

ADVANCED EUROPEAN UNION LAW



A.A. 2022-2023
Primo Semestre

Scuola di Economia e Management
Università di Siena



Patrizia Vigni
DISAG

EQUAL TREATMENT IN EU LAW

Jean Monnet Module

European Union against Gender Inequality Action

EUGENIA

Coordinated

by

Professor Tania Groppi

DISAG

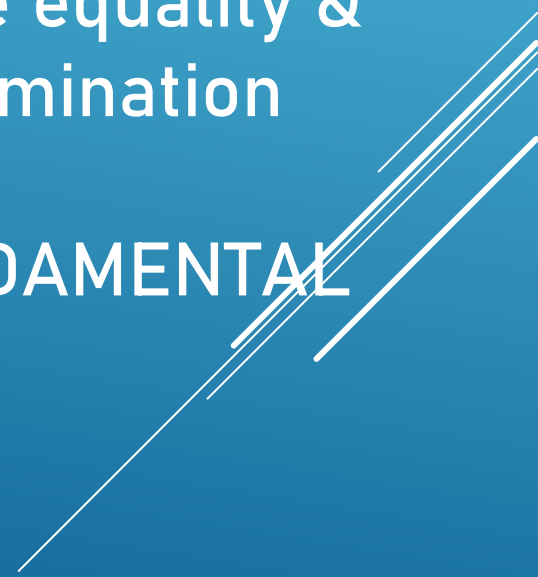
University of Siena

20 December 2022

A series of white diagonal lines of varying lengths and thicknesses, located in the bottom right corner of the slide, creating a modern, abstract graphic element.

EQUAL TREATMENT IN THE EU

BASIC NORMS

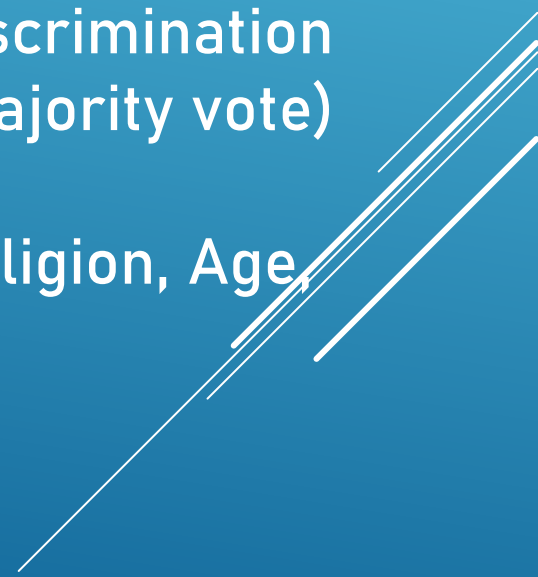
- ARTICLES 2 AND 3(3) TEU VALUES & AIMS
 - ARTICLES 8 AND 10 TFEU Promote equality & Combat discrimination
 - ARTICLE 21 EU CHARTER ON FUNDAMENTAL RIGHTS
- 
- Several white diagonal lines of varying lengths and thicknesses are positioned in the bottom right corner of the slide, creating a modern, abstract graphic element.

EQUAL TREATMENT IN THE EU

- FROM TOOL TO UNIFY EU INTERNAL MARKET TO “CONSTITUTIONAL PRINCIPLE”
- UNIFYING TOOL
 - ARTICLE 119 EEC (NOW ARTICLE 157 TFEU)
EQUAL PAY
 - Equal Pay
 - Equal Access and working conditions
 - Social Security
 - Consolidated Directive 2006/54 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation

EQUAL TREATMENT IN THE EU

LEGISLATIVE EVOLUTION

- ARTICLE 153(1)(i) TFEU EQUAL TREATMENT IN THE LABOUR MARKET
 - ARTICLE 19 TFEU – measures against-discrimination (unanimously) or incentive measures (majority vote)
 - Directive 2000/43 Race
 - Directive 2000/78 Employment for Religion, Age, Sexual Orientation
- 
- A series of white diagonal lines of varying lengths and thicknesses are positioned in the bottom right corner of the slide, creating a modern, abstract graphic element.

EQUAL TREATMENT IN THE EU

AGENCIES AND SOFT LAW

- EUROPEAN INSTITUTE FOR GENDER EQUALITY 2007
 - EUROPEAN NETWORK OF EQUALITY BODIES 2007
 - EU COMMISSION Gender Equality Strategy 2020-2025
 - EU COMMISSION ANNUAL REPORTS
- 
- A series of white diagonal lines of varying lengths and thicknesses, located in the bottom right corner of the slide, creating a modern, abstract graphic element.

EQUAL TREATMENT IN THE EU

EU STRATEGY ON GENDER EQUALITY

► Objectives

- ending gender-based violence
 - challenging gender stereotypes
 - closing gender gaps in the labour market
 - achieving equal participation across different sectors of the economy
 - addressing the gender pay and pension gaps
 - closing the gender care gap
 - achieving gender balance in decision-making and in politics
- 
- A series of white diagonal lines of varying lengths and thicknesses are positioned in the bottom right corner of the slide, creating a modern, abstract graphic element.

EQUAL TREATMENT IN THE EU

EU STRATEGY ON GENDER EQUALITY

- ▶ Dual approach
 - ▶ gender mainstreaming targeted actions
 - ▶ Intersectionality
- ▶ Proposals
 - ▶ Binding pay transparency measures (4 March 2021)
 - ▶ Directive to combat violence against women and domestic violence (8 March 2022)
- ▶ Recent Achievement
 - ▶ Directive on gender balance in corporate boards (22 November 2022)

EQUAL TREATMENT IN THE EU

EQUAL PAY

- ▶ ARTICLE 119 EEC (NOW ARTICLE 157 TFEU)
- ▶ CASE-LAW
 - ▶ Social Aim (Defrenne-Schroder)
 - ▶ Definition of “Pay”
 - Occupation Social Security v. State Social Security
 - ▶ “Advantages for Women” Retirement Age (Barber)
- ▶ Directive 2006/54 exception of voluntary contributions

EQUAL TREATMENT IN THE EU

GENDER DIRECTIVES

- ▶ Equal Treatment - Directive 2006/54
- ▶ State Social Security - Directive 79/7
- ▶ Pregnancy - Directive 92/85
- ▶ Access to and Supply of Goods and Services - Directive 2004/113
- ▶ Parental Leave - Directive 2010/18
- ▶ Self-Employed Men and Women Directive 2010/41

EQUAL TREATMENT IN THE EU

- ▶ DIRECTIVE 2006/54
 - ▶ Pay
 - ▶ Occupational Social Security
 - ▶ Working Conditions
- ▶ Prohibition of Direct and Indirect Discrimination (Art. 14) (Harassment, Sexual Harassment, Pregnancy and Maternity Leave)
- ▶ Exceptions
 - ▶ Occupational Qualification (1983 Male Midwives)
 - ▶ Pregnancy
 - ▶ Positive Action (Preferential Treatment for Weaker Persons – 1997 Marschall)

EQUAL TREATMENT IN THE EU

- ▶ DIRECTIVE 79/7 on Social Security
 - ▶ EU Residual Powers
 - ▶ Working Population
 - ▶ Employed and Self Employed
 - ▶ Illness and Unemployment
 - ▶ Seeking employment
 - ▶ Retired Population
 - ▶ Employment-related Social Security
 - ▶ Invalid Care Allowance YES
 - ▶ Housing Benefit NO

EQUAL TREATMENT IN THE EU

- ▶ **DIRECTIVE 79/7 on Social Security**
 - ▶ **Exceptions for Member States – Article 7:**
 - ▶ Retirement Age
 - ▶ Advantages for having grown up children
 - ▶ Invalidity Benefits as a Wife
 - ▶ Increases for long term invalidity to the workers and dependent wives
 - ▶ Option out of rights under statutory schemes
- 
- A series of white diagonal lines of varying lengths and thicknesses, located in the bottom right corner of the slide, creating a modern, abstract graphic element.

EQUAL TREATMENT IN THE EU

▶ DIRECTIVE 92/85 on Pregnancy

- ▶ Based on Article 153 TFEU Health and Safety at Work
- ▶ Workers:
 - ▶ Pregnant
 - ▶ Recently Given Birth
 - ▶ Breastfeeding
- ▶ Maternity Leave
- ▶ Prohibition to Dismiss Pregnant Women
- ▶ Minimum Level of Maternity Pay
- ▶ Directive 2006/54 prevails

EQUAL TREATMENT IN THE EU

- ▶ DIRECTIVE 2004/113 on Access to and Supply of Goods and Services
 - ▶ Not for the Employment Field
 - ▶ Insurance and Sex Stereotyping
 - ▶ Prohibition of Direct and Indirect Discrimination
 - ▶ Objective Justification (single-sex private clubs)
 - ▶ Temporary Differentiation allowed for Member States (2011 Association belge des Consommateurs Test-Achats)

EQUAL TREATMENT IN THE EU

- ▶ DIRECTIVE 2010/18 on Parental Leave
 - ▶ 1996 Framework Agreement
 - ▶ Minimum Level Individual Right – Non-Transferable
 - ▶ Birth of the Child
 - ▶ Force Majeure Family Reasons
 - ▶ Conditions decided by Member States
 - ▶ Prohibition of Dismissal
 - ▶ Indirect Discrimination
- (Rules on Dismissal – 2013 Reizneice)

EQUAL TREATMENT IN THE EU

- ▶ DIRECTIVE 2010/41 on Self-Employed Workers
 - ▶ 1986 Directive
 - ▶ Legal Basis Article 157(3) TFEU
 - ▶ Self-employed workers and their spouses
 - ▶ Duty to Social Protection for spouses – Article 7
 - ▶ Maternity Allowance – Article 8
- 
- A series of white diagonal lines of varying lengths and thicknesses are positioned in the bottom right corner of the slide, creating a modern, abstract graphic element.

EQUAL TREATMENT IN THE EU

FUNDAMENTAL PRINCIPLE OF EQUAL TREATMENT

- ▶ ARTICLES 21 AND 23 EU CHARTER
 - ▶ CASE-LAW
 - ▶ Fundamental Human Right (Defrenne)
 - ▶ Criterion of Legality of EU Acts (Rinke - Directives on medicine doctors)
 - ▶ Remedies
- 
- A series of white diagonal lines of varying lengths and thicknesses, located in the bottom right corner of the slide, creating a modern, abstract graphic element.

EQUAL TREATMENT IN EU LAW

Jean Monnet Module

European Union against Gender Inequality Action

EUGENIA

Coordinated

by

Professor Tania Groppi

DISAG

University of Siena

20 December 2022

