposition deadline, the focus should be over the main enforcement “carriers”. Equality bodies will need not only statutory standing but also funding to act effectively; labour inspectorates must be equipped with clear mandates to audit and sanction breaches; SMEs require access to standardised gender-neutral job evaluation tools; and procurement authorities must be able to apply exclusion criteria with due-process safeguards.

Looking beyond, by the time the Commission conducts its first review in 2031, attention will inevitably shift to outcomes. Coverage thresholds may need to be lowered if large parts of feminised sectors remain outside the transparency's reach of the directive; courts will need to show whether hypothetical and single-source comparators are being meaningfully used in litigation; and policymakers will want to assess not only the volume and size of sanctions, but also the rate at which joint pay assessments translate into corrective action. Crucially, it will matter whether collective claims, formally enabled by the Directive, are actually being mobilised in practice.

For academic debate, the Directive sets new points for research agenda. Comparative analysis will be needed to trace the “activation gap” across Member States and to identify which combinations of sanctions, procurement leverage, and collective mobilisation are most effective in closing it. Researchers will also need to evaluate whether the Directive's recognition of intersectionality translates into justiciable claims, or whether it remains a symbolic innovation. In this sense, the PTD does not mark the end of debate but the beginning of a new empirical and doctrinal inquiry into what makes EU-level enforcement credible in practice.

So overall, can the EU be deemed as an enforcement agent? After the Pay Transparency Directive, the Union is best understood as an enforcement setter and floor-raiser. It has indeed prepared a

common system of data, duties, procedures, and incentives that reduces fragmentation and obliges Member States to create channels from transparency to remedy. In this sense, the EU now acts as an enforcement agent at the level of system design.

Yet the Union is not a unitary enforcer capable of guaranteeing uniform protection in practice. Very important features remain national: the resources and independence of equality bodies and inspectorates; judicial openness to comparators and structural orders; the mobilisation of unions and social partners; and the political will to apply sanctions and procurement exclusions consistently.

The true measure of the Directive's legacy will be whether these national and political variables allow the EU's architecture to reshapes equality in practice across the Union.

## Bibliography

- Ales, E. (2017). The European Pillar of Social Rights: An ambitious ‘soft-law guide’ to efficient employment and social outcomes. In R. Singer & T. Bazzani (Eds.), *European employment policies: Current challenges* (pp. 43–63).
- Benedi Lahuerta, S. (2022). EU transparency legislation to address gender pay inequity: What is on the horizon and its likely impact in Ireland. *Irish Journal of European Law*, 24(1), 161–188.
- Böttner, R., & Blanke, H.-J. (Eds.). (2023). *Treaty on the Functioning of the European Union – A commentary. Volume II: Articles 90–164* (Springer Commentaries on International and European Law). Springer.
- Burri, S., & Schiek, D. (Eds.). (2022). *The EU gender equality law and policy handbook*. Edward Elgar Publishing.
- Carlson, L. (2023). *The EU pay transparency proposed directive – general overview and some comments on the rules on enforcement and sanctions*. *European Equality Law Review*, (2/2022), 1–20. European Commission, Directorate-General for Justice and Consumers.
- Ceballos, M., Masselot, A., & Burri, S. (2022). Mind the gender pay gap! How men and women get equal working opportunities and wages. *CESifo Forum*, 23(2), 3–12.
- De Schutter, O. (2006). Three models of equality and European anti-discrimination law. *Maastricht Journal of European and Comparative Law*, 13(3), 193–220.
- Debusscher, P. (2023). The EU Gender Equality Strategy 2020–2025: The beginning of a new season? In B. Vanhercke, S. Sabato, & S. Spasova (Eds.), *Social policy in the European Union: State of play 2022 — Policymaking in a permacrisis* (pp. 91–110). ETUI & OSE.
- Dieckhoff, M., & Gallie, D. (2007). The renewed Lisbon Strategy and social exclusion policy. *International Journal of Comparative Sociology*, 48(6), 480–502.
- Dorsemont, F., et al. (2019). *The Charter of Fundamental Rights of the European Union and the employment relation* (1st ed.). Hart Publishing.
- Efstathiou, D., Dukelow, F., & Murphy, M. (2021). Dead ends and blind spots in the European Semester: The epistemological limits of the EU’s social and economic governance framework. *Socio-Economic Review*, 19(4), 1329–1353.
- Falkner, G., Treib, O., Hartlapp, M., & Leiber, S. (2007). *Complying with Europe: EU harmonisation and soft law in the member states*. Cambridge University Press.
- Gomez Urquijo, L. (2023). The progressive gendering of the European Union’s economic governance architecture. *European Constitutional Law Review*, 19(1), 1–28.
- Hermann, C., & Hofbauer, I. (2007). The European social model: Between competitive modernisation and neoliberal resistance. *Capital & Class*, 31(3), 125–139.
- Hubert, A. (2021). *The European Union and gender equality*. In G. Abels & J. Mushaben (Eds.), *The Routledge Handbook of Gender and EU Politics* (pp. 25–35). Routledge.
- International Labour Organization. (2021). *Observation on Italy: Equal Remuneration Convention, 1951 (No. 100)*. Committee of Experts on the Application of Conventions and Recommendations (CEACR). Geneva: ILO.
- Izzi, D. (2024). Contrasto al gender gap nel lavoro e regole di trasparenza. *Lavoro e diritto*, 38(4), 645–661. <https://doi.org/10.1441/115068>.



- Jacquot, S. (2010). 'The paradox of gender mainstreaming. Unanticipated effects of new modes of governance in the gender equality domain'. *West European Politics*, 33(1): 118-135.
- Jacquot, S. (2015). *Transformations in EU gender equality: From emergence to dismantling*. Palgrave Macmillan.
- Karamessini, M., & Rubery, J. (Eds.) (2013). *Women and austerity. The economic crisis and the future for gender equality*. London/New York: Routledge.
- Koukiadaki, A., & Lörcher, K. (Eds.). (2022). *Effective enforcement of EU labour law* (1st ed.). Oxford: Hart Publishing.
- Lahuerta, S. B. (2023). *EU transparency legislation to address gender pay inequity: What is on the horizon and its likely impact in Ireland* (UCD Working Papers in Law, Criminology & Socio-Legal Studies Research Paper No. 16/2023). University College Dublin.
- Leon, M. (2009). Gender equality and the European Employment Strategy: The work/family balance debate. In S. Bretherton & M. Mannin (Eds.), *The European Union and the Social Dimension of Globalization: How the EU Influences the World* (pp. 121–139). Palgrave Macmillan.
- Leoncini, S. (2020). *Gender equality in Europe and intersectionality in times of crisis*. *Journal of International Women's Studies*, 21(6), 109–124.
- Lombardo, E., & Meier, P. (2008). Framing gender equality in the European Union political discourse. *Social Politics: International Studies in Gender, State & Society*, 15(1), 101–129; Rubery, J. (2021). Pay transparency and the EU's new strategy for gender equality. *Cambridge Journal of Economics*, 45(5), 1079–1098.
- Lopez-Santana, M. (2009). Having a say and acting: Assessing the effectiveness of the European Employment Strategy as an intra-governmental coordinative instrument. *European Integration Online Papers*, 13.
- Mosher, J. S., & Trubek, D. M. (2003). *Alternative Approaches to Governance in the EU: EU Social Policy and the European Employment Strategy*. *Journal of Common Market Studies*, 41(1), 63–88.
- Ren, X., Kanavitsa, E., & León, M. (2023). *Gender inequalities at work in Southern Europe*. *Social Inclusion*, 11(1), 49–60.
- Rubery, J. (2013). Public sector adjustment and the threat to gender equality, in Daniel Vaughan-Whitehead (ed.), *Public Sector Shock*, (pp. 43-83), Edward Elgar Publishing.
- Rubery, J. (2021). Pay transparency and the EU's new strategy for gender equality. *Cambridge Journal of Economics*, 45(5), 1079–1098.
- Rubery, J., Insarauto, V., & Sánchez-Mira, N. (2024). *Gender equality in the EU: Why we need a renewed commitment to gender mainstreaming* (ETUI Policy Brief No. 2024.08, October). Brussels: European Trade Union Institute (ETUI).
- Samek Lodovici, M. (2020). *EU funding for gender equality: The need for a gender responsive budget* (Policy Department for Citizens' Rights and Constitutional Affairs). European Parliament.
- Šimonović Einwalter, T., & Selanec, G. (2015). *Alignment of the law on prohibition of discrimination with the EU acquis* (Human Rights Paper No. 9). Heinrich Böll Stiftung; Sarajevski otvoreni centar. ISSN 2303-6079.
- Smith, M., & Villa, P. (2009). The ever-declining role of gender equality in the European Employment Strategy. *International Review of Sociology*, 19(3), 529–543.
- Távora, I., & Rubery, J. (2021). *The Covid-19 crisis and gender equality: risks and opportunities*. In B. Vanhercke, S. Spasova, & B. Fronteddu (Eds.), *Social policy in the European Union: state of play 2020: Facing the pandemic* (pp. 71–96). European Trade Union Institute (ETUI) and European Social Observatory (OSE).

Van Apeldoorn B., (2009). The contradictions of ‘embedded neoliberalism’ and Europe’s multilevel legitimacy crisis: The European project and its limits. In: van Apeldoorn B, Drahokoupil J, Horn L (eds) *Contradictions and Limits of Neoliberal European Governance: From Lisbon to Lisbon*. Basingstoke: Palgrave, 21–43.

Van der Vleuten, A., Guerrina, R., & Masselot, A. (2023). *Gender equality and the European Union: Politics, policy and legal mobilization*. Palgrave Macmillan.

## EU Documents

Böök, B., Burri, S., Senden, L., & Timmer, A. (2023). *A comparative analysis of gender equality law in Europe – 2022*. European network of legal experts in gender equality and non-discrimination. Directorate-General for Justice and Consumers, European Commission. Publications Office of the European Union.

Commission of the European Communities. (2006c). *Implementing the renewed Lisbon Strategy for growth and jobs: A year of delivery* (COM(2006) 816 final).

Council of the European Union. (2020). *Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027*. Official Journal of the European Union, L 433I, 11–22.

European Commission, Directorate-General for Justice and Consumers. (2022). *European Equality Law Review, 2022(2)*. Publications Office of the European Union.

European Commission, Directorate-General for Justice and Consumers. (2024). *European Equality Law Review, 2024(1)*. Publications Office of the European Union.

European Commission. (1997). *The European Employment Strategy: Investing in people – The Luxembourg process*. Office for Official Publications of the European Communities.

European Commission. (2009). *Report on the application of Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation* (COM(2009) 409 final).

European Commission. (2010). *Strategy for equality between women and men 2010–2015* (COM(2010) 491 final).

European Commission. (2015). *Strategic engagement for gender equality 2016–2019* (SWD(2015) 278 final).

European Commission. (2017). *European Pillar of Social Rights*. Brussels: European Commission.

European Commission. (2020). *A Union of Equality: Gender Equality Strategy 2020–2025* (COM(2020) 152 final). Brussels: European Commission.

European Committee of Social Rights (ECSR). (2019). *Conclusions 2019 – Spain: Article 4§3 (Right to a fair remuneration, non-discrimination between women and men with respect to remuneration)*. Strasbourg: Council of Europe.

European Committee of Social Rights (ECSR). (2020). *Conclusions XXII-1 – Spain: Article 1 of the 1988 Additional Protocol (Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex)*. Strasbourg: Council of Europe.

European Committee of Social Rights (ECSR). (2020). *University Women of Europe (UWE) v. Italy, Complaint No. 133/2016, Decision on the Merits (6 December 2019)*. Strasbourg: Council of Europe.

European Committee of Social Rights (ECSR). (2022). *Conclusions 2022 – Italy: Article 4§3 (Right to a fair remuneration, non-discrimination between women and men with respect to remuneration)*. Strasbourg: Council of Europe.

European Economic Community. (1957). *Treaty establishing the European Economic Community (Treaty of Rome)*, 25 March 1957, 298 U.N.T.S. 11. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A11957E%2FTXT>.

European Network of Legal Experts in Gender Equality and Non-Discrimination. (2022). *New Spanish comprehensive anti-discrimination law: Summary*. Brussels: European Commission, Directorate-General for Justice and Consumers.

European Parliament & Council of the European Union. (2006). *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 (recast)*. *Official Journal of the European Union*, L 204, 23–36.

European Parliament & Council of the European Union. (2023). *Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 strengthening the application of the principle of equal pay between men and women for equal work or work of equal value through pay transparency and enforcement mechanisms*. *Official Journal of the European Union*, L 132, 17–32.

European Parliament & Council of the European Union. (2024). *Directive (EU) 2024/1500 of the European Parliament and of the Council of 29 April 2024 on equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and on equal treatment between persons irrespective of racial or ethnic origin, religion or belief, disability, age or sexual orientation*. *Official Journal of the European Union*, L 202, 1–30.

European Parliament. (2022). *Report on the proposal for a directive of the European Parliament and of the Council 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 (A9-0056/2022)*. Strasbourg: European Parliament.

European Union, (2012). *Charter of Fundamental Rights of the European Union*, 2012 *Official Journal of the European Union*, C 326/391.

European Union. (1997). *Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex*. *Official Journal of the European Communities*, L 14, 6–8.

European Union. (2000). *Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin* (OJ L 180, 19.7.2000, pp. 22–26). Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000L0043>.

European Union. (2000); *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation* (OJ L 303, 2.12.2000, pp. 16–22). Retrieved from: <https://eurlex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A32000L0078>.

European Union. (2012). *Consolidated version of the Treaty on the Functioning of the European Union*. *Official Journal of the European Union*, C 326, 47–390.

Ramos Quintana, M. I. (2025). *Country report: Gender equality – Spain (Reporting period 1 January 2024 – 1 January 2025)*. European Commission, Directorate-General for Justice and Consumers. Publications Office of the European Union.

Renga, S. (2025). *Country report: Gender equality – Italy (Reporting period 1 January 2024 – 1 January 2025)*. European Commission, Directorate-General for Justice and Consumers. Publications Office of the European Union. Retrieved from: <https://doi.org/10.2838/0812383>.

Treaty establishing the European Community (Nice consolidated version). (2002). *Official Journal of the European Communities*, C 325, 47–48.

Treaty on the Functioning of the European Union (TFEU). (2012). *Consolidated version of the Treaty on the Functioning of the European Union*. Official Journal of the European Union, C 326, 47–390.

## Case Law

Constitución Española [Spanish Constitution]. (1978). *Boletín Oficial del Estado* (B.O.E.), núm. 311, 29 December 1978 (Spain).

Corte di Cassazione. (1986). Sez. Lavoro, 27 February 1986, No. 1444 (Italy).

Court of Justice of the European Union (CJEU). (1981). *Jenkins v. Kingsgate (Clothing Productions) Ltd*, Case 96/80, ECLI:EU:C:1981:80.

Court of Justice of the European Union (CJEU). (1986). *Bilka-Kaufhaus GmbH v. Weber von Hartz*, Case 170/84, ECLI:EU:C:1986:204.

Court of Justice of the European Union. (1976). *Gabrielle Defrenne v. Société anonyme belge de navigation aérienne Sabena*, Case C-43/75, ECLI:EU:C:1976:56.

Court of Justice of the European Union. (1989). *Handels- og Kontorfunktionærernes Forbund i Danmark v. Dansk Arbejdsgiverforening, acting on behalf of Danfoss*, Case C-109/88, ECLI:EU:C:1989:383.

Court of Justice of the European Union. (1993). *Enderby v. Frenchay Health Authority and Secretary of State for Health*, Case C-127/92, ECLI:EU:C:1993:859.

Court of Justice of the European Union. (1995). *Kalanke v. Freie Hansestadt Bremen*, Case C-450/93, ECLI:EU:C:1995:322.

Court of Justice of the European Union. (2000). *Land Hessen v. Hilde Kreil (Badeck)*, Case C-158/97, ECLI:EU:C:2000:84.

Court of Justice of the European Union. (2002). *Lawrence and Others v. Regent Office Care Ltd and Others*, Case C-320/00, ECLI:EU:C:2002:498; Court of Justice of the European Union. (2004). *Allonby v. Accrington & Rossendale College*, Case C-256/01, ECLI:EU:C:2004:18.

Court of Justice of the European Union. (2008). *Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryn NV* (Case C-54/07, EU:C:2008:397).

Court of Justice of the European Union. (2012). *Leone v. Commissione Nazionale per le Società e la Borsa (Consob)*, Case C-173/09, ECLI:EU:C:2012:21.

Court of Justice of the European Union. (2013). *Elbal Moreno v. Instituto Nacional de la Seguridad Social (INSS)*, Case C-385/11, ECLI:EU:C:2013:683.

Court of Justice of the European Union. (2017). *Case C-385/11, Elbal Moreno v. Instituto Nacional de la Seguridad Social (INSS)*. ECLI:EU:C:2017:683.

Court of Justice of the European Union. (2017). *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV*, Case C-157/15, ECLI:EU:C:2017:203.

Court of Justice of the European Union. (2018). *Case C-103/16, Porras Guisado v. Bankia SA and Others*. ECLI:EU:C:2018:187.

Court of Justice of the European Union. (2021). *IX v. WABE eV and MH Müller Handels GmbH v. MJ*, Joined Cases C-804/18 and C-341/19, ECLI:EU:C:2021:594.

Fiat/FCA case. (2012). Tribunal of Turin.

Tribunal Constitucional [Constitutional Court]. (1991). *Sentencia 145/1991, de 1 de julio*. Boletín Oficial del Estado (B.O.E.), núm. 170, 17 July 1991 (Spain).

Tribunal Constitucional [Constitutional Court]. (1998). *Sentencia 2/1998, de 12 de enero*. Boletín Oficial del Estado (B.O.E.), núm. 35, 10 February 1998 (Spain).

## Legislation

Constitution of the Italian Republic. (1948). *Gazzetta Ufficiale*, 27 December 1947, No. 298 (Italy).

Decree No. 124 of 23 April 2004. *Razionalizzazione delle funzioni ispettive in materia di previdenza sociale e di lavoro*. (2004). *Gazzetta Ufficiale*, 26 May 2004, No. 121 (Italy).

Decree No. 8 of 15 January 2016. *Disposizioni in materia di depenalizzazione*. (2016). *Gazzetta Ufficiale*, 22 January 2016, No. 17 (Italy).

Law No. 162 of 5 November 2021. *Modifications to the Equal Opportunities Code*. *Gazzetta Ufficiale*, 18 November 2021, No. 275 (Italy).

Law No. 92 of 28 June 2012. *Disposizioni in materia di riforma del mercato del lavoro in una prospettiva di crescita*. (2012). *Gazzetta Ufficiale*, 3 July 2012, No. 153, Supplemento Ordinario No. 136 (Italy).

Legge 21 febbraio 2024, n. 15. *Delega al Governo per il recepimento delle direttive europee e l'attuazione di altri atti dell'Unione europea – Legge di delegazione europea 2022–2023*. (2024). *Gazzetta Ufficiale della Repubblica Italiana*, Serie Generale n. 49, 28 febbraio 2024. Available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2024-02-21;15>.

Legge 23 dicembre 2014, n. 190. (2014). [Stability Law 2015]. *Gazzetta Ufficiale della Repubblica Italiana*.

Legge 27 dicembre 2006, n. 296. (2006). [Financial Law 2007]. *Gazzetta Ufficiale della Repubblica Italiana*.

Legislative Decree No. 151 of 15 June 2015. *Disposizioni di razionalizzazione e semplificazione in materia di pari opportunità e congedi*. (2015). *Gazzetta Ufficiale*, 14 September 2015, No. 221 (Italy).

Legislative Decree No. 198 of 11 April 2006. *Code of Equal Opportunities between Women and Men*. (2006). *Gazzetta Ufficiale*, 31 May 2006, No. 125 (Italy).

Ley 15/2022, de 12 de julio, integral para la igualdad de trato y la no discriminación [Comprehensive Law for Equal Treatment and Non-Discrimination]. (2022). *Boletín Oficial del Estado* (B.O.E.), núm. 167, 13 July 2022 (Spain).

Ley 16/1983, de 24 de octubre, de creación del Instituto de la Mujer. (1983). *Boletín Oficial del Estado* (B.O.E.), núm. 256, 26 October 1983 (Spain).

Ley 23/2015, de 21 de julio, ordenadora del Sistema de Inspección de Trabajo y Seguridad Social. (2015). *Boletín Oficial del Estado* (B.O.E.), núm. 174, 22 July 2015 (Spain).

Ley 36/2011, de 10 de octubre, reguladora de la jurisdicción social (LRJS). (2011). *Boletín Oficial del Estado* (B.O.E.), núm. 245, 11 October 2011 (Spain).

Ley 36/2011, de 10 de octubre, reguladora de la jurisdicción social (LRJS). (2011). *Boletín Oficial del Estado* (B.O.E.), núm. 245, 11 October 2011 (Spain).

Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público [Public Sector Procurement Law]. (2017). *Boletín Oficial del Estado* (B.O.E.), núm. 272, 9 November 2017 (Spain).

Ley de Enjuiciamiento Civil [Civil Procedure Act], Ley 1/2000, de 7 de enero. (2000). *Boletín Oficial del Estado* (B.O.E.), núm. 7, 8 January 2000 (Spain).

Ley sobre Infracciones y Sanciones en el Orden Social [Law on Offences and Penalties in the Social Order], Texto refundido aprobado por Real Decreto Legislativo 5/2000, de 4 de agosto. (2000). *Boletín Oficial del Estado* (B.O.E.), núm. 189, 8 August 2000 (Spain).

Organic Act 3/2007 of 22 March on Effective Equality between Women and Men. (2007). *Boletín Oficial del Estado* (B.O.E.), núm. 71, 23 March 2007 (Spain).

Real Decreto 901/2020, de 13 de octubre, por el que se regulan los planes de igualdad y su registro. (2020). *Boletín Oficial del Estado* (B.O.E.), núm. 272, 14 October 2020 (Spain).

Real Decreto 902/2020, de 13 de octubre, de igualdad retributiva entre mujeres y hombres. (2020). *Boletín Oficial del Estado* (B.O.E.), núm. 272, 14 October 2020 (Spain).

Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores [Workers' Statute]. (2015). *Boletín Oficial del Estado* (B.O.E.), núm. 255, 24 October 2015 (Spain).

Real Decreto-ley 6/2019, de 1 de marzo, de medidas urgentes para garantía de la igualdad de trato y de oportunidades entre mujeres y hombres en el empleo y la ocupación. (2019). *Boletín Oficial del Estado* (B.O.E.), núm. 57, 7 March 2019 (Spain).

Royal Decree 901/2020 of 13 October regulating equality plans and their registration. (2020). *Boletín Oficial del Estado* (B.O.E.), núm. 272, 14 October 2020 (Spain). Royal Decree 902/2020 of 13 October on equal pay between women and men. (2020). *Boletín Oficial del Estado* (B.O.E.), núm. 272, 14 October 2020 (Spain).

UNI. (2022). Prassi di riferimento UNI/PdR 125:2022 – Linee guida sul sistema di gestione per la parità di genere. Ente Italiano di Normazione.

Workers' Statute, Law No. 300 of 20 May 1970. Statuto dei Lavoratori. (1970). *Gazzetta Ufficiale*, 27 May 1970, No. 131 (Italy).

Workers' Statute, Real Decreto Legislativo 2/2015, de 23 de octubre. (2015). *Boletín Oficial del Estado* (B.O.E.), núm. 255, 24 October 2015 (Spain).

Workers' Statute, Royal Legislative Decree 2/2015 of 23 October. (2015). *Boletín Oficial del Estado* (B.O.E.), núm. 255, 24 October 2015 (Spain).

## Sitography

European Commission. (2020). A Union of Equality: Gender Equality Strategy 2020–2025 (COM(2020) 152 final). European Commission, from [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy_en).

European Commission. (n.d.). *Gender equality mainstreaming in the EU budget*. Retrieved September 16, 2025, from [https://commission.europa.eu/strategy-and-policy/eu-budget/performance-and-reporting/horizontal-priorities/gender-equality-mainstreaming\\_en](https://commission.europa.eu/strategy-and-policy/eu-budget/performance-and-reporting/horizontal-priorities/gender-equality-mainstreaming_en).

Federal Ministry of Education, Science and Research. *Women's rights and gender equality in the EU*. Republic of Austria, from <https://www.bmfwf.gv.at/en/women-and-equality/women-s-rights-and-gender-equality-in-the-eu.html>.

Lavorosi.it. (2024, February 21). *Camera dei Deputati: Gender pay gap, le modalità di recepimento della direttiva*. Retrieved September 9, 2025, from <https://www.lavorosi.it/rapporti-di-lavoro/retribuzione/camera-dei-deputati-gender-pay-gap-le-modalita-di-recepimento-della-direttiva/#:~:text=citata%20Direttiva%2C%20al%20fine%20di,46%2F2024>.

Presidenza del Consiglio dei Ministri. (2021). *Missione 5 “Inclusione e coesione” del Piano Nazionale di Ripresa e Resilienza (PNRR): Parità di genere come criterio trasversale per i progetti cofinanziati con risorse UE*. Governo Italiano. <https://www.italiadomani.gov.it/en/il-piano/priorita-del-piano/parita-di-genere.html>.

## *Ringraziamenti*

Questo percorso ha rappresentato una grande scommessa per me. In esso ho riposto tante speranze, aspettative ed anche una grande scommessa su me stessa: quella di scegliere chi voglio essere. Questo elaborato è quindi per me un testamento di tali promesse, un qualcosa a cui spero di tornare quando metterò in dubbio cosa sto facendo. La paura della conclusione di tutto questo è davvero tanta, l'incertezza del dopo dietro l'angolo. Nonostante ciò, questi due anni mi hanno resa una persona nuova, con nuove consapevolezze e tanta, tantissima voglia di mettersi in gioco. Nel mentre ho avuto la fortuna di conoscere delle persone che porterò per sempre nel cuore e che quindi mi sembra doveroso ringraziare.

Ai miei colleghi di PAGE, coloro che hanno reso ogni lezione un piacere, che mi hanno fatto ridere anche quando avevamo essays, dibattiti e presentazioni da fare tutte insieme. Grazie per ogni momento condiviso, per avermi fatto vivere quegli anni di università con la spensieratezza che non ho mai avuto e per avermi ridonato una Giulia che non vedevo da tempo. Porterò per sempre nel cuore i nostri pranzi in giardino, le pause alle macchinette un po' troppo lunghe, le risate troppo forti in aula, il Vix di Francesco quando stavamo tutti male e le battute indecenti di Filippo. Grazie per le uscite tutti insieme, mi avete davvero fatto bene più di quanto mai saprete, mi mancherete davvero tanto.

Un grazie speciale è per Alice. So che non sei per niente tipa da queste cose, ma questa ti tocca. Sei stata tra le scoperte più belle di questo percorso e questo lo sai bene. Insieme a te ogni esame è stato meno pesante e ogni momento passato insieme lo custodirò con tanta cura, come si fa solo con le cose più preziose. Nonostante tu sia così diversa da me (dal tuo amore per il cocco alla Juve), non ho mai trovato una persona che riuscisse così tanto a starmi vicino in ogni cosa e con la quale mi senta così al sicuro. Mi hai sostenuta in un momento in cui ogni certezza mi è scivolata dalle mani e con tanta cura mi hai aiutato a ricostruirmi. Sai solo tu cosa sia stato il Lussemburgo per noi e sai anche benissimo che senza di te non so cosa avrei fatto. Ho imparato tanto da te e dalla tua forza, ti ammiro davvero tanto. Siamo veramente il best duo e non vedo l'ora di continuare a vederti crescere e brillare come fai ogni giorno.

Grazie di cuore anche alla mia Ludo per avermi regalato tanti sorrisi nonostante fossero le 9 di mattina, ai nostri pigiama party il weekend, per tutti gli abbracci quando eravamo sfrante e per la tua dolcezza infinita. Grazie a Chiaretta, per ogni nostra conversazione e per avermi fatto riscoprire la meraviglia di poter parlare di ciò che più mi sta a cuore. Grazie a Clara, per esserci avvicinate verso la fine di questo percorso e per essermi stata vicino nel tuo modo così meravigliosamente unico.



Grazie a Fin, per avermi vista come pochi sanno fare, per avermi ascoltata, sostenuta e aiutata sempre. Sei una persona brillante e davvero speciale, che farà grandi cose nella vita, ne sono certa.

Volevo poi ringraziare Valeria. Sei l'estensione della mia anima, ogni cosa che faccio la faccio per te, per essere all'altezza della meravigliosa donna che confermi di essere ogni giorno, sempre di più. Grazie per aver creduto in me in maniera così tenace, grazie per vedere in me quello che i miei occhi velano e per non aver mai dubitato delle mie abilità. Raggiungere questo traguardo insieme mi riempie il cuore di gioia e non potrei essere più orgogliosa di avere una sorella come te.

Alla mia mamma e a papà, che hanno saputo comprendere questa scelta e per avermi sempre dato gli strumenti e le risorse per potermi migliorarmi sempre di più. Sono estremamente grata di ciò che mi date da 24 anni, spero un giorno di potervi rendere orgogliosi tanto quanto io vi ammiri e di potervi ripagare di questi sforzi.

Ai miei nonni, le persone che vorrei avere sempre con me. Grazie per essere i miei sostenitori numero uno sempre, per essere la forza in ogni esame dato e per le chiamate per dirmi che credete in me. Un grazie importante alla mia stella nel cielo, che purtroppo non posso avere fisicamente vicino. In questi momenti nonnino mio manchi un po' di più, spero di continuare a essere il tuo orgoglio anche se non riesco a sentirtelo dire più. Vi amo infinitamente. Alla mia famiglia, coloro che sono così orgogliosi di me imprescindibilmente da ciò che faccio.

Alle amiche di una vita, in particolare grazie a Giuli e Mati, letteralmente non ricordo una vita senza di voi e spero di non doverlo mai fare. Dai banchi della prima elementare avete creduto in me come nessun altro, condividere ogni successo e insuccesso con voi è un privilegio meraviglioso. Grazie perché anche con uno sguardo mi capite, grazie per farmi sentire così speciale e per ricordarmi che i miei pesi non devo mai portarli da sola, anche quando tantissimi chilometri ci separano. Grazie per avermi regalato così tanto in tutti questi anni e per avermi amata in maniera così incondizionata.

A Livia, per le nostre conversazioni sul futuro che sembra meno spaventoso quando ci sei tu a parlarne, per capirmi ogni volta senza che io mi debba spiegare perché tu sai. A Mimmi, per essere il mio rifugio sicuro, per la tua meravigliosa empatia che tante volte mi ha così aiutata.

A Edo, per tutte le volte che mi hai permesso di condividere così tanto di me e per riuscire a capirmi così bene. Sai benissimo cosa penso della Luiss, ma tu sarai per sempre qualcuno per il quale sarò per sempre grata di aver frequentato questa università.

Alla mia Fede, il mio giallo, e letteralmente la persona che mi ha portato così tanta luce nel grigio del Lussemburgo, sono davvero grata di averti incontrata in questo percorso.

Alla mia Vali, la mia persona speciale che si è insinuata nella mia vita così rapidamente come fosse la cosa più facile del mondo. Grazie perché ogni tuo discorso mi fa sentire così validata e così forte, grazie perché da quando sei vicino a me, mi tieni la mano in ogni singola vicissitudine, bella o brutta che sia. Grazie per credere in me così ciecamente e per la forza con cui mi sostieni.

Una menzione molto importante va sicuramente alla mia terapeuta Cristina. Coi che mi ha guidato in questi due anni ricchi di alti e bassi emotivi e coei che mi sta insegnando come prendermi cura dei miei sogni, delle mie ansie e delle mie paure. Un grazie non basta.

A questo percorso e a questo traguardo, per avermi dimostrato che ci si può scegliere, che i rischi non sono sempre così spaventosi se si crede nelle proprie potenzialità. Anche se non mi piace riconoscermelo, un grazie a me stessa. Spero che la Giulia del futuro possa guardare a questi anni e ricordarsi di tutte le cose meravigliose che ha fatto e che, qualora si sentisse sola, possa leggere questi ringraziamenti e ricordarsi che è tanto amata. Mi auguro di ricordami anche le serate piene di ansia a chiedersi se questo fosse il percorso giusto, le solitarie notti insonni con il cuore spezzato e la paura che è ancora stretta in gola. Che possa sempre rammentarmi come nonostante ci sia stato anche tutto questo, sono sempre andata avanti e che un modo lo abbia sempre trovato. Alla curiosità e tenacia che ho mostrato di avere, quelle che mi hanno fatto concludere questo meraviglioso capitolo; che mi possano guidare alla volta di ciò che verrà dopo. Alla consapevolezza di essere stata brava e all'indulgenza che non mi do spesso, che mi faccia apprezzare il qui ed ora e che mi faccia innamorare un po' di più della vita. Quindi anche se non me lo dico mai, oggi più che in qualunque momento sento di potermelo dire: sei stata brava.