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Country report

Gender equality

Italy

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Country report

Gender equality

How are EU rules transposed into national law?

Italy

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2020 Directorate-General for Justice and Consumers

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1 Introduction

1.1 Basic structure of the national legal system

Article 37 of the Italian Constitution of 1948 states both equality at work between men and women and women's right to working conditions that allow them to fulfil their essential family functions and grant adequate protection to the mother and the child. The ambiguity of this rule rests on the principle of equality being flanked by the necessity of protecting women as weak subjects of the labour market. The logic of protection prevailed over that of equality for the next 30 years. During that period, alongside instruments of protection necessary to allow women to fulfil their family functions (such as protection against dismissal on grounds of marriage or pregnancy, compulsory maternity leave, and a ban on heavy and unhealthy work during pregnancy and motherhood), there was an excess of protection that discouraged women from working.

The influence of the EEC Directives No. 75/117 and No. 76/207 on equal pay and equal treatment between men and women, led to the employment legislation on women to be re-written according to the principle of equality and the protection of women was coordinated with equality. In particular, following those two directives, Act No. 903/1977 was introduced, which was the first piece of legislation on implementing the principle of non-discrimination between men and women as regards access to employment, vocational training and promotion, and working conditions. The influence of EU directives has always been, therefore, absolutely crucial in the field of gender equality and non-discrimination. However, Act No. 903/1977 mainly addressed direct gender discrimination and, as such, implemented a formal notion of equality.[1] It was only with Act No. 125/1991 that a substantive conception of equality was pursued: the act also introduced a wider and clearer notion of indirect discrimination and positive action. The concept of indirect discrimination opened the door to the evaluation of material obstacles to equality, thus leaving aside formal equality. Positive action, provided only in favour of women, aiming to remove all the material obstacles that hinder the fulfilment of equal opportunities, was addressed by Act No. 125/1991, thus implementing once again a concept of substantive equality. Later on, Act No. 53/2000 provided for bi-directional (that is to say: in favour of both women and men) positive action geared towards the reconciliation of professional, private and family life.

This legislation finds its roots in Article 3 of the Constitution. Article 3, Paragraph 1 provides a formal rule of equality as a constitutional right, stating:

> 'All citizens are equal and have equal dignity under the law, without distinctions on grounds of sex, race, language, religion, political opinions and personal or social conditions.'

The prevailing interpretation of this provision is that no differential treatment is allowed if it is grounded on the elements forbidden by Article 3. The second paragraph of Article 3 provides the basis of the definition of substantive equality:

> 'It shall be the responsibility of the Republic to remove all obstacles of an economic and social nature which, by limiting the freedom and equality of citizens, hinder the full development of the human person and the effective participation of all workers in the country's political, economic and social organisation.'

Substantive equality is grounded on the attribution of relevance to the differences existing between categories of persons, which are grounded on their belonging to different genders or ethnic, racial or social groups, in order to remove all the adverse consequences

[1] In this report we prefer to use the notion of gender discrimination rather than sex discrimination, as it is closest to the term used in our legislation.

(inequalities) caused by such differences. Equal opportunities, in other words, are the final end of substantive equality.

Acts No. 903/1977 and No. 125/1991 were later merged in Decree No. 198/2006, a consolidation act called the Code of Equal Opportunities between Men and Women (the Equal Opportunities Code). The Equal Opportunities Code gathered (and revised many) provisions on gender discrimination and equal opportunities in all civil, political, social and economic fields, including the working relationship. The notions of direct and indirect discrimination contained in the Equal Opportunities Code repeat almost word for word the respective concepts set out by the EC directives. These notions have also been strongly influenced by the European Court of Justice case law. The concept of equal opportunities is mainly embodied in positive action measures, as instruments of substantive equality: they are regulated in section IV of the third part of the Equal Opportunities Code on 'Equal opportunities in economic relationships', under the heading 'Promotion of equal opportunities'. The categorisation of the positive action measures provided has been definitely influenced by Recommendation no. 84/635/EEC.

Article 117 of the Constitution provides for the boundary between the legislative powers of the state and those of the regions. The state has exclusive competence in the 'determination of the basic standards of welfare relating to those civil and social rights that must be guaranteed in the entire national territory;' Article 117 then states: 'regional laws shall remove all obstacles which prevent the full equality of men and women in social, cultural and economic life, and shall promote equal access of men and women to elective office.' The regions can thus legislate on substantive equality and gender equality.

1.2 List of main legislation transposing and implementing the directives

- Act No. 145 of 30 December 2018, Budget Act for 2019, published in OJ No. 302 of 31 December 2018, o.s. No. 62;
- Act No. 205 of 27 December 2017, Budget Act for 2018, published in OJ No. 302 of 29 December 2017, o.s. No. 62;
- Act No. 81 of 22 May 2017, on the protection of self-employment and flexible employment, OJ No. 135 of 13 June 2017;
- Decree No. 151 of 14 September 2015 on the simplification of bureaucracy and other provisions, OJ No. 221 of 23 September 2015;
- Decree No. 80 of 15 June 2015 on the protection of motherhood and fatherhood, the promotion of reconciliation measures and protection against gender violence, OJ No. 144 of 24 June 2015;
- Act No. 65/2014 on amendments to Act No. 18/79 on the election of Italian members of the European Parliament, as regards gender balance and transitory provisions for the 2014 elections, OJ No. 95 of 24 April 2014;
- Decree No. 149/2013 on the revocation of direct public financing of parties and on the regulations of voluntary and indirect forms of financing, implemented by Act No. 13/2014, OJ No. 47 of 26 February 2014;
- Decree No. 76/2013 on urgent regulations on occupation, social cohesion, VAT and other financial measures, implemented by Act No. 99/2013, OJ No. 150 of 22 August 2013;
- Act No. 228/2012, Budgeting regulations, OJ No. 302 of 29 December 2012, Ordinary Supplement No. 212;
- Act No. 215/2012 on the promotion of gender balance in local government bodies and on the promotion of equal opportunities in the composition of public competition commissions in the public sector, OJ No. 288 of 11 December 2012;
- Act No. 92/2012 on the reform of the labour market in a perspective of growth, OJ – Ordinary Supplement No. 136 of 3 July 2012;
- Act No. 214/2011, on growth, equity and consolidation of public spending, OJ No. 284, Supplement No. 251 of 6 December 2011;

- Act No. 120/2011, on the appointment of managing directors and auditors of listed companies and state subsidiary companies, OJ No.174 of 28 July 2011;
- Decree No. 5/2010, implementing Directive 2006/54/EC, OJ No. 29 of 5 February 2010;
- Act No. 101/2008, implementation in an act, with modifications of Decree No. 59/2008 on the implementation of EU obligations and Court of Justice decisions, published in OJ No. 132 of 7 June 2008;
- Decree No. 196/2007, implementing Directive 2004/113/EC on the principle of equal treatment between men and women in the access to and supply of goods and services, OJ No. 261 of 9 November 2007;
- Decree No. 116/2007, Regulations of the Commission for Equal Opportunities between Men and Women (following Article 29 of Decree No. 223/2006), as implemented by Act No. 248/2006, OJ No. 177 of 1 August 2007;
- Decree No. 198/2006, Code of Equal Opportunities between Men and Women under Article 6 of Decree No. 246/2006, OJ No. 125 of 31 May 2006 (Equal Opportunities Code);
- Decree No. 145/2005, implementing EU Directive 2002/73/EC amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training, promotion and working conditions, OJ No. 173 of 27 July 2005;
- Article 57 of Decree No. 165/2001 on work relationships in the public sector, OJ No. 106 (S.O. No. 112) of 9 May 2001;
- Decree No. 151/2001 on sustaining motherhood and fatherhood, OJ No. 96 of 26 April 2001;
- Act No. 53/2000, on sustaining motherhood and fatherhood, time for care and for vocational training, and coordinating hours of the public services of towns, OJ No. 60 of 13 March 2000;
- Decree No. 645/1996, implementing EU Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, OJ No. 299 of 21 December 1996.

1.3 Sources of law

The structure of the national legal system for guaranteeing equal treatment in Italy is mainly based on constitutional and statutory law.

Statutory law can take the form of acts of Parliament or governmental decrees; governmental decrees are issued following an act of delegation sent by Parliament to the Government (a legislative decree).

The Constitution ensures the fundamental rights of the person and sets limits on property rights and on private economic initiatives in relation to fundamental rights and the public interest. Articles of the Constitution are directly applicable. According to many authors, they can also be invoked in horizontal relations (between private parties); however, this has never been fully accepted by the courts and therefore they are mainly used in Constitutional Court cases to assess whether the ordinary legislation complies with the principles of equality. Civil actions are based on the fundamental rights contained in Article 2 of the Constitution (tort law, Article 2059, Civil Code) in all cases of non-economic loss (pain and suffering). The principle of equality provided in Article 3 of the Constitution is generally not relied upon in civil actions although, theoretically, it could be; however, reference to this principle of equality is quite often made by the Constitutional Court to verify the constitutional legitimacy of legislation.

EU equality directives are normally implemented by legislative decrees. Such decrees often repeat the text of the directive word for word. The verbatim reproduction of directives in

our system can be regarded as bad practice: it does not ensure the necessary coordination with other existing provisions and does not promote knowledge of European legislation.

According to Article 117 of the Constitution, regions can legislate on substantive equality and gender equality; the state, however, has exclusive competence in the determination of the basic standards of welfare relating to those civil and social rights that must be guaranteed in the entire national territory.

There is little case law on gender equality and therefore case law plays only a marginal role, which could be both a cause and an effect of the merely formal implementation of directives.

Equality bodies, ruled by the Equal Opportunities Code (Decree No. 198/2006), have different powers that, taken together, are aimed at the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds of sex. The equality advisers have legal standing to: bring discrimination complaints on behalf of identified victims to court; bring discrimination complaints on behalf of non-identified victims to court; and intervene in legal cases concerning discrimination, such as *amicus curiae*. In particular, national and regional equality advisers can act directly in their own name in cases of collective discrimination. Local advisers can also initiate legal claims when delegated to do so by an individual employee or can intervene in a process that was initiated by the latter. However equality bodies do not have quasi-judicial powers and their opinions are not considered a source of law.

Authoritative scholarly interpretations are neither considered a source of law, nor play a role in the decisions of courts.

2 General legal framework

2.1 Constitution

2.1.1 Constitutional ban on sex discrimination

Article 3 of the Italian Constitution provides the general framework for protection against discrimination. It states: 'All citizens are equal and have equal dignity under the law, without distinctions on grounds of sex, race, language, religion, political opinions and personal or social conditions.' The second paragraph of Article 3 confirms the principle of substantive equality, according to which the state is called upon to remove social and economic obstacles which limit the freedom and equality of citizens and prevent the full development of the human being and the effective participation of all the workers in the political, economic and social organisation of the country. Paragraph 2 of Article 3 provides a constitutional basis for different treatment aimed at the pursuit of equal opportunities and positive action.

2.1.2 Other constitutional protection of equality between men and women

The Constitution contains other articles pertaining to equality between men and women. Article 37, Paragraph 1 of the Constitution states that a female worker shall have the same rights and, in the case of equal work, the same remuneration as a male worker. Article 37 also lays down certain working conditions for women, such as allowing them to fulfil their essential family functions and granting adequate protection to the mother and the child.

Article 51 of the Constitution lays down the principle of equality between men and women as regards eligibility for public office and for elected positions. It also provides that the Republic shall promote equal opportunities for men and women.

Article 117 states that 'regional laws shall remove all obstacles which prevent the full equality of men and women in social, cultural and economic life, and shall promote equal access of men and women to elective office.'

2.2 Equal treatment legislation

Our country has specific equal treatment legislation. Legislative interventions during the last 20 years have resulted, on the whole, in an effective implementation of EU directives on gender discrimination in Italy and, sometimes, domestic legislation has gone even further than EU law.

Decree No. 198/2006, a consolidating act called the Code of Equal Opportunities between Men and Women (the Equal Opportunities Code), contains all anti-discriminatory provisions relating to gender which were issued to implement EU directives or which were already in conformity therewith. It combined all the provisions on gender discrimination and equal opportunities in all civil, political, social and economic fields, including working relationships. The Equal Opportunities Code has been amended on several occasions, including by Decree No. 5 of 25 January 2010, which transposed Recast Directive 2006/54/EC.

Another important piece of legislation in this field is Act No. 53/2000 on sustaining motherhood and fatherhood, time for care and for vocational training, and coordination of hours in the town's public services (and its subsequent amendments). Also important is Decree No. 151/2001 on the protection of motherhood and fatherhood, which includes all rules on pregnancy, maternity, paternity, parental leave and leave related to work-life balance, also implementing Directives 2006/54 and 2010/18.

Act No. 120 of 12 July 2011 introduced a quota system for the appointment of managing directors and auditors of listed companies and state subsidiary companies, where each sex cannot be represented in a proportion lower than one third.

Furthermore, Act No. 215 of 23 November 2012, Act No. 13/2014 and Act No. 65/2014 introduced new regulations aimed at achieving gender equality in politics and in hiring procedures in public administration.

Other grounds of discrimination, such as politics, religion, race, language or sex, are covered by Article 15 of the Workers' Statute. Article 2 of Decree No. 215 of 9 July 2003, which implements EU Directive 43/2000, provides for a prohibition on discrimination on the ground of racial or ethnic origin. Article 2 of Decree No. 216 of 9 July 2003, implementing EU Directive 78/2000, provides for a prohibition on discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation.

3 Implementation of central concepts

3.1 General (legal) context

3.1.1 Surveys on the definition, implementation and limits of central concepts of gender equality law

Although scholars have debated the meanings of concepts of equality and non-discrimination in the past, there are no surveys or reports available on these issues.

Scholars regard the principle of non-discrimination as the reverse side of equality: as equality means abstraction from differential characteristics of individuals, the principle of non-discrimination regards giving relevance to these differential characteristics as illegal.[2] The extension of the concept of discrimination to harassment and sexual harassment, which are infringements of the absolute right to individual dignity, helped the evolution of the notion of discrimination from a relative concept, needing a comparator in order to be assessed, to becoming an absolute concept, which can be defined in terms of social disadvantage or of infringement of fundamental social rights, different from equality.[3]

As regards direct discrimination, scholars stress the bi-directional character of the notion, which addresses both women and men, as well as the irrelevance of the discriminatory intention, given that the notion is based on the differential impact of the treatment.[4]

According to legal theories, the concept of indirect discrimination is based upon the three structural characteristics provided by both the EU legislation and the CJEU case law, which have greatly influenced the development of these concepts in Italy. The three characteristics are: apparent neutrality of the criterion under examination; particular disadvantage of one sex as compared with persons of the other sex, which according to some scholars does not mean existence of an effective prejudice;[5] absence of objective justification. Indirect discrimination is seen among academics as allowing the overtaking of the individual dimension of equality, thus giving value to the link between the individual and the group to whom she/he belongs: indeed, the comparison test to detect discrimination is made between groups. However, some academics affirm that, in the light of the EU legislation, indirect discrimination can also be assessed by focusing on the individual situation of disadvantage, rather than on that of the group.[6] It is widespread opinion that indirect discrimination is deemed to imply the evaluation of material obstacles to equality, thus leaving aside formal equality in favour of substantive equality.

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2 Ballestrero M.V. (1994), 'Le azioni positive fra eguaglianza e diritto diseguale' (Positive action, equality and unequal legislation) in: Ballestrero M.V. & Treu T. (ed.) *Legge 10 aprile 1991, n. 125, Azioni positive per la realizzazione della parità uomo-donna nel lavoro, Commentario sistematico*, *Nuove leggi civili commentate*, p. 14.

3 See on this issue Barbera M. (2007), 'Il nuovo diritto antidiscriminatorio: innovazione e continuità' (The new anti-discriminatory legislation: innovation and continuity) in: Barbera M. (ed.), *Il nuovo diritto antidiscriminatorio,* Milano, Giuffrè, pp. XXXI-XXXVII.

4 See on this issue: Barbera M. (2007), 'Il nuovo diritto antidiscriminatorio: innovazione e continuità' (The new anti-discriminatory legislation: innovation and continuity) in: Barbera M. (ed.), *Il nuovo diritto antidiscriminatorio,* Milano, Giuffrè, pp. XXXI-XXXVII; Guaglianone L. (2007), 'Le discriminazioni basate sul genere' (Gender discriminations) in: Barbera M. (ed.), *Il nuovo diritto antidiscriminatorio,* Milano, Giuffrè pp. 261-265; Izzi D. (2003), 'Discriminazioni senza comparazione? Appunti sulle direttive comunitarie di seconda generazione' (Discriminations without comparator? Notes on the EU directives of second generation) *Diritto delle relazioni industriali*, p. 423.

5 See on this issue Barbera M. (2007), 'Il nuovo diritto antidiscriminatorio: innovazione e continuità' (The new anti-discriminatory legislation: innovation and continuity) in: Barbera M. (ed.), *Il nuovo diritto antidiscriminatorio,* Milano, Giuffrè, pp. XXXI-XXXVII.

6 See on this issue Barbera M. (2007), 'Il nuovo diritto antidiscriminatorio: innovazione e continuità' (The new anti-discriminatory legislation: innovation and continuity) in: Barbera M. (ed.), *Il nuovo diritto antidiscriminatorio,* Milano, Giuffrè, pp. XXXI-XXXVII. The author supports her findings by quoting Barnard C. & Hepple B. (2000), 'Substantive equality' *Comparative Law Journal*, p. 568.

Limited information on the implementation of central concepts can be found in the local equality advisers' reports on their activities, presented in December each year to the local bodies where they are set up and to the Ministry of Labour. The findings of the 2017 reports were published in July 2018.[7] The bodies dealt with 3 765 requests of intervention against discriminatory activities and 1 942 cases out of the 3 765 requests of intervention were taken into consideration. The equality bodies, in particular, dealt with gender discrimination in respect of the following grounds: access to work (10 %), reconciliation issues and working time (21 %), career advancement (10 %), equal pay (5 %), maternity/paternity issues (20 %), mobbing (13 %), harassment/sexual harassment (13 %).

3.1.2 Other issues

Case law on equality and non-discrimination is worth consideration. Case law tends to use the concepts as provided by legislation, in particular by the Equal Opportunities Code. The role of the concepts of direct and indirect discrimination provided by legislation is crucial for the assessment of gender discrimination.

The notion of direct discrimination is often regarded by case law as a relative concept, which needs a comparator in order to be assessed. The bi-directional nature of the notion of direct discrimination, which addresses both women and men, and the irrelevance of the discriminatory intention, given that the notion is based on the different impact of the treatment, are also stated by case law.

With respect to indirect discrimination, case law takes into consideration the apparent neutrality of the specific criterion, the particular disadvantage of one sex as compared with persons of the other sex and the absence of objective justification.

A few decisions show the natural link between the anti-discrimination legislation and the principle of equality by tracing the roots of the concepts of direct and indirect discrimination in Articles 3 and 37 of the Constitution.[8]

The concept of equal opportunities, as an application of the principle of substantive equality of Article 3, Paragraph 2 of the Constitution, is used in decisions on reserved quotas for women in the access to employment or in hiring commissions for civil service posts. In these cases, the concept of equal opportunities has been decisive in assessing the constitutional legitimacy of reserved quotas provided by legislation. The principle of equality stated by Article 3 of the Constitution is also often used by the Constitutional Court to assess the legitimacy of provisions in the light of gender equality.[9]

3.1.3 General overview of national acts

Decree No. 198/2006 (the Equal Opportunities Code), contains all anti-discriminatory provisions relating to gender that were issued to implement EU directives or that were already in conformity with them.

Another important piece of legislation on central concepts is Act No. 53/2000 on sustaining motherhood and fatherhood, time for care and for vocational training, and coordination of

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[7] Bagni Cipriani, F. (2018) *Analysis of reports of local equality advisers 2017*, Ministry of Labour, available at: http://www.lavoro.gov.it/ministro-e-ministero/Organi-garanzia-e-osservatori/ConsiglieraNazionale/Consigliera-nazionale-di-parita/Documents/Presentazione-Dati-Rapporti-2017-11072018.pdf.

[8] See, for all: Court of Cassation (Corte di Cassazione, sez. lav.), 24-04-2007, No. 9866*;* 21-09-2006, No. 20455*;* Tribunal of Catania 22-11-2000*;* Tribunal of Genova*,* 30-09-1997; Tribunal of Catania, 22-11-2000*;* Pretura Bologna (magistrate's court), 27-06-1998*;* Pretura Trento, 05-05-1992.

[9] Constitutional Court*,* cases No. 371/1989 and No. 134/1991. Contra European Court of Justice case No. 139/95, which declares the named provisions on early retirement compatible with the EU anti-discriminatory legislation, on the basis of Article 7(1)(a) of Directive 79/7/EEC.

hours in the town's public services (and subsequent amendments). Also important is Decree No. 151/2001 on the protection of motherhood and fatherhood, which includes all rules on pregnancy, maternity, paternity, parental leave and leave related to work-life balance, also implementing Directives 2006/54 and 2010/18.

These provisions are also part of Labour Law.

3.1.4 Political and societal debate and pending legislative proposals

At present, there is no political and/or societal debate and there are no pending legislative proposals on the central concepts of gender equality.

3.2 Sex/gender/transgender

3.2.1 Definition of 'gender' and 'sex'

The terms gender/sex are not defined in our national legislation and neither does the Italian legislation on equal opportunities expressly refer to gender reassignment, although the latter can probably be included in the wider concept of sex discrimination and in the concept of 'sexual orientation.'

3.2.2 Protection of transgender, intersex and non-binary persons

Article 3 of Constitution provides for the equality principle to be applied in Italy. This is a general rule against all kinds of discrimination. All the anti-discriminatory legislation comes from this norm. This legislation has been enormously strengthened thanks to the EU directives on gender equality and anti-discrimination. Decree No. 216/2003 implementing Directive 78/2000/EC expressly included sexual orientation among the grounds of discrimination, although it did not include a specific protection for transgender, intersex and non-binary persons. Indeed, there are many provisions that prohibit direct and indirect discrimination related to sexual orientation (Article 15 of Workers Statute – Act No. 300/1970, for example). Furthermore, there is all the anti-discriminatory legislation on gender. However, the Italian legislation on equal opportunities between men and women does not explicitly refer to transgender, intersex and non-binary persons. Nonetheless, in the view of the author of this report, despite the fact that gender reassignment is not explicitly provided for by Italian legislation, it can be included under the grounds of discrimination of sexual orientation and gender discrimination.

The material scope of these provisions is: employment and occupation for the ground of sexual orientation (Decree No. 216/2003); employment, occupation, pensions, goods and services, health, education, politics, economy, social, cultural, civil and any other field, for the ground of gender (Decree No. 198/2006, the Equal Opportunities Code).

Finally, it is worth mentioning that Act No. 164 of 1982 allows gender reassignment for transgender persons.

3.2.3 Specific requirements

No specific requirements are demanded in order to benefit from legal non-discrimination protection.

3.3 Direct sex discrimination

3.3.1 Explicit prohibition

Direct sex discrimination is explicitly prohibited by Articles 25 to 35 of Decree No. 198/2006 as regards equal pay and equal treatment at work, statutory and occupational

pensions, access to public employment, and equal treatment in a military career. Less favourable treatment based on a worker's rejection of or submission to harassment or sexual harassment will also be considered to be discrimination. The same holds true for an instruction to discriminate.

Direct discrimination is defined by Article 25 of Decree No. 198/2006. Direct discrimination occurs when 'one person is treated less favourably than another is, has been or would be treated in a comparable situation.' This definition of direct discrimination is a literal reflection of the concepts defined by the Recast Directive.

The role of the concept of direct discrimination provided by legislation is crucial for the assessment of gender discrimination. The notion of direct discrimination is regarded as a relative concept, which needs a comparator in order to be assessed. The symmetrical nature of the notion of direct discrimination, which addresses both women and men, and the irrelevance of the discriminatory intention, given that the notion is based on the different impact of the treatment, have also been recognised by case law.[10]

3.3.2 Prohibition of pregnancy and maternity discrimination

Less favourable treatment related to marriage, pregnancy, motherhood or fatherhood, and adoption, as well as relating to the respective rights emanating therefrom, is considered to be direct gender discrimination (Articles 25 of Decree No. 198/2006). The provision complies with EU legislation.

3.3.3 Specific difficulties

There are no specific difficulties in our country in applying the concept of direct sex discrimination.

3.4 Indirect sex discrimination

3.4.1 Explicit prohibition

Indirect sex discrimination is explicitly prohibited by Articles 25 to 35 of Decree No. 198/2006 as regards equal pay and equal treatment at work, statutory and occupational pensions, access to public employment, and equal treatment in a military career.

Indirect discrimination is defined by Article 25 of Decree No. 198/2006. Indirect discrimination is 'where an apparently neutral provision, criterion or practice would put workers of one sex at a particular disadvantage compared with workers of the other sex, unless that provision, criterion or practice concern essential requirements for the job objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.'

The concept fulfils the requirements of the Recast Directive and, as regards the justification clauses, the notion of indirect discrimination is stricter than EU law: in fact, neutral criteria which result in a disparate impact are only legitimate if they are essential requirements for the job.

3.4.2 Statistical evidence

In Italy, statistical evidence is used in order to establish a presumption of indirect sex discrimination.

[10] See Constitutional Court No. 432/2005.

In relation to the use of quantitative/statistical data, Decree No. 198/2006 goes further than EU law, as Article 46 requires companies with more than 100 employees to draw up reports every two years (and to deliver them to the company's union representatives and to the regional equality advisers) on the situation of workers (male and female) as regards recruitment, professional training, career opportunities, mobility between categories and grades, other mobility aspects, remuneration, dismissals and retirement.

3.4.3 Application of the objective justification test

With respect to indirect discrimination, case law takes into consideration the apparent neutrality of the criterion under examination, the particular disadvantage for one sex as compared with persons of the other sex and the absence of an objective justification.

The objective justification test is, therefore, correctly applied by national courts. However, litigation concerning gender discrimination remains scarce in our country.

3.4.4 Specific difficulties

There are no specific difficulties in our country in applying the concept of indirect sex discrimination.

3.5 Multiple discrimination and intersectional discrimination[11]

3.5.1 Definition and explicit prohibition

Multiple discrimination is included in the Italian legislation in the extremely simplified form of double discrimination. The only references thereto are in legislative Decree Nos. 215 and 216 of 2003, transposing Directives 43/2000 and 78/2000, and in the corresponding act of delegation. In particular, Article 1 of Decree No. 215/2003 provides that the implementation of equal treatment, irrespective of race and ethnic origin, must take place 'also in a perspective that takes into account the different impact that the same forms of discrimination can have on women and men, and the existence of forms of racism with a cultural and religious character;' this formula is repeated in Article 7 of the decree, where the tasks of the National Office against Racial Discrimination (UNAR) are defined. In this respect, the decree fulfils the guideline provided by Delegation Act No. 39/2002, which in Article 29 requires that the implementation of Directive 43/2000 should take into account the existence of discrimination on the double grounds of gender and race and ethnic origin. A similar concept of multiple discrimination is provided by Article 1 of Decree No. 216/2003, which states that the implementation of equal treatment, irrespective of religion or belief, disability, age or sexual orientation, as regards employment and occupation must be carried out in a 'perspective that also takes into account the different impact that the same forms of discrimination can have on women and men.' Multiple discrimination, therefore, is not properly defined and is perceived by the legislature only as a sum of the grounds of gender and other discriminatory factors.

Several grounds of discrimination can be simultaneously invoked in the same claim. However, one of the reasons why the Italian judiciary and legislation fail to address multiple discrimination is the lack of an explicit provision in domestic legislation. Lawyers are generally prone to choose the strongest ground on which to take their case to courts and to leave out the grounds that are difficult to prove either singularly or in combination. Most of the time they do not even think about the possibility of arguing on the basis of more than one ground. At present, there are no pending legislative proposals on multiple/intersectional discrimination.

[11] See for more information Fredman, S. (2016) *Intersectional discrimination in EU gender equality and non-discrimination law*, European network of legal experts in gender equality and non-discrimination, available at https://www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb.

Moreover, the lack of legislation against discrimination outside employment and occupation on the grounds of age, disability, religion/belief and sexual orientation is a problem when these grounds are combined with existing grounds, because this prevents argument on the grounds in an intersectional or cumulative way as is required in a hypothesis of multiple discrimination (when age, disability, religion/belief and/or sexual orientation intersect outside employment). Furthermore, the fact that the two anti-discrimination directives provide for an exhaustive list of discriminatory grounds rather than for an open list of prohibited factors does not assist in the protection against multiple discrimination.

At a more general level, gender policies and non-discrimination policies should not be separated because this does not favour the development of a coordinated action to defeat discrimination and specifically endangers the intersections and communication across the various grounds that are necessary in order to recognise the combined effect of different grounds of discrimination.

On 16 October 2019, Parliament approved, four motions to tackle multiple discrimination on the grounds of gender and disability.[12] The motions are based on data showing the seriousness and prevalence of the phenomena and draw on the UN Convention on the Rights of People with Disabilities, ratified by the European Union on 5th January 2011 and on the European Parliament resolution of 29 November 2018 on the situation of women with disabilities. The motions encourage the Government to tackle multiple discrimination on the grounds of gender and disability by: enhancing mainstreaming of such discrimination in all public policies; assuring disabled women full access to healthcare, including sexual healthcare, and protecting their right to self-determination in this sphere; promoting professional training of healthcare staff to give assistance to disabled women; ensuring that disabled women are given all the information and support necessary to report that they are victim of violence or discrimination or to claim their rights in such cases; ensuring that their particular disadvantageous condition is fully taken into consideration by specific measures provided in the national plan against gender violence; promoting the participation of disabled women in the labour market, society and sports; including multiple discrimination issues in all campaigns aimed at tackling gender discrimination or disability discrimination; enhancing all initiatives to use EU funds aimed at tackling discrimination of disabled women; and promoting a monitoring system to evaluate both the prevalence of this kind of multiple discrimination and the effectiveness of the measures to tackle it. Although a motion is a soft measure, the approval of these documents is still very important as it focuses attention on an issue which is often overlooked in Italy.

3.5.2 Case law and judicial recognition

There is a particular group of cases in which gender could be recorded in combination with another ground of discrimination. These are cases where reaching the pensionable age or the possibility of relying on early retirement is used as a criterion for redundancy. In general, a person can work after reaching the pensionable age. In our system, the pensionable age, and consequently the age of early retirement, was lower for women than it was for men, although women could choose to keep on working until the age provided for men (this was so until 2018, by which time the pensionable age had been equalised).

[12] Motion n. I-00243 of 24 September 2019, as modified and finally approved on 15 October 2019, https://www.camera.it/leg18/410?idSeduta=0239&tipo=documenti_seduta&pag=allegato_a#si.1-00243.mod.v1; Motion n.-00262 of 14 October 2019 as modified and finally approved on 15 October 2019, https://aic.camera.it/aic/scheda.html?numero=1-00262&ramo=C&leg=18; Motion n. I-00263 of 14 October, as modified and finally approved on 15 October 2019, https://www.camera.it/leg18/410?idSeduta=0239&tipo=documenti_seduta&pag=allegato_a#si.1-00262.mod.v1; Motion n. I-00264 of Motion n. I-00263 of 14 October as modified on 15 October 2019 and finally approved on 16 October, https://www.camera.it/leg18/410?idSeduta=0239&tipo=documenti_seduta&pag=allegato_a#si.1-00264.mod.v1.

This means that the criterion of reaching the age of retirement, irrespective of the lower pensionable age for women, was discriminatory both on the ground of gender and age, as it caused women to be dismissed at a younger age and earlier than men, despite the fact that women could choose to keep on working until the retirement age provided for men. Nevertheless, the case law that dealt with this issue, which was very limited, was absolutely unaware of the hypothesis of multiple discrimination. Therefore, there are cases where the criterion of reaching retirement age is regarded as discriminatory exclusively on grounds of age, the ground of gender being ignored (for example Tribunal of Milan, 27 April 2005) and cases where the existence of gender discrimination is denied and the age ground is not taken into consideration at all (Court of Cassation, No. 9866/2007; Court of Cassation, No. 20455/2006; Tribunal of Genova 30 September 1997).

Another group of cases concerns non-EU disabled residents, who do not qualify for social protection benefits and advantages: the grounds of discrimination are those of nationality and disability. Here, indeed, the intervention of the Constitutional Court was crucial in order to recognise the hypothesis of double discrimination. In one decision, the Court granted the mobility allowance to non-EU residents (case No. 306/2008): the Court recognised the double grounds of nationality and disability by referring to Articles 3 (principle of equality), 10 (status of foreign persons), 32 (health rights) and 38 (social protection) of the Constitution. Moreover, the Constitutional Court gave non-EU disabled residents the right to use public transport free of charge on the basis of the equality principle and Article 32 of the Constitution (health rights), thus recognising once more the two discriminatory grounds of nationality and disability (case No. 432/2005). In 1998, the Court had already acknowledged the relevance of the grounds of nationality and disability in an interpretative decision (case No. 454), when it gave non-EU disabled residents certain advantages in employment procedures (see also case No. 324/2006). Although various grounds have been recognised, this has not resulted in the combined effect of such grounds being acknowledged by the courts. In particular, the occurrence of more than one ground has not resulted in higher sanctions or awards of damages, mainly because double grounds were relevant in cases decided by the Constitutional Court, which is competent only regarding the legitimacy of legislation with respect to the Constitution and cannot evaluate the merits of individual cases.

In these cases no comparison-based tests were used, therefore disadvantage linked to nationality and disability was sufficient.

3.6 Positive action

3.6.1 Definition and explicit prohibition

Positive action measures are regulated in Italy by: Article 37, Article 42 et seq. and Article 52 et seq. of the Equal Opportunities Code (Decree No. 198/2006); Article 9 of Act No. 53/2000; and Act No. 215/2012.

The Equal Opportunities Code provides for two kinds of positive action measures in employment. The first kind of positive action measure includes compulsory measures in respect of collective discrimination, i.e. cases of unlawful differential treatment in working conditions, access to jobs and so on, where a whole group of female workers is discriminated against. They can start with a conciliation attempt (Article 37 Paragraph 1), where the agreement on the enforcement of a plan to remove the discrimination becomes a writ of execution through a decree of the court. They can also start with ordinary proceedings (Article 37 Paragraph 3), where the court in the decision ascertaining a collective discrimination, after having heard trade union representatives as well as the national or regional equality adviser, orders the employer to set up a plan to end it, fixing a time limit for drawing up the plan; a penal and an administrative sanction is provided in case of non-compliance with the court order and public contractors can be excluded from incentives and contracts with public administrations. In these cases the 'victim' is a group

of women and the conciliation attempt or the complaint is initiated by the national or regional equality adviser.

The second kind includes voluntary positive action under Article 42 et seq. of the Equal Opportunities Code. Here, positive action is defined as measures designed to encourage female employment and to achieve substantial equality between men and women at work. Positive action goes beyond formal equality as it can include preferential measures for workers belonging to the disadvantaged gender, consistent with Article 3 of the Constitution and with the principle of substantive equality. Positive action measures are voluntary measures.

In the public sector, employers are also entitled to request financing for positive action plans and must draw up three-year positive action plans aimed at achieving a better balance between the sexes in jobs and professions where women are underrepresented (that is, they make up less than one third of the total) (Article 48 of the Equal Opportunities Code).

In the field of entrepreneurial activity, positive action is provided as preferential measures meant to favour access to bank credit and public funds (Articles 52 to 55 of the Equal Opportunities Code).

Article 9 of Act No. 53/2000 provides for other kinds of voluntary positive action, which is symmetrical, as it can address both women and men. This is the allocation of part of the Fund for Family Policies (the Family Fund) to businesses that enforce collective agreements on positive action aimed at: allowing parents to adopt a flexible working time schedule, through part-time, teleworking, homework, flexitime and other measures; reintroducing parents to the workplace after a period of leave linked to reconciliation reasons; and promoting innovative services for the reconciliation of private and professional life. Positive action measures have to address parents with minor children; priority is given to parents with children under 12 (or under 15 in the case of temporary custody or adoption) and to parents with disabled children. Funds are accessible to private employers and some public bodies, such as local health units and hospitals. Moreover, the Family Fund can also support the promotion of and professional advice on, the planning and the monitoring of the measures to be carried out through territorial networks. The support of such measures by the Family Fund could be useful as far as the quality of the projects is concerned, but could also conceal the risk of wasting resources.

The definitions of positive action provided in Italian legislation comply with the EU definition in Article 157(4) TFEU.

3.6.2 Conceptual distinctions between 'equal opportunities' and 'positive action' in national law

Equal opportunities (or equality of opportunity) are realised through substantive equality (Article 3, Paragraph 2 of the Constitution). Substantive equality 'is grounded on the attribution of relevance to the differences existing between categories of persons, which are grounded on their belonging to different gender or ethnic or race or social groups, in order to remove all the adverse consequences (inequalities) caused by the differences taken into consideration'.[13] The application of substantive equality leads, therefore, to the reinstatement of equal opportunities between categories of persons, whose differences may cause adverse consequences. Equal opportunities, in other words, are the final end of substantive equality. Substantive equality implies the elimination of the adverse consequences coming from the differences existing between groups rather than of the differences themselves; substantive equality, as a consequence, demands the adoption of

[13] Ballestrero M.V. (1992), 'A proposito di eguaglianza e diritto del lavoro' (On equality and labour law) *Lavoro e Diritto,* p. 578.

measures in favour of the disadvantaged group, such as positive action. Therefore, all positive action in our system is regarded as a means to achieve equal opportunities.

3.6.3 Specific difficulties

There are the following specific difficulties in relation to positive action: insufficient financing of the plans; few incentives to develop positive action plans; lack of a system to monitor positive action and its impact; and scarce knowledge of positive action as a tool. The main difficulties, however, are economic. Until 2012 we had data on the public financing of positive action measures: each year, the EONC (Equal Opportunities National Committee) prepared a programme to fix the targets for positive action measures to be financed and to monitor their implementation, however the last available yearly programme dates back to 2012.[14] According to the Equal Opportunities Code (Article 48), the public administration has a primary role in promoting positive action: indeed, public employers have an obligation to draw up three-year positive action plans, which can be sustained within budget limits. Many positive action plans are carried out in this context,[15] which shows that positive action plans are implemented where they are encouraged through economic or legal incentives.

3.6.4 Measures to improve the gender balance on company boards

Act No. 120 of 12 July 2011 introduced a quota system for the appointment of managing directors and auditors of listed companies and state subsidiary companies,[16] where each sex cannot be represented in a proportion lower than one third. This rule can be enforced for directors and auditors. The sanction procedure in the event of an infringement of the rule is very gradual and only after two warnings by the Consob (the National Securities and Exchange Commission), which is also charged with monitoring compliance with the gender balance principle, can the penalty of the dissolution of the company board be applied. The same principles are enforceable against state subsidiary companies not quoted on the regulated market (Decree No. 251/2012).

3.6.5 Positive action measures to improve the gender balance in other areas

Act No. 215 of 23 November 2012 introduced new regulations aimed at achieving gender equality in politics and in hiring procedures in public administration. One of the main interventions concerns the statutes of municipalities and provinces, which must now provide regulations to ensure (and not only to 'promote' as under previous legislation) the representation of both sexes in government bodies and in other corporate bodies (not elective ones) of the municipality or the province or in businesses and institutions depending thereon. Moreover, it is provided that the regulations governing the election of municipality and provincial councils and governing the appointment of the respective local government bodies must also respect the principle of gender equality and guarantee the representation of both sexes. In particular, as regards the election of the councils of local bodies, in the lists of candidates neither of the two sexes can be represented in a proportion higher than two thirds and if the statutes provide for the possibility to express two preferential votes, they cannot both go to candidates of the same sex. Moreover, if the list fails to respect this proportion, candidates of the overrepresented sex will be removed by the Electoral Commission so as to ensure the proportion mentioned above. The provisions regulating regional elections are still subject to the powers of the regions, but Act No. 215/2012 expressly states that the regions must ensure the promotion of gender equality in access to elective posts. Article 4 also provides that the media, as regards broadcasts concerning politics, must respect the principle of gender equality in

[14] http://sitiarcheologici.lavoro.gov.it/AreaLavoro/Tutela/Documents/PROGRAMMAOBIETTIVO2012.pdf.

[15] http://presidenza.governo.it/AmministrazioneTrasparente/AltriContenuti/DatiUlteriori/DSG/PIANO_AZIONI_POSITIVE_PCM_def.pdf, http://www.comune.bologna.it/media/files/pap_20192021.pdf.

[16] State subsidiary companies are those controlled by the state.

access to public posts and elective offices provided by Article 51 of the Constitution for the promotion of equal opportunities. Finally, Article 5 amends Article 57 of Decree No. 165/2001 (regarding equal opportunities in public administration) by providing that the equality adviser must be informed of the appointment of each commission for hiring competitions in the public sector, so as to check that at least one third of the members are women. If women's representation in the commission is lower, the equality adviser must compel the public administration to eliminate the infringement and if it persists she/he must take the public administration to court.

Act No. 65/2014 modified previous regulations so as to ensure a better gender balance in the election of Italian members of the European Parliament. Under these regulations, no more than 50 % of the candidates on each list can be of the same sex; the first and the second candidates on the list cannot be of the same sex; where there are two or three preferential votes, they must be given to candidates of different sex, and if not, the second and the third preferential vote must be cancelled. Finally, a gender balance in politics is also supported by Act No. 13/2014, which provided for a reduction in parties' public financing if they do not fulfil gender-balance requirements regarding the list of candidates for political elections.

3.7 Harassment and sexual harassment

3.7.1 Definition and explicit prohibition of harassment

The provisions on harassment in Directives 2006/54/EC and 2004/113/EC have been transposed in Articles 26, 50*bis*, 55*bis*, and 55*ter,* Paragraph 6 of the Equal Opportunities Code (Decree No. 198/2006, as modified by Decree No. 196/2007 and by Decree No. 5/2010).

In particular, harassment on the ground of sex has been equated to discrimination on the ground of gender.

Article 26 of the Equal Opportunities Code states: 'Harassment, that is unwanted conduct related to the sex of a worker with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment, is regarded as discrimination on the ground of gender.' The conduct can also be unintentional.
Article 55*bis* of the Equal Opportunities Code provides, in relation to goods and services, almost the same definition of harassment on the ground of sex/sexual harassment quoted above.

The relevant legislation essentially uses the same wording as the directives.

3.7.2 Scope of the prohibition of harassment

The scope of the domestic prohibitions is basically the same as that of the directive. The only relevant difference is that Directive 2006/54/EC refers to 'persons' as victims of harassment, while Article 26 of the Equal Opportunities Code refers to 'workers', thus excluding any third parties present in the business.

Article 55*bis* of the Equal Opportunities Code refers to, 'persons' as victims of harassment in relation to goods and services.

3.7.3 Definition and explicit prohibition of sexual harassment

Article 26 of the Equal Opportunities Code states that 'Sexual harassment, that is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a worker, in particular when creating an intimidating,

hostile, degrading, humiliating or offensive environment' is also regarded as discrimination on the ground of gender.

Article 55*bis* of the Equal Opportunities Code provides, in relation to goods and services, the same definition of harassment on the ground of sex/sexual harassment quoted above.

The relevant legislation essentially repeats the wording of the directives.

3.7.4 Scope of the prohibition of sexual harassment

The scope of the domestic prohibitions is basically the same as that of the directive. The only relevant difference is that Directive 2006/54/EC refers to 'persons' as victims of sexual harassment, while Article 26 of the Equal Opportunities Code refers to 'workers', thus excluding any third parties present in the business.

Article 55*bis* of the Equal Opportunities Code refers to 'persons' as victims of sexual harassment in relation to goods and services.

3.7.5 Understanding of (sexual) harassment as discrimination

Article 2(2)(a) of Directive 2006/54/EC has been specifically transposed. Harassment and sexual harassment, therefore, amount to discrimination. Article 26 of the Equal Opportunities Code also provides that any less favourable treatment based on a worker's rejection of or submission to harassment on the ground of sex or sexual harassment are regarded as discrimination. Moreover it states that: 'Acts, pacts or provisions taken in relation to the employment relationship towards workers who are victims of harassment are null and void if adopted as a consequence of the worker's rejection of or submission to harassment on the ground of sex or sexual harassment' and that 'Any adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment is regarded as discrimination on the ground of gender.'

Article 55*ter*, Paragraph 6, provides, as regards access to goods and services, that 'The refusal of harassment or sexual harassment by a person cannot be the reason for a decision that is relevant for that person.'

Moreover, Article 26 of Directive 2006/54/EC has been transposed in Article 50*bis* of the Equal Opportunities Code, which states: 'Collective agreements can provide for specific measures, such as codes of conduct, guidelines and good practices, in order to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment in the workplace, in access to employment, vocational training and promotion.' In the national implementation, the emphasis in the rule has been moved from the employers' responsibility, as provided by the directive, to that of collective bargaining. Furthermore, in Italy the employer does not take measures to prevent harassment on their own, as such actions are always left to collective bargaining.

3.7.6 Specific difficulties

There are no specific difficulties in our country in applying the prohibition of (sexual) harassment.

3.8 Instruction to discriminate

3.8.1 Explicit prohibition

An instruction to discriminate against persons on the ground of sex is explicitly prohibited in national legislation by Article 25, Paragraph 1, of the Equal Opportunities Code (Decree No. 198/2006) as is regarded as discrimination.

3.8.2 Specific difficulties

There are no specific difficulties in relation to the concept of instructions to discriminate.

3.9 Other forms of discrimination

There are no other forms of discrimination prohibited in national law.

3.10 Evaluation of implementation

Several legislative interventions in the last 20 years have created, on the whole, a good level of implementation of EU directives. Sometimes domestic legislation has gone further than EU law in the implementation of central concepts.

As regards the justification clauses, the notion of indirect discrimination, for example, is stricter than EU law: neutral criteria which result in a disparate impact are only legitimate if they are essential requirements for the job. Furthermore, in relation to the use of quantitative/statistical data, Decree No. 198/2006 goes further than EU law, as Article 46 requires companies with more than 100 employees to draw up reports every two years (and to deliver them to the company union representatives and the regional equality advisers) on the situation of male and female workers as regards recruitment, professional training, career opportunities, mobility between categories and grades, other mobility aspects, remuneration, dismissals and retirement.

The concept of direct discrimination is taken directly from the definitions in the Recast Directive.

The concept of positive action adopted in Italy is tuned with that provided by the EU legislation. Moreover, the Italian legislation went further than the EU directives, as it provides for a structured system with different types of measures. Indeed, in relation to positive action, the difficulties are mainly economic – that is, limited financing of the plans and few incentives to develop positive action plans. Furthermore, we also lack a system to monitor positive action measures and their impact.

The legislation on sexual harassment is also harmonised with EU legislation. In particular, Article 26 of Directive 2006/54/EC has been transposed in Article 50*bis* of the Equal Opportunities Code. In the national implementation the emphasis in the rule has been moved from the employers' responsibility, as provided by the directive, to that of collective bargaining. In Italy the employer does not take measures to prevent harassment on their own as such action is always left to collective bargaining.

An important gap in our legislation, on the other hand, is the absence of a specific protection for transgender, intersex and non-binary persons. Nonetheless, in the view of the author of this report, gender reassignment, despite the fact that it is not explicitly provided by our legislation, can be included under the grounds of discrimination of sexual orientation and gender discrimination.

Another gap is the lack of an explicit provision in domestic legislation on multiple discrimination. Moreover, the lack of legislation against discrimination outside employment and occupation on the grounds of age, disability, religion/belief and sexual orientation is a problem when these grounds are combined with existing grounds, because this prevents argument on the grounds in an intersectional or cumulative way as is required by the hypothesis on multiple discrimination (when age, disability, religion/belief and/or sexual orientation intersect outside employment).

3.11 Remaining issues

There are no remaining issues.

4 Equal pay and equal treatment at work (Article 157 of the Treaty on the Functioning of the European Union (TFEU) and Recast Directive 2006/54)

4.1 General (legal) context

4.1.1 Surveys on the gender pay gap and the difficulties of realising to equal pay

In 2018, a survey on the differences in pay was released by ISTAT (the National Institute for Statistics), on data from 2014-2016.[17] The report shows that women's gross pay is oriented towards low levels: in 2016, 59 % of women earned an hourly pay lower than the national average (as opposed to 44 % of men). In 2016, only 17.8 % of women earned over EUR 15 per hour (against 26.2 % of men), while 11.5 % of women earned less than EUR 8 per hour (against 8.9 % of men). In the new contacts stipulated in 2016, hourly pay tends to be lower for men and women (-18.4 %) compared to the past; men's hourly pay has decreased more than that of women (-21.5 % against -14.6 % for women).

Surveys led by *Valore D*, an enterprise association (166 enterprises representing 1.5 million employees), show the following figures: the gender pay gap is 17.9 %; one year after graduation, women earn 17.3 % less than men in the same job positions; women in managerial positions earn 15 % less than men; women in administrative boards earn 69.8 % less than men; and women's average pensions are 28.6 % less than men's.[18] In 2017, *Valore D* prepared a manifesto for employers on the issue of sustainability, which is inspired by the GRI (Global Reporting Initiative) indicators for social budgets.[19] The manifesto aims to promote: a growing attention to women in access to jobs; flexibility at work in order to improve reconciliation between work and private life for women; assistance to women during maternity in order to make smoother the period of absence from work and the return to work for both the women and the firm; incentives for men to take an active part in their role as fathers and to take advantage of the social benefits provided for that purpose; increasing the quota of women in high level job positions; instruments to monitor the presence of women in the labour force of the firm; and professional training for management on gender diversity.[20]

In 2018, Job Pricing (a labour market research body) issued a report on the gender pay gap.[21] According to its data, the pay gap between men and women is 10.4 %, although it has decreased since 2016. The percentage of women in high responsibility jobs is increasing but very slowly: from 2007 to 2017, the number of women managers increased by 26 % to 31 %. In 79 % of the cases analysed by Job Pricing (350 000 private sector employees) men earn more than women in the same job positions.

Eurostat 2016 records a gender pay gap in Italy of 5.3 % (the average gender pay gap in the EU is 16.2 %). Eurostat 2014 shows that the gender overall earnings gap in Italy stands at 43.7 % (the average gender overall earnings gap in the EU is 39.6 %). The gender overall earnings gap is the difference between the average annual earnings of women and men. It takes into account three types of disadvantages that women face: lower hourly earnings; working fewer hours in paid jobs; lower employment rates (for example when interrupting a career to take care of children or relatives).[22] According to Eurostat, the main factors of the gender pay gap are: management and supervisory positions are overwhelmingly held by men; women take charge of important unpaid tasks, such as household work and caring for children or relatives on a far larger scale than men do; women tend to spend periods out of the labour market more often than men; in some

[17] https://www.istat.it/it/files//2018/12/Report-Differenziali-retributivi.pdf.
[18] https://nopaygap.valored.it/#service-1-1.
[19] https://valored.it/wp-content/uploads/2018/05/Manifesto_Valore_D-2.pdf.
[20] https://valored.it/wp-content/uploads/2018/05/Manifesto_Valore_D-2.pdf.
[21] https://winningwomeninstitute.org/wp-content/uploads/2018/09/Gender_Gap_Report_2018.pdf.
[22] https://ec.europa.eu/info/sites/info/files/aid_development_cooperation_fundamental_rights/equalpayday_factsheets_2018_country_files_italy_en.pdf.

sectors and occupations, women tend to be overrepresented, while in others men are overrepresented; and pay discrimination.[23]

4.1.2 Surveys on the difficulties of realising equal treatment at work

There are not many report/surveys on difficulties in realising equal treatment at work.

A research project led by Tor Vergata University in 2014 for the FEMM Committee for Women's Rights and Gender Equality at the European Parliament found that the main difficulties in achieving gender equality are linked to lack of services and financing for helping women in caring responsibilities. According to this research, the low percentage of women of working age in employment is also due to the crisis in the service sector.[24]

Another survey on these issues was conducted in 2017 by the European Institute for gender equality.[25] The Gender Equality Index 2017 examined the progress and challenges in achieving gender equality across the European Union from 2005 to 2015. Using a scale from 1 (full inequality) to 100 (full equality), it measures the differences between women and men in key areas of the EU policy framework (work, pay, knowledge, time, power and health). In the Gender Equality Index 2017, Italy achieved a score of 62.1 out of 100, which is an increase of 12.9 points. This score is less than the EU-28 average of 66.2, but Italy has made the most progress out of all EU Member States: Italy improved its GEI rank by 12 positions, to reach 14th place. The situation in relation to pay has improved, but the distribution of economic resources between women and men became more unequal. There is some progress in the area of work, with the duration of women's working lives catching up with men's. However, progress remains slow due to persisting inequalities in women and men's participation in the labour market and a gender-segregated workforce. Along with 11 other Member States, Italy's score in the respect of time decreased, pointing to persisting inequalities in the division of household tasks between women and men.

According to the Global Gender Gap Report 2018 published by the World Economic Forum, Italy is only 70th in the global index measuring the gender gap in broader terms. These statistics include factors such as economic participation and opportunity (where Italy ranks 118th), educational attainment (61st), health and survival (116th) and political empowerment (38th).[26]

4.1.3 Other issues

In Italy, the equal pay principle and gender equality at work have a low profile on the policy agenda. Therefore we have problems of awareness and of political priorities.

Broadly speaking, even the trade unions have never shown a strong commitment to reducing the gender pay gap and improving gender equality at work. A serious problem is that the percentage of women union representatives is also low, especially at high levels, as a result of job segregation. Female union representatives, including those who specifically deal with equality matters, do not take part in collective bargaining.

The current trend towards a more decentralised and individualised system of wage setting makes the situation even more worrying. That is why it is important to enhance policies directed at the dissemination of information among those engaged in wage bargaining to raise awareness of the extent and seriousness of the problem.

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23 https://ec.europa.eu/info/sites/info/files/aid_development_cooperation_fundamental_rights/equalpayday_factsheets_2018_country_files_italy_en.pdf.

24 http://www.europarl.europa.eu/RegData/etudes/note/join/2014/493052/IPOL-FEMM_NT%282014%29493052_IT.pdf.

25 https://eige.europa.eu/publications/gender-equality-index-2017-italy.

26 http://www3.weforum.org/docs/WEF_GGGR_2018.pdf.

Furthermore, it might be not easy to detect the gender pay gap, which can hide in an apparently neutral of definition of wages (and be a form of indirect discrimination) stated by collective agreements or in additional wages bargained at local or enterprise level and in personal bonuses; most of the time, such criteria can easily be explained by the employer as objective, necessary and proportionate criteria, which are essential requirements of the job. Job classification is required by legislation to be gender neutral, but no formal job evaluation and job analysis systems are available in Italy's legal and industrial relationships systems. Moreover, local and enterprise contracts are not easily available and seldom published either on the websites and in paper form. Collective agreements and job evaluation schemes are not normally monitored.

4.1.4 Political and societal debate and pending legislative proposals

In our country, the equal pay principle and gender equality at work have only a low profile on the policy agenda. Therefore there are problems with awareness and political priorities.

The media has given broad space to the problem of the gender pay gap. The main arguments, at present, are those connected with the latest Eurostat, World Economic Forum and OECD (Organisation for Economic Co-operation and Development) data. For example, it is highlighted that Italy's pay gap is a little over 5 %, which is lower than any other EU country except one (Eurostat 2016 data). Nonetheless, it is also emphasised that, according to the OECD, Italy has some of the fewest women in the workforce of any developed economy, (that is, fewer than half of working-age Italian women are in employment); this means that those who do work are more likely to be better educated and in higher-paying jobs. Moreover, around 62 % of Italian women's work each day is unpaid, according to the World Economic Forum's latest report on the global gender gap, compared to 30 % for Italian men. Women in Italy work longer than men on average – 512 minutes per day compared to 453 minutes – yet are more likely to be unemployed or work part-time. Finally, ISTAT data shows that women made up a measly 16 % on decision-making bodies in 2017 and that just under 34 % of board members on listed companies were female, after Italy introduced a quota that requires boards to include at least 33 % women.[27]

Recently, the president of Equality Web (a member of ASviS, the Italian Alliance for Sustainable Development, which aims at promoting the Italian implementation of ONU objectives for sustainable development) stated that, after a period of growth, since 2016 there has been a trend of decreasing gender equality in Italy. Equality Web also highlighted: the low occupational rate of women, which among women of working age (20-64 years) is equal to 51 % (as opposed to 65 % in the EU); the fact that 30 % of women stop working when they become mothers; and the fact that although Italy has good laws on gender equality, they are not correctly implemented.

As regards pending legislative proposals, a bill on salary transparency was presented to the House of Representatives on 31 March 2015. The bill provided for a Government delegation to set the rules to guarantee that wage composition and structure is transparent and publicised, following Recommendation of 7 March 2014, 2014/124/EU. However, the bill is currently suspended. In 2016, another bill was proposed that would exclude employers who infringe pay equality legislation from public contracts; this bill is also currently suspended.[28]

[27] See https://www.thelocal.it/20180308/statistics-women-in-italy-womens-rights-gender-gap-equality and https://www.thelocal.it/20171103/italy-gender-gap-worse.

[28] http://documenti.camera.it/_dati/leg17/lavori/schedela/apriTelecomando_wai.asp?codice=17PDL0041480.

4.2 Equal pay

4.2.1 Implementation in national law

The principle of equal pay for equal work or work of equal value is implemented in national legislation. Legislation regarding equal pay applies to all employees in the private as well as in the public sector. Article 37 of the Constitution states that 'a working woman shall have the same rights and, for equal work, the same remuneration as a male worker.'

The latter constitutional principle was reworded and clarified by Article 28 of the Equal Opportunities Code (Decree No. 198/2006), which states: 'For the same work or for work to which equal value is attributed, direct and indirect discrimination with regard to all aspects and conditions of remuneration are forbidden.'

4.2.2 Definition in national law

The concept of pay is not defined by the law, but has widely been construed by the Italian courts, on the basis of collective agreements, as including any economic benefit in cash or in kind directly and indirectly paid on the ground of the employment relationship. Therefore it fully complies with the definition of Article 157(2) TFEU.

The Tribunal of Venice of 2 May 2005 and the Tribunal of Padova of 26 October 2007,[29] stated that, consistent with Article 37 of the Constitution, as regards the pay incentive provided by sectorial collective agreements, the period of compulsory maternity leave is to be calculated solely on the criterion of presence, unless any bonus pay is linked by the collective agreement itself to a specific project aimed at boosting productivity or to reward the strenuous nature of specific work.

The Turin Court of Appeal of 10 January 2018 deemed a clause of a collective agreement at the enterprise level to be discriminatory as it infringed Articles 3 and 37 of the Constitution, Article 25, Paragraph 2bis of Decree No. 198/2006 and Article 3 of Decree No. 151/2001. The clause provided 'real presence at work' as a condition to be eligible to receive additional remuneration as an incentive, and did not regard family-related leave including compulsory maternity leave, parental leave and leave for illness as working time. Although the criterion is formally neutral, it results in indirect pay-discrimination since a higher percentage of female workers than male workers take family-related leave. Moreover, the company in this case had not provided a permissible justification regarding the requirement of 'real presence at work'. The employer was ordered to: (1) cease the discrimination by regarding such leave as actual work with the aim of providing remuneration as an incentive, (2) to pay the additional remuneration incentive to the claimants, (3) and to enhance a plan to remove the discrimination where the change of the criteria mentioned above had to be included in future collective bargaining at the enterprise level. The latter was suggested by the intervention of the regional equality adviser, as it was a case of collective discrimination.

This judgment is important because previous cases mainly concerned the negative effects of parental leave on wage progression. It actually relates to both direct and indirect discrimination, as the exclusion of the compulsory maternity leave involves differential treatment, which is directly grounded on gender, although the reasoning of the Court concerns mainly indirect discrimination.[30] In particular, the enforcement and effectiveness of the partial reversal of the burden of proof is evident in this judgment. The claimant stated that the clause of the collective agreement was discriminatory by showing data on

[29] Published on the official website of the national equality adviser respectively at http://consiglieranazionale.lavoro.gov.it/FileCaricati/file%2035.pdf and at http://consiglieranazionale.lavoro.gov.it/FileCaricati/file%2048.pdf.

[30] See on this issue: CJEU, judgment of 30 April 1998, *Caisse nationale d'assurance vieillesse des travailleurs salariés* v. *Thibault*, C-136/95, ECLI:EU:C:1998:178.

the proportionally disadvantageous effect of the criteria, which excluded maternity and parental leave. The company tried to justify the criterion of real presence at work by referring to the link between the productivity objectives and the concrete and profitable work performed by employees. Nevertheless, the judge rejected this justification as the collective agreement included similar leave/time off (such as leave to assist disabled persons, which is more equally used by workers of both sexes) among days to be reckoned for this purpose, meaning the link is not proven. The Court of Appeal also underlined that discrimination is not excluded by the fact that it rises from the enforcement of a collective agreement, because the employer (and also trade unions) must aim towards an organisation of employment that tends to mitigate or remove unequal treatment between male and female workers. The 'essential job requirements' element of the objective justification was not addressed.

4.2.3 Explicit implementation of Article 4 of Recast Directive 2006/54

Article 4 of Recast Directive 2006/54 is explicitly implemented by Article 28 of the Equal Opportunities Code (Decree No. 198/2006), which states that occupational classification systems applied for the purpose of determining remuneration shall adopt common criteria for men and women and be drawn up so as to eliminate any discrimination.

4.2.4 Related case law

The Tribunal of Aosta of 13 April 2016 ascertained gender discrimination in pay where a female manager, in the head office of the accounts department of the local casino, had been paid about EUR 92 000 a year whereas her male colleagues had been paid about EUR 140 000 a year on average and some other male employees of a lower level earned a higher remuneration than she did. This case has to be recorded as gender discrimination in pay, which is taken to court very rarely in Italy. Moreover the judgment shows a rigorous interpretation of Article 28 of Decree No 198/2006, which provides the principle of equal pay for equal work. In fact it states that the intention to discriminate as well as the possible fairness of the remuneration considering the job and the minimum wages provided by collective agreements are useless: the discrimination is proved by the mere fact that the female worker received a lower wage compared to male colleagues while she, as a manager, had higher responsibilities and a weaker protection against dismissal. The judgment awarded the worker damages of about 41 % of her remuneration, considering that a fair remuneration could amount to EUR 130 000 a year (that was a little higher than the one of the better paid employees).

Many years ago, as regards pay discrimination against men, the Pretura (magistrate's court) of Turin of 4 December 1991 and the Pretura of Parma of 24 November 1981 held that the collective agreement bargained at the enterprise level that entitled only working women to a contribution to crèche expenses infringed the principle of equal treatment between male and female workers. Following the courts' reasoning, the contribution is linked to the array of duties that are a burden on both parents. A different interpretation would be in contrast with the constitutional principle of equality as it would involve the working mother is the main and/or only subject who is charged with family duties. This reversed the traditional guideline, which, up to the 1980s, allowed such clauses, considering women's essential family function to be protected by Article 37 of the Constitution (Court of Cassation, 5 March 1986, No 1444).

4.2.5 Permissibility of pay differences

No justifications for differences in pay are provided by the Equal Opportunities Code, except those permitted on the ground of the general notion of indirect discrimination.

4.2.6 Requirement for comparators

The general concept of both direct and indirect discrimination provided by Article 25 of the Equal Opportunities Code (Decree No. 198/2006) refers to a comparator and is enforceable with regard to all working conditions, including remuneration.

Actually, both the concise wording of the definition of direct discrimination and the reference to the conditional ('could put') in the notion of indirect discrimination, together with the reference to 'a particular disadvantage' instead of 'a proportionally higher disadvantage' (which was provided by the previous text) opened a debate on the real need for a comparison. No overriding opinion has been recorded, which has called for the need for an actual comparator.

Case law on equal pay is scarce and does not indicate whether the claimant should point to an actual comparator. However, an old case on professional classification deserves to be mentioned. In this case, a female worker claimed discrimination as she had been placed at a lower level compared to male workers performing the same job. The judgment of the Pretura of Milan of 22 December 1989 ascertained that there had been discrimination, including during a period when male workers had not yet been hired. The judge made a finding of discrimination, as male workers were later hired at a higher level compared to the female worker who was already performing the same job. As a consequence, according to the judge, there was a double possibility: either the higher level of male workers was the right one, considering the job (then the female worker was also entitled to the same level), or this was not the case and the female worker had been discriminated against. In both cases, discrimination against the female worker was proved. The judgment did not expressly refer to a hypothetical comparator, but showed a particular sensitivity in the reasoning and anticipated results, which are easier to achieve under the new notion of discrimination.

4.2.7 Existence of parameters for establishing the equal value of the work performed

The national law does not lay down any parameters for establishing the equal value of the work performed. There is no case law on this issue.

4.2.8 Other relevant rules or policies

There are no any other relevant rules or policies that provide parameters for establishing the equal value of the work performed.

4.2.9 Job evaluation and classification systems

As yet there are no good practices specifically targeted at closing the pay gap.

4.2.10 Wage transparency

Article 46 of the Equal Opportunities Code on the release of information on individual pay and other data at firm level is relevant to wage transparency. It provides that, every two years, public and private companies employing more than 100 employees must submit to regional equality advisers and trade unions a report concerning the situation of male and female employees in all jobs in the company, in relation to appointments, training, professional promotion, pay levels, mobility between categories and grades, other mobility aspects, redundancy funds, dismissals, early retirement and retirement, and the remuneration actually paid. Moreover, the regional equality adviser must analyse the report data and send them to the national equality adviser, the Ministry of Labour and the Ministry for Equal Opportunities and Family. This should contribute to the readability, usability and circulation of the data contained in the report. A bill is currently under examination by the Commission of Labour at the Italian Parliament, which would reduce

to size of a company (to 25 rather than 100 employees) compelled to submit the release of information under Article 46.[31] Moreover, under Article 10 Paragraph 1(h) of the Equal Opportunities Code, the National Equality Committee can ask the local labour inspectorate to obtain gender-differentiated data at the workplace in respect of hiring, vocational training and career opportunities.

4.2.11 Implementation of the transparency measures set out by European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women

The European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency has not yet been applied. A draft delegation act was presented to Parliament on 31 March 2015 (see Section 4.1.4, above).[32]

4.2.12 Other measures, tools or procedures

No other measures, tools or procedures are known to have been developed in order to enhance pay transparency and to close the gender pay gap.

4.3 Access to work, working conditions and dismissal

4.3.1 Definition of the personal scope (Article 14 of Recast Directive 2006/54)

Under the broad definition of Article 27 Paragraph 1 of the Equal Opportunities Code, the personal scope in relation to access to work and vocational training expressly encompasses all types of contracts – subordinate, autonomous or 'any other.' The same provision is enforceable, under Paragraph 3, for membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry out a particular profession (including the benefits provided by such organisations).

As regards equal pay and working conditions, including dismissals, just as for labour law in general, the text of the law does not expressly refer to non-subordinate or quasi-subordinate workers (that is, dependent self-employed workers, known DSE), so it could be applied to these employment relationships as well, but only by way of interpretation. However, no specific case law can be found on this point.

With regard to the implementation of Article 14 of Directive 54/2006, it must be emphasised that the prohibition on discrimination provided by the Equal Opportunities Code applies to all persons employed in any sector (both public and private), irrespective of the length of the employment relationship, including part-time workers, fixed-term workers, apprentices, employees on education contracts, home workers, working spouses or relatives, as well as persons working in cooperatives, and irrespective of the size of the enterprise/employer. On the whole the personal scope of these provisions is very wide and covers the notion of a worker as defined by CJEU. However, there is no national case law on this specific issue.

[31] See the bill in http://documenti.camera.it/leg18/pdl/pdf/leg.18.pdl.camera.1345.18PDL0035880.pdf.

[32] Draft Delegation Act No. 3000 of 31 March 2015, available at: http://www.camera.it/_dati/leg17/lavori/stampati/pdf/17PDL0032100.pdf. The act is aimed at ensuring both workers and unions have access to detailed information on all items of the remuneration of each employee (in respect of private data but clearly distinguished by gender), including bonuses, that employers of more than 50 workers give periodical information on the average wage of each level of a career, distinguished by gender, and that employers of more than 250 workers conduct wage audits and that those are made widely available to workers' representatives and unions. See also: https://www.thelocal.it/20180308/statistics-women-in-italy-womens-rights-gender-gap-equality, https://www.thelocal.it/20171103/italy-gender-gap-worse and http://documenti.camera.it/_dati/leg17/lavori/schedela/apriTelecomando_wai.asp?codice=17PDL0041480.

4.3.2 Definition of the material scope (Article 14(1) of Recast Directive 2006/54)

Under Article 27 of the Equal Opportunities Code, the material scope of the ban on discrimination as regards access to employment includes vocational training, selection criteria, recruitment conditions at all levels of the professional hierarchy and promotion in all sectors, irrespective of the hiring procedures, as well as the setting up or broadening of a business or of any other form of autonomous work. This article merely translates the wording of the Recast Directive and of Article 4(1) of Directive 41/2010, except as regards vocational training, where the prohibition on discrimination expressly includes both access to and the content of vocational training.

4.3.3 Implementation of the exception on occupational activities (Article 14(2) of Recast Directive 2006/54

Article 27 allows for a gender requirement in hiring in artistic and fashion activities and with regard to public performances, when such a requirement is essential to the nature of the work/job. It also entitles collective agreements to provide for specific exceptions to the prohibition on discrimination in access to work for women in cases of particularly strenuous jobs. The first exception (artistic, fashion, performance activities) goes beyond the principle of proportionality, as it is stricter: the exception is only legitimate if sex is really a genuine occupational requirement that is essential for performing the activity in question, taking into account its nature.

The second exception (strenuous work) is worded in terms of a 'derogation' from the general rule and is only admitted if and when collective agreements identify a 'particularly strenuous' job, task or duties. As such, it is based on the nature (particularly strenuous) of the specific occupational activity. Even if the principle of proportionality is not directly considered, and the law does not provide that the exclusion of women must be 'essential' (to the protection of women's health), this exception has always been deemed to comply with the exceptions provided by EU law.

The legislature's decision to allow collective bargaining to identify such jobs is considered to be rational and preferable to listing them all in an act, once and for all.[33]

There is no available information on an assessment by the Member State of the occupational activities referred to in Article 14(2), nor does the author of this report think that such an assessment has ever been done.

4.3.4 Protection against the non-hiring, non-renewal of a fixed-term contract, non-continuation of a contract and dismissal of women connected to their state of pregnancy and/or maternity

National law and case law provide for sufficient protection against the non-hiring, non-renewal of a fixed-term contract, non-continuation of a contract and dismissal of women connected to their state of pregnancy and/or maternity. Protection is as follows.

According to Article 25 of the Equal Opportunities Code (Decree No. 198/2006) and Article 3 of Decree No. 151/2001 on the protection of motherhood and fatherhood, less favourable treatment related to pregnancy, motherhood or fatherhood, including adoption, as well as to the respective rights, is regarded as direct gender discrimination. This feature allows

[33] This last remark is based on the effective implementation of this exception starting from the issuing of Act No. 903 in 1977 (which was later included in Decree No. 151/2001). In fact, during subsequent years collective bargaining has progressively removed a great number of exclusions, narrowing them down to a few tasks even in activities traditionally considered to be 'strenuous' and, for this reason, 'closed' to women (for instance, in the past all activities carried out in the mining industry were considered to be 'strenuous' and forbidden for women). No case law can be recorded in the last few years (in the 1980s, the small number of cases were followed by collective agreements that removed many exceptions that could be deemed to go beyond the principle of proportionality).

the claimant to benefit from specific procedural rules and to obtain stronger remedies provided by the law for cases of discrimination. This even exceeds the obligations stated at EU level, as it is not limited to women, as expressly provided by Article 2(2)(c) of the Recast Directive, but also includes men and adoptive parents. Moreover, Article 27 of the Equal Opportunities Code bans discrimination as regards access to work, promotion, professional training and working conditions. In particular, discrimination is expressly forbidden in relation to marriage, family status or pregnancy, and motherhood or fatherhood, including through adoption.

As regards dismissal, the protection afforded is ensured purely on grounds of pregnancy, regardless of whether the employer has been informed or not. Moreover, protection is granted during pregnancy, maternity leave, parental leave and for a period of 12 months following the date of confinement. A dismissal in this situation is considered to be equal to a discriminatory dismissal and the special remedy (reinstatement) provided by Article 18 of the Worker's Statute is enforceable (Article 54 of Decree No. 151/2001). The same protection against dismissal as for natural parents is granted to adoptive or foster parents until one year after the child has entered the family.

Moreover, in response to the issue of 'blank resignation' (that is, an undated resignation letter signed by a worker at the time of recruitment so as to be used by the employer to make the worker resign when needed), Act No. 92/2012 changed Article 55, Paragraph 4 of Decree No. 151/2012.

A few cases have been heard in relation to: the legitimacy of the worker's behaviour if she does not inform the employer of her pregnancy before recruitment on a fixed-term contract; the legitimacy of the employer's behaviour if a pregnant women is not hired, despite her overcoming the practical test, because there is no job in the firm compatible with her health during pregnancy; the illegitimacy of the employer's behaviour if a pregnant women is not hired because she should be assigned to a job dangerous for her and her child's health; the illegitimacy of the exclusion from access to work of a pregnant worker by an employment exchange; the illegitimacy of pregnancy tests for access to work.[34]

There is some published case law regard the interpretation of the exceptions to the ban on dismissal during pregnancy.[35] The Tribunal of Venice of 9 February 2010 ruled that the dismissal of a pregnant woman at the end of the probationary period is discriminatory if the woman proves both that there is no reason for dismissal as her capacity has been positively ascertained and that she is pregnant. The Constitutional Court, in a judgment of 27 May 1996, No. 172, ruled that an employer may dismiss a pregnant employee on the grounds of the negative result of the probationary period only if he can prove - or if there is objective evidence - that he did not know of the woman's pregnancy; otherwise, he must explain the reasons justifying the negative evaluation of the probationary period, in order to disprove that the reason for the dismissal was the pregnancy of the woman. Other decisions ruled that: the consequence of the discriminatory dismissal is the payment of retribution from the day of dismissal to that of the reintegration in service of the women, as the dismissal is null and void;[36] dismissal of pregnant women is null and void also in case of illegal employment and also if the employer had not been informed of pregnancy.[37]

[34] Court of Cassation civ., sez. lav. 24-08-1995, n. 8971; Court of Appeal Milano 17-06-2009; Pretura of Florence 05-08-1988; Court of Cassation civ., sez. lav. 09-10-1997, n. 9800; Pretura Pistoia 06-04-1996; Court of Cassation civ. 16-04-1991, n. 4064; Council of State, sez. *VI* 05-08-1991, n. 505; Pretura Domodossola, 15-10-1981.

[35] Court of Cassation civ., sez. lav., 21-12-2004, n. 23684; Tribunal of Milan 24-05-2010; Court of Cassation civ., sez. lav., 28-06-2013, n. 16415; Court of Cassation civ., sez. lav. 26-01-2017, n. 2004; Court of Cassation civ., sez. lav., 28-09-2017, n. 22720.

[36] Court of Cassation civ., sez. lav. 11-01-2017, n. 475.

[37] Court of Cassation civ., sez. lav., 20-07-2012, n. 12693; Court of Cassation civ., sez. lav. 03-07-2015, n. 13692.

Several published cases regard blank resignation of working mothers. The Tribunal of Florence of 12 December 2005 stated that if the resignation is not validated it means that the work relationship is not terminated; the employee, therefore, has the right to go back to work and to receive remuneration, plus compensation, currency revaluation and legal interest for the months in which the worker was kept out of work (in the same sense as Tribunal of Milan of 12 July 2007).

Other cases concern the relevance of being aware of the pregnancy for these rules to be enforced. The Court of Appeal of Florence of 9 September 2006 ruled that Article 55 was enforceable despite the fact that the employer did not know about the pregnancy of the worker and Tribunal of Treviso of 4 January 2007 ruled that Article 55 was enforceable only if the employee knew about her pregnancy when she resigned.

Very little case law has directly reflected the difficulty for the employee in providing evidence of blackmail in relation to 'blank resignation'. The only case where this obstacle was expressly taken into consideration related to a male worker who had taken sick leave. In the decision of the Tribunal of Arezzo of 21 October 2008, where the judge deemed that the real will of the worker could be inferred by a series of factors, in contrast with the resignation: the text of the letter was typewritten with only the date written in ink; no specific facts showed the will of the worker to resign as the investigation proved that he came back to work after the illness with his workbag and the same day of the resignation he asked for the intervention of a union representative; moreover, it was very unlikely he decided straight off to leave the job, considering his family burden and mortgage.

4.3.5 Implementation of the exception on the protection for women in relation to pregnancy and maternity (Article 28(1) of Recast Directive 2006/54)

The exception on the protection of women as regards pregnancy and maternity (Article 28 of the Recast Directive) has not been expressly provided. Nevertheless, Decree No. 198/2006 (the Equal Opportunities Code) refers to Decree No. 151/2001 for the protection of maternity and paternity, which provides for all specific rights linked to motherhood and fatherhood involving the safeguarding of these provisions, and also states (in Article 1 Paragraph 3) that the principle of equality is without prejudice to more favourable provisions for the gender which is underrepresented. Moreover, following the first interpretation of Article 37 of the Constitution (providing for women's right to working conditions so as to allow them to fulfil their essential family functions and to grant adequate protection to the mother and the child) we used to have the opposite problem of a logic of protection that prevailed over that of equality.

4.3.6 Particular difficulties

As regards subordinate workers there are no specific problems with regard to the personal or material scope of the Recast Directive in relation to equal access to work, vocational training, employment contracts, working conditions and promotion and protection against dismissal on grounds connected to sex. As regards other forms of work, the directive has been implemented by a mere reproduction of its wording. Therefore some problems could rise from its ambiguous text. However, there is no case law or debate on these issues.

4.3.7 Positive action measures (Article 3 of Recast Directive 2006/54)

Italy has made use of the voluntary positive action measures available under Article 42 et seq. of the Equal Opportunities Code (Decree No. 198/2006) with a view to ensuring full equality in practice between men and women in working life. Article 42 defines positive action as measures designed to encourage female employment and to achieve substantial equality between men and women at work by removing obstacles which in practice prevent the achievement of equal opportunities; in particular, positive action must aim to eliminate disparities that affect women in education and professional training, in professional choices

(both as regards labour relationships and self-employment), in working conditions and organisation, in activities, professional sectors and levels where they are underrepresented, and in the division of family and professional responsibilities between the two sexes.

According to Article 43 of the Equal Opportunities Code, positive action measures may be promoted by different subjects, both public and private alike. Employers, professional training centres, associations, and trade unions promoting positive action can also apply for public funding, which is paid according to the available funds; positive action organised by employers and the most representative trade unions and positive action geared towards professional training have preferential access to public funding (Articles 44 and 45 of the Equal Opportunities Code).

In the public sector, employers are also entitled to request financing for positive action plans and must draw up three-year positive action plans aimed at achieving a better balance between the sexes in jobs and professions where women are underrepresented (that is, they make up less than one third of the total) (Article 48 of the Equal Opportunities Code). Moreover, in hiring procedures and in promotion when there are male and female applicants with the same level and qualifications and the male is chosen, the Civil Service has to provide an explicit and appropriate reason for this choice. The same article states that at least one third of the members of the commission for public hiring competitions must be women, except in the event of justified impossibility. Article 5 of Act No. 215/2012 provides that the equality adviser must be informed of the appointment of each commission for hiring competitions in the public sector, so as to check that at least one third of the members are women. If women's representation in the commission is lower, the equality adviser must compel the public administration to eliminate the infringement and if it persists, she/he must take the public administration to court. Furthermore, as regards state-owned companies, a specific provision is dedicated to positive action measures in the radio and television sector. Article 49 of the Equal Opportunities Code states that public and private broadcasting companies must promote positive action measures so as to eliminate unequal opportunities and conditions between the two sexes in the working organisation, recruitment and appointment to high and responsible positions. No sanctions are provided in case no plans are produced, so the adoption of these positive action measures is not binding and unfortunately there is no data on their implementation in practice. Finally, the public administration must ensure the professional training of personnel in proportion to the percentage of representation of each sex in the specific sector and facilitate this participation through the reconciliation of work and private life.

In addition, Act No. 120 of 12 July 2011 introduced a quota system for the appointment of managing directors and auditors of listed companies and state subsidiary companies, where each sex cannot be represented in a proportion lower than one third. The same principles are enforceable for state subsidiary companies not quoted on the regulated market (Decree No. 251/2012).

Italy lacks a positive action monitoring system; we have no information on the follow up even in relation to positive action financed by public funds. The problems with positive action measures are mainly economic, that is: low financing of the plans; few incentives to develop positive action plans; the lack of a system to monitor positive action measures and their impact; and little knowledge of positive action as a tool. According to the Equal Opportunities Code (Article 48), the public administration holds a primary role in promoting positive action: indeed, public employers have an obligation to draw up three-year positive action plans, which can be sustained within budget limits. Many positive action plans are carried out in this context, which shows that positive action plans are implemented where they are encouraged through economic or legal incentives.

However, we do not have many examples available of this kind of positive action, which is also due to the lack of a monitoring system. The Equal Opportunities National Committee (EONC) 2012 programme for the public financing of positive action provides for positive action measures in professional training in order to improve the employability of young women.[38] The triennial 2017-2019 plan for positive action of the Offices of the Prime Minister provides for measures geared towards women's professional requalification and consequent mobility to offices where there is a shortage of staff with specific skills.[39] The EONC's 2012 programme for the public financing of positive action[40] includes numerical targets to be achieved in hiring, such as: measures addressed to young qualified or graduate women, where 50 % of the recipients are expected to be hired on an employment contract (not a fixed-term one); and measures addressed to unemployed women or women on redundancy over 45 years old, where 50 % of the recipients will enter or re-enter the labour market. However, no specific example of such a measure is available. The 2017-2019 positive action plan of *Corte dei Conti*, for example, provides for positive action measures on internal mobility in order to enhance workers' professional skills.

4.4 Evaluation of implementation

The principle of equal pay for equal work or work of equal value is satisfactorily implemented in national legislation.

The concept of pay is not defined by the law, but has widely been construed by the Italian courts, on the basis of collective agreements, as including any economic benefit in cash or in kind directly and indirectly paid on the ground of the employment relationship. Therefore it fully complies with the definition in Article 157(2) TFEU.

Article 4 of Recast Directive 2006/54 is explicitly implemented by Article 28 of the Equal Opportunities Code.

No justifications for differences in pay are provided by the Equal Opportunities Code (Decree No. 198/2006), except those permitted on the ground of the general notion of indirect discrimination.

The general notion of both direct and indirect discrimination provided by Article 25 of the Equal Opportunities Code refers to a comparator and is enforceable with regard to all working conditions, including remuneration.

Actually, both the concise wording of the definition of direct discrimination and the reference to the conditional ('could put') in the notion of indirect discrimination, together with the reference to 'a particular disadvantage' instead of 'a proportionally higher disadvantage' (which was provided by the previous text) opened a debate on the real need for a comparison. No overriding opinion has been recorded that calls for the need for an actual comparator.

National law does not lay down any parameters for establishing the equal value of the work performed.

The European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency has not yet been applied. However, there is Article 46 of the Equal Opportunities Code on the release of information on pay to individuals and other data at firm level, which provides that, every two years, public and private companies employing more than 100 employees must submit

[38] http://sitiarcheologici.lavoro.gov.it/AreaLavoro/Tutela/Documents/PROGRAMMAOBIETTIVO2012.pdf.

[39] http://presidenza.governo.it/AmministrazioneTrasparente/AltriContenuti/DatiUlteriori/DSG/PIANO_AZIONI_POSITIVE_PCM_def.pdf.

[40] http://sitiarcheologici.lavoro.gov.it/AreaLavoro/Tutela/Documents/PROGRAMMAOBIETTIVO2012.pdf.

to regional equality advisers and trade unions a report concerning the situation of male and female employees.

Under the broad definition of Article 27 Paragraph 1 of the Equal Opportunities Code, the personal scope in relation to access to work and vocational training expressly encompasses all types of contracts, subordinate, autonomous or 'any other'. As regards equal pay and working conditions, including dismissals, just as for labour law in general, the text of the law does not expressly refer to non-subordinate or quasi-subordinate workers (that is, a sort of dependent self-employed worker, known as DSE), so it could be applied to these workers as well, but only by way of interpretation; however, no specific case law can be found on this point.

With regard to the implementation of Article 14 of Directive 54/2006, the prohibition on discrimination provided by the Equal Opportunities Code applies to all persons employed in any sector (both public and private), irrespective of the length of the employment relationship, including part-time workers, fixed-term workers, apprentices, employees on education contracts, home workers, working spouses or relatives, as well as persons working in cooperatives, and irrespective of the size of the enterprise/employer. On the whole, the personal scope of these provisions is very wide and covers the notion of a worker as defined by the CJEU.

As regards material scope (Article 14(1) Recast Directive 2006/54), Article 27 of the Equal Opportunities Code merely translates the wording of the Recast Directive and of Article 4(1) of Directive 41/2010, except as regards vocational training where the prohibition on discrimination expressly includes both access to and the content of vocational training.

On the whole, as regards subordinate workers there are no specific problems with regard to the personal or the material scope of the directive in relation to equal access to work, vocational training, employment contracts, working conditions and promotion and protection against dismissal on grounds connected to sex. As regards other forms of work, the directive has been implemented by a mere reproduction of its wording. Therefore some problems could rise from its ambiguous text. However, there is no case law or debate on these issues.

The implementation of the exception on occupational activities (Article 14(2) Recast Directive 2006/54) has always been deemed to comply with the exceptions provided by EU law.

National law and case law provide for sufficient protection against the non-hiring, non-renewal of a fixed-term contract, non-continuation of a contract and dismissal of women connected to their state of pregnancy and/or maternity.

The exception on the protection of women as regards pregnancy and maternity (Article 28 of the Recast Directive) has not been expressly provided. Nevertheless, Decree No. 198/2006 on Equal Opportunities refers to Decree No. 151/2001 for the protection of maternity and paternity, which provides for all specific rights linked to motherhood and fatherhood involving the safeguarding of these provisions.

Italy has made use of the voluntary positive actions provided by Article 42 et seq. of the Equal Opportunities Code (Decree No. 198/2006) with a view to ensuring full equality in practice between men and women in working life. The main problems with positive action measures are economic ones, including: low financing of the plans; few incentives to project positive action plans; the lack of a system to monitor positive action measures and their impact; and little knowledge of positive action as a tool.

4.5 Remaining issues

There are no remaining issues regarding national law on equal pay and/or equal treatment at work that have not been discussed so far.

5 Pregnancy, maternity, and leave related to work-life balance for workers (Directive 92/85, relevant provisions of Directives 2006/54, 2010/18 and 2019/1158)[41]

5.1 General (legal) context

5.1.1 Surveys and reports on the practical difficulties linked to work-life balance

There have been no specific surveys over the last five years that provide insights into difficulties that workers face in practice in relation to work-life balance issues.

The 2017 OECD Better Life Index states that an important aspect of work-life balance is the amount of time a person spends at work. Evidence suggests that long work hours may impair personal health, jeopardise safety and increase stress. In Italy, almost 4 % of employees work very long hours, although that is less than the OECD average of 13 %. The more people work, the less time they have to spend on other activities, such as caring for children and elderly, leisure activities, eating or sleeping. The amount and quality of leisure time is important for people's overall wellbeing and can bring additional physical and mental health benefits. In Italy, on average, full-time workers devote 62 % of their day, or 14.9 hours, to personal care (eating, sleeping, etc.) and leisure (socialising with friends and family, hobbies, games, computer and television use, etc.), which is slightly less than the OECD average of 15 hours. The report states that work-life balance can be improved through free childcare and gives the example of the childcare service provided by the Italian Ministry of Economy and Finance: the free care and entertainment service is aimed at its employees' children aged 4 to 12 years old; the services are located at the ministry headquarters and in nearby external sports facilities during summer; it is operational on weekdays when there is no school; in the morning before starting work, employees can leave their children in care and collect them at lunch time; if their working hours involve an afternoon, they can also leave them after lunch and collect them in the evening; the care activities are managed by qualified childcare staff. This improves employee work-life balance, with 76 % of users valuing the experience of the service by their sons and daughters as 'excellent' and 21 % as 'good'. In addition, the work attendance rate of employees who use the service is higher on average than that of other employees with children of the same age.[42]

The ISTAT 2018 report, *Well-being equity and sustainability in Italy (BES)* shows that in 2017, for every 100 women without children who are employed, only 75.5 % of women with at least one child under 6 years of age are employed; this rate has decreased in recent years, meaning that the participation in the labour market of women with children is decreasing.[43] According to the 2014 ISTAT report on *Daily life*, on average, working women dedicate 5.13 hours a day to household work, while working men spend 1.5 hours on household tasks. According to the same report, there were positive signs for gender equality among couples who are parents who both work, where the mother is aged between 25 and 44 years. Furthermore, in 2014, for the first time, the asymmetry index of household work fell below the 70:30 split, with 67.3 % of the family work carried out by women—a decline of 5 % compared to 2009 (71.9 %).[44]

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[41] See Masselot, A. (2018) *Family leave: enforcement of the protection against dismissal and unfavourable treatment*, European network of legal experts in gender equality and non-discrimination, available at https://www.equalitylaw.eu/downloads/4808-family-leave-enforcement-of-the-protection-against-dismissal-and-unfavourable-treatment-pdf-962-kb and McColgan, Aileen (2015) *Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway* European network of legal experts in gender equality and non-discrimination, available at https://www.equalitylaw.eu/downloads/3631-reconciliation.

[42] http://test.oecdbetterlifeindex.org/#/11111111111.

[43] https://www.istat.it/it/files//2018/12/BES2018-cap-03.pdf.

[44] https://www.istat.it/it/files//2016/11/Report_Tempidivita_2014.pdf and https://www.istat.it/it/files//2016/11/EN_Uso_tempo_2016_1.pdf.

However, in Italy, the main difficulties are due to a lack of services. The structures and services useful to workers who have care duties are greatly insufficient and access to them is also too expensive compared to the average income of workers; all the more so for women, whose income is normally lower than that of men. Furthermore, the quality of public transport is often a problem.

Part-time work, which is not always a solution considering the economic aspect mentioned above, is neither a worker's right in the private sector nor available as a temporary measure. Moreover, except for the cases where leave (even unpaid) is granted to the worker, the choice of giving up the job is a hard one, as re-entering the labour market is not an easy task due to the high unemployment rate.

Traditional stereotypes concerning the roles of parents and the low percentage of women in highly qualified, well paid jobs and in positions of responsibility does not help, but acts as a multiplier factor.

The only answer to all this is to change the social stereotypes of the distribution of roles within the family. This means improving leave provisions for men and improving services and facilities, such as kindergartens. In particular, access to services such as crèches, school holiday camps and other school activities, mainly depend on the income of the parent/s and the offer is dramatically insufficient in comparison with the needs of families (both of employed and self-employed parents).

5.1.2 Other issues

The main problem in Italy is not related to a lack of legislation on the reconciliation of work and family life or on care leave. Indeed, domestic legislation is in line with the EU directives and usually exceeds EU legislation. The main issue is the effectiveness of the legislation: workers tend to refrain from exercising their rights, as they are afraid of the consequences from their employer. In particular, employees on fixed-term contracts or in project work or other types of temporary work, are afraid that their contract will not be renewed. This is especially true for younger generations: the majority of young people, the potential parents, work in precarious jobs, lacking a secure and constant income as well as the respective pension and insurance contributions. This deprives them of the choice to exercise their rights.

Furthermore, it is quite unusual in Italy for fathers to take parental leave. The gender pay gap and the fact that men are the main breadwinners has a great influence on this. As parental leave is calculated as a percentage of the worker's pay, it is more convenient for families to lose part of the woman's pay than of the man's pay, because in general, men earn much more than women and the percentage of pay lost in the event of parental leave is mostly higher for men than for women. As a measure to encourage fathers to take parental leave, the maximum total length of the leave awarded per child was increased from 10 to 11 months if the father uses at least three months (Article 32 Decree No. 151/2001). Moreover, to reduce the negative effects of parental leave on the organisation or business, employers can offer fixed-term contracts, by way of exception starting up to one month before the leave begins (or longer if provided by collective bargaining), so that the worker taking leave can train his or her replacement. For small companies (employing less than 20 workers), a 50 % reduction in contribution is provided for the recruitment of persons replacing workers on parental leave (Article 4 Decree No. 151/2001).

Another problem is that paternity leave is allowed to fathers only as an alternative to maternity leave in very special cases: that is, if the mother dies or becomes seriously ill, or in the event of the mother abandoning the child, or if the child is in the exclusive custody of the father. This limits the rights of fathers and the promotion of a better balance in care duties as well as reconciliation of work and family life. On the other hand, the special

paternity leave introduced by Act No. 92/2012 is also a very weak measure in respect of promoting a better balance in care duties within the family (which is the declared aim of the measure), as it is short and temporary.

Finally, a weak point of the Italian legislation, despite Article 9 of Act No. 53/2000 (which finances companies that enforce collective agreements on positive action aimed at allowing parents to adopt a flexible working time schedule, even after parental leave), is that workers returning from parental leave are not generally entitled to a right to change their working hours and/or patterns for a set period of time as a consequence of the leave or of being parents, and employers are not obliged to consider and respond to such requests.

5.1.3 Overview of national acts on work-life balance issues

Act No. 53/2000 on supporting motherhood and fatherhood, time for care and for vocational training, and coordination of hours in the town's public services is the only text that explicitly refers to reconciliation: Act No. 53/2000 provides for the enactment of a policy aimed both at reconciling work and family life and helping social solidarity. More specifically, Articles 22 and 26 state that regions have to provide regulations for municipalities to co-ordinate the opening hours of shops, business, public services and decentralised units of the public administration, and to promote the use of time for social solidarity. Such co-ordination has to be achieved by municipalities on the basis of a territorial plan, which can include experimental plans financed by the region. Article 27 states that local bodies can support and promote associations called 'time banks', which facilitate the exchange of neighbourhood services, the access to services and facilities, the solidarity in local communities and the initiatives intended to exchange time-off for mutual benefit.

Article 9 of Act No. 53/2000 provides an important measure for the promotion of the reconciliation of work and family life in the form of symmetrical positive action measures that can apply to both women and men. Part of the Family Fund is allocated to businesses that enforce collective agreements on positive action aimed at: allowing parents to adopt a flexible working time schedule, through part-time, teleworking, home work, flexitime and other measures; reintroducing parents to the workplace after a period of leave linked to reconciliation reasons; and promoting innovative services for the reconciliation of private and professional life. Positive action measures have to apply to parents with minor children; priority is given to parents with children under 12 (or under 15 in the case of temporary custody or adoption) and to parents with disabled children. Funds are accessible to private employers and some public bodies, such as local health units and hospitals. Moreover, the Family Fund can also support the promotion of and professional advice on the planning and the monitoring of the measures to be carried out also through territorial networks. The support of such measures by the Family Fund could be useful as far as the quality of the projects is concerned, but could also conceal the risk of wasting resources.

There are several provisions related to pregnancy, maternity, paternity, parental and care leave, which for the most part are contained in Decree No. 151/2001 on the protection of motherhood and fatherhood.

Finally, the Minister of Labour and Social Policies, together with the Minister of Economics and Finance, issued a Decree on 12 September 2017 to implement Article 25 of Decree No. 80/2015 on the allocation of resources for measures to reconcile family and working life. The decree sets criteria entitling employers who can demonstrate that they promote such reconciliation measures through company-wide collective agreements to ask for a reduction in their social contributions. Measures must cover parenthood (an extension of paternity leave and/or the integration of the respective allowance, crèches, e-learning for employees returning to work, vouchers for baby-sitting services), organisation (smart working, flexible working hours, part-time work and the transfer of holiday leave) and enterprise welfare (offers of time-saving services, offers of care services, vouchers for care

services). The collective agreement must provide two measures and at least one must be included in the first two areas to entitle the employer to access the benefit. Moreover, the intervention must be innovative and grant better conditions compared to previous agreements and concern at least 70 % of the workforce employed during the year before the application.[45]

5.1.4 Political and societal debate and pending legislative proposals

There are no pending legislative proposals on work-life balance at present. The political and social debate is focused on the following issues: changing social stereotypes of the distribution of roles within the family; improving leave provisions for men; improving services facilities, such as kindergarten, crèches, school holiday camps and other school activities; and making these activities available to all. Moreover, there is a debate on how to improve the work-life balance among entrepreneurs, who have understood that a good work-life balance also improves workers' productivity, reduces health expenses, increases employees' loyalty and adds value to the firm's brand.[46]

5.2 Pregnancy and maternity protection

5.2.1 Definition in national law

Decree No. 151/2001 on the protection of motherhood and fatherhood, which includes all rules on this subject, and also implements Directives 2006/54 and 2010/18, does not provide a specific definition of a pregnant worker, a worker who has recently given birth or a worker who is breastfeeding. Nevertheless, some specific rights regarding the health of pregnant workers (provided under Chapter II of Decree No. 151/2001) are assured to workers from the beginning of pregnancy until the child is seven months old, subject to the condition that the employer has been informed.

5.2.2 Obligation to inform employer

Article 21 of Decree No. 151/2001 states that, before the beginning of the compulsory period of maternity leave, the woman has to present to the employer a general practitioner certificate attesting the presumed date of delivery and the general practitioner has to submit an online certificate to INPS (National Institute for Social Security). Furthermore, within 30 days of the birth, the woman has to submit the birth certificate to her employer. Finally, the hospital also has to send the birth certificate (or the certificate of pregnancy loss) to INPS (online).

5.2.3 Case law on the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding

There is no available case law on the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding.

5.2.4 Implementation of protective measures (Articles 4-6 of Directive 92/85)

The protective measures mentioned in Articles 4-6 of Directive 92/85 have been implemented by Decree No. 645/1996, which was later included in Decree No. 151/2001 (Chapter II).

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[45] Funds have been allocated to sustain experimental measures in 2016-2018 (EUR 55 200 000 for 2017 and 54 600 000 for 2018). 20 % of the Fund will be equally shared among all employers while 80 % will be shared in proportion to the workforce that they employed during the year before the application. Employers can participate only once, as it is a pilot scheme.

[46] See, for example, https://blogunisalute.it/work-life-balance-aziende/.

Article 11 of the latter Decree provides for a specific 'health and safety risk assessment' related to pregnancy, which must be included in the general assessment to be drawn up for all workers under Decree No. 81/2008, and also provides that employees and their representatives must be informed of the results and the respective measures to be enacted.

Article 7 imposes a ban on performing duties that involve the lifting of weights or that could be too strenuous, or pose a risk to the health of the mother and/or of the child, as specifically listed in two annexes to the decree, and provides that the worker must be transferred to another job. The Labour Inspectorate can also order a change of job where the worker or the child has serious health problems or if the working or environmental conditions are held to be prejudicial to their state of health. In both cases maternity leave is anticipated if no different jobs are available.

Under Article 12, following the results of the risk assessment mentioned above, the employer must change the working conditions or schedule so as to avoid possible risks to the worker and, if this is not possible, the worker must be transferred to another job. The Labour Inspectorate must be duly informed and it can then order an extension of the compulsory maternity leave to cover the whole period (until the child is seven months old).

5.2.5 Case law on issues addressed in Articles 4 and 5 of Directive 92/85

There is no available case law on issues addressed in Article 4 and 5 of Directive 92/85.

5.2.6 Prohibition of night work

Article 53 of Decree No. 151/2001 provides for a ban on night work (from midnight to 6 o'clock) from the certified beginning of pregnancy until the child is one year old. Furthermore, Article 53 states that workers cannot be required to work at night when they are: a mother of children aged less than 3 years or their cohabiting father; single parents of cohabitant children aged less than 12 years; an adoptive or foster mother of children during the first 3 years since adoption or beginning of legal custody or alternatively the adoptive or foster father cohabiting with the mother; a mother or father who care for a disabled person. In these cases, workers are given daytime work, unless this is impossible for the arrangements of the enterprise.

The Italian legislation goes further than the EU directive, as it provides the same guarantees to fathers as to mothers. However, Article 7 of the directive provides for the possibility to avoid night work, while Article 53 states a ban on night work only in certain circumstances.

5.2.7 Case law on the prohibition of night work

The Court of Cassation, in case No. 23807 of 14 November 2011, declared null the dismissal of a working mother of children aged less than 3 years who refused to be employed on night work, as the employer had not proved that there was no day job where she could have been employed.

The issue of night work is open for women of flight crews: there has been discussion in case law on whether Article 53 of Decree No. 151/2001 or the sectorial specific legislation on working time, which makes no provisions for exemption from night work can be applied to them.[47]

[47] Tribunal Busto Arsizio, 23-07-2018 and 16-09-2019; Court of Cassation 25-07-2017, No. 18285.

5.2.8 Prohibition of dismissal

Protection against dismissal is ensured on the ground of pregnancy alone, regardless of whether the employer has been informed of the pregnancy. Protection is granted during pregnancy, maternity leave, parental leave and for a period of 12 months following the date of confinement. A dismissal in this situation is considered to be equal to a discriminatory dismissal and the special remedy (reinstatement) provided by Article 18 of the Worker's Statute is enforceable (Article 54, Decree No. 151/2001). The same protection against dismissal that is provided for natural parents is granted to adoptive or foster parents until one year after the child has entered the family.

Moreover, in response to the issue of 'blank resignation', Act No. 92/2012 changed Article 55, Paragraph 4 of Decree No. 151/2012. 'Blank resignation' refers to an undated resignation letter signed by a worker at the time of recruitment so as to be used by the employer to make the worker resign when needed (i.e. when pregnant). Often the employer makes recruitment conditional on signing such a letter. Act No. 92/2012 extended the period during which mutual termination of the employment contract or resignation letters of working mothers must be signed in front of an inspector of the Minister of Labour. This period now starts at the beginning of the pregnancy and ends when the child reaches the age of three. The same rule applies to adoptive parents or persons who have been given the official custody of a child from birth/entering the family. In the case of an international adoption, the ban on dismissal provided by Article 54 of Decree No. 151/2001 is enforceable from the communication of the proposal by the association that is in charge of the case.

Article 54 of Decree No. 151/2001 allows the working mother to be dismissed in only four exceptional cases: a serious offence by the female worker; the cessation of the activities of the company; the end of a fixed-term contract and the negative result of the probationary period if the ban on discrimination has not been infringed. In these cases the mother will continue to receive the maternity allowance, which is paid directly by the INPS (the National Institute for Social Security), except in the latter case.

Finally, Article 35 of Decree No. 198/2006 provides a ban on the dismissal of women during the first year of marriage.

5.2.9 Redundancy and payment during maternity leave

During the period covered by the ban on dismissal, the worker cannot be put on short-time hours or made redundant in a collective procedure except in the case of the cessation of the company's activities. In the latter case, the mother will continue to receive the maternity allowance, which is directly paid by the INPS (the National Institute for Social Security).

The same protection against dismissal provided for natural parents is granted to adoptive or foster parents until one year after the child has entered the family. In the case of an international adoption, the ban on dismissal provided by Article 54 of Decree No. 151/2001 is enforceable from the communication of the proposal by the association that is in charge of the case.

5.2.10 Employer's obligation to substantiate a dismissal

Protection is granted during pregnancy, maternity leave, parental leave and for a period of 12 months following the date of confinement: a dismissal in this situation is considered to be equal to a discriminatory dismissal and the special remedy (reinstatement) provided by Article 18 of the Worker's Statute is enforceable (Article 54 Decree No. 151/2001). Article 54 of Decree No. 151/2001 allows a working mother to be dismissed only in four exceptional cases: a serious offence by the female worker; the cessation of the activities

of the company; the end of a fixed-term contract and the negative result of the probationary period if the ban on discrimination has not been infringed. In these cases the mother will continue to receive the maternity allowance, which is directly paid by the INPS (the National Institute for Social Security), except in the latter case. In these cases, employers must indicate substantiated grounds for the dismissal in writing. Indeed, general rules are enforceable that provide the obligation to indicate the substantiated grounds for the dismissal in writing (Article 2, Paragraph 2 of Act No. 604/1966). In case of an infringement of this provision, the dismissal does not produce any effect. The consequences of such an infringement are limited to the restitution of damages. It is up to the employer to provide evidence of the real reason for the dismissal in order to demonstrate that it is included in the four legitimate exceptions mentioned above.

5.2.11 Case law on the protection against dismissal

Some case law has been published regarding the interpretation of the exceptions to the ban on dismissal during pregnancy.[48] The Tribunal of Venice of 9 February 2010 ruled that the dismissal of a pregnant woman at the end of the probationary period is discriminatory if the woman proves both that there is no reason for dismissal as her capacity has been positively ascertained and that she is pregnant. The Constitutional Court in case No. 172 of 27 May 1996 ruled that an employer may dismiss a pregnant employee on the grounds of the negative result of the probationary period only if he can prove – or if there is objective evidence – that he did not know of the woman's pregnancy; otherwise, he must explain the reasons justifying the negative evaluation of the probationary period, in order to disprove that the reason for the dismissal was the pregnancy of the woman. Other decisions ruled that: the consequence of the discriminatory dismissal is the payment of retribution from the day of dismissal to that of the woman's reintegration into work, as the dismissal is null and void;[49] the dismissal of pregnant women is null and void in the event of illegal employment, even if the employer had not been informed of the pregnancy.[50]

The Court of Cassation, in case No. 1168 of 2 March 1989, ruled that pregnancy forbids women from working for five months but has no impact on their right to be employed.[51]

There are several published cases regarding the blank resignation of working mothers. The Tribunal of Florence of 12 December 2005 stated that if the resignation is not validated, the work relationship is not terminated and the employee, therefore, has the right to go back to work and to receive remuneration, plus compensation, currency revaluation and legal interest for the months in which they were kept out of work (in the same sense as the finding of the Tribunal of Milan of 12 July 2007). Other cases concern the relevance of being aware of the pregnancy for these rules to be enforced. The Court of Appeal of Florence, of 9 September 2006, ruled that Article 55 was enforceable despite the fact that the employer did not know about the pregnancy of the worker and the Tribunal of Treviso of 4 January 2007 ruled that Article 55 was enforceable only if the employee knew about her pregnancy when she resigned

5.3 Maternity leave

5.3.1 Length

Compulsory maternity leave, under Articles 16 and 20 of Decree No. 151/2001, lasts for five months: two to be taken before the birth, three after the birth. This entire period can

[48] Court of Cassation, civ., sez. lav., 21-12-2004, No. 23684; Tribunal of Milan, 24-05-2010; Court of Cassation civ., sez. lav., 28-06-2013, No. 16415; Court of Cassation civ., sez. lav., 26-01-2017, No. 2004; Court of Cassation, civ., sez. lav., 28-09-2017, No. 22720.

[49] Court of Cassation, civ., sez. lav., 11-01-2017, No. 475.

[50] Court of Cassation, civ., sez. lav., 20-07-2012, No. 12693; Court of Cassation, civ., sez. lav., 03-07-2015, No. 13692.

[51] See also Council of State, sez. VI, 28-07-1982, No. 392.

be postponed by one month if a national health service specialist deems that there is no risk to the mother and to the unborn child, or it can be brought forward when the worker's job involves a risk to the pregnancy. Alternatively, women can take the five months maternity leave entirely after the birth, provided that a national health service specialist deems that there is no risk to the mother and to the unborn child (Article 1, Paragraph 485 of Act No. 145/2018, which amended Article 16 of Decree No. 151/2001).

5.3.2 Obligatory maternity leave

Compulsory maternity leave, under Articles 16 and 20 of Decree No. 151/2001, lasts for five months: two to be taken before the birth, three after the birth. This entire period can be postponed by one month if a national health service specialist deems that there is no risk to the mother and to the unborn child, or it can be brought forward when the worker's job involves a risk to the pregnancy.

Alternatively, women can take the five months of maternity leave entirely after the birth, provided that a national health service specialist deems that there is no risk to the mother and the unborn child (Article 1, Paragraph 485 of Act No. 145/2018, which amended Article 16 of Decree No. 151/2001). Although this measure is likely to be appreciated by working mothers, and has been prudently accompanied by a thorough medical evaluation, it also raised some criticism as regards the risk of exposing women, particularly those in precarious employment, to possible pressures to keep on working until the birth of the child. Careful monitoring of the implementation of this measure would be advisable, at least for the first few years.

5.3.3 Legal protection of employment rights (Article 5, 6 and 7 of Directive 92/85)

The protective measures mentioned in Articles 4 to 6 of Directive 92/85 have been implemented by Decree No. 645/1996, which was later included in Decree No. 151/2001 (Chapter II).

Article 11 of Decree No. 151/2001 provides for a specific 'health and safety risk assessment' related to pregnancy, which must be included in the general assessment to be drawn up for all workers under Decree No. 81/2008, and also provides that employees and their representatives must be informed of the results and the respective measures to be enacted.

Article 7 imposes a ban on performing duties that involve the lifting of weights or that could be too strenuous, or pose a risk to the health of the mother and/or of the child, as specifically listed in two annexes to the decree, and provides that the worker must be transferred to another job. The Labour Inspectorate can also order a change of job where the worker or the child has serious health problems or if the working or environmental conditions are held to be prejudicial to their state of health. In both cases maternity leave is anticipated if no different jobs are available.

Under Article 12, following the results of the risk assessment mentioned above, the employer must change the working conditions or schedule so as to avoid possible risks to the worker and, if this is not possible, the worker must be transferred to another job. The Labour Inspectorate must be informed and it can then order an extension of the compulsory maternity leave to cover the whole period (until the child is seven months old).

Article 53 of Decree No. 151/2001 provides for a ban on night work (from midnight to 6 o'clock) from the certified beginning of pregnancy until the child is one year old. Furthermore, Article 53 states that workers cannot be required to work at night when they are: a mother of children aged less than 3 years or their cohabiting father; single parents of cohabitant children aged less than 12 years; an adoptive or foster mother of children

during the first 3 years since adoption or beginning of legal custody or alternatively the adoptive or foster father cohabiting with the mother; a mother or father who care for a disabled person. In these cases, workers are given daytime work, unless this is impossible for the arrangements of the enterprise.

The Italian legislation goes further than the EU directive, as it provides the same guarantees to fathers as it does to mothers.

5.3.4 Legal protection of rights ensuing from the employment contract

Pregnancy and maternity leave are counted as actual work as regards seniority, annual leave, the thirteenth month and must be deemed, for the purposes of promotion, to be a period of employment, unless any special requirements are laid down for the purpose by collective agreements (Article 22, Decree No. 151/2001). The same provision also applies when the compulsory maternity leave is anticipated or extended by the Labour Inspectorate or arises from the impossibility of transferring the worker from a risky job or from night work.[52] Furthermore, the Budget Act for 2016 (Act No. 208/2015, Article 1, Paragraph 183) clarified that compulsory maternity leave must take into account the aim of the productivity bonus, meaning that the suspension of the working relationship in this period cannot jeopardise the mother's income in respect of wage incentives.[53]

5.3.5 Level of pay or allowance

During the whole period of maternity leave, mothers are entitled to a daily benefit paid by the National Institute for Social Security (INPS). This benefit is granted to those working in the private and public sectors, to self-employed persons and to professionals. The amount of the maternity benefit is 80 % of the average overall daily wage. During the leave, figurative contributions are taken into account for pension rights and amounts. There is no ceiling to the allowance.

Therefore, the maternity leave allowance is considerably higher than the sick leave pay in both the private and public sector (from 20 % to 40 % higher).

5.3.6 Additional statutory maternity benefits

Most collective agreements (such as, for instance, the collective agreements for the chemical sector industries and the tourism sector) provide for an integration of maternity allowance of up to 100 % for the first five months to be paid by the employer. Women in the civil service, according to their employment contract, are entitled to a maternity allowance equal to their full wage.

5.3.7 Conditions for eligibility (Article 11(4) of Directive 92/85)

Maternity benefits do not require a minimum amount of national insurance contributions to have been paid: it is enough that the claimant was employed at the time the compulsory leave period began and no minimum length of service is required.[54]

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[52] In the event that the worker has been transferred to a different job at a lower level she has the right to retain her previous remuneration and level; if the job is at a higher level, she is entitled to be promoted under the conditions provided by the ordinary ruling for all other workers.

[53] Under Paragraph 635 of Article 1 of Act No. 205/2017 (the Budgeting Act), the expiry of university researchers' fixed-term contracts was postponed for 5 months corresponding to the length of compulsory maternity leave.

[54] There is also a right to the maternity leave allowance in cases where the dismissal is exceptionally justified within the first year of the life of the child (Article 3 Decree No. 80/2015).

5.3.8 Right to return to the same or an equivalent job (Article 15 of Directive 2006/54)

Article 56 of Decree No. 151/2001 guarantees the right of a woman to return to her job or to an equivalent job after her maternity leave, on terms and conditions that are no less favourable to her, and to benefit from any improvement in working conditions to which she would have been entitled during her absence. It also provides for the right to return to the same workplace or to another workplace in the same municipality and to work there until the child is one year old.

5.3.9 Legal right to share maternity leave

According to Article 28 of Decree No. 151/2001, working fathers may obtain maternity leave in cases provided for by Article 28 of Decree No. 151/2001. Under Article 28 of Decree No. 151/2001 maternity leave is granted to the father after the birth for the whole length of the maternity leave or for the remaining period in special cases, that is: where the mother, including a professional and self-employed mother, dies or becomes seriously ill; in the event that the mother abandons the child; if the child is in the sole custody of the father. Adoptive and foster fathers can also take the maternity leave in place of the mothers in the same special cases (Article 31). The same economic and working conditions as well as notional contributions provided for the maternity leave are granted to the father.

Moreover, under Article 1 Paragraph 278 of Act No. 145/2018, following Article 4 of Act No. 92/2012, fathers have the (optional) right to take one day of leave (taken from the mother's leave allocation) within the first five months after the child's birth.

5.3.10 Case law

The Constitutional Court of 13 July 2018 ruled that Paragraph 3 of Article 24 of Decree No. 151/2001 on the protection of motherhood and fatherhood contradicts the Constitution. Article 24 extends the right to maternity allowance for the period of compulsory maternity leave to working mothers who, at the beginning of this period, are temporarily absent from work, or on leave from work with no right to remuneration or have been unemployed for less than 60 days. Under Paragraph 3 of Article 24, absences due to illness or an accident at work, leave due to care for a sick child, absence due to foster care, or periods of interruption of work in case of a vertical part-time contract,[55] are exceptions and not to be reckoned under the time limit of 60 days. The Constitutional Court ruled that paragraph 3, which does not include periods of leave to take care of disabled relatives in these exceptions, is not in compliance with Articles 3, 31 and 37 of the Constitution ensuring the principle of equality and the protection of the family and of motherhood. The Court underlined in its ruling that the remunerated period of leave to take care of a disabled relative, which is grounded on objective and strict requirements, must be included in the other exceptions provided by the law mentioned above as it responds to the need of assuring that the necessary care for disabled persons can be provided by their family. Not recognising the need to care for a disabled relative would also arbitrarily sacrifice the special protection granted by Article 37 of the Constitution to both the mother and the child as it would compel the mother to choose between taking care of the disabled person or returning to work to benefit from the maternity allowance. The judgment of the Constitutional Court, which added the period of leave to take care of disabled persons to the exceptions expressly laid down by paragraph 3 of Article 24, further strengthened the protection of maternity and was a necessary intervention (as stated by the Court itself) as case law could not merely add it to the list of exceptions by way of interpretation.

In sex discrimination cases, Article 40 of Decree No. 198/2006 provides for the partial reversal of the burden of proof: the Court of Appeal of Milano of 17 June 2009, ruled that

[55] A vertical-time part-time employment scheme provides for full-time employment, but only at predetermined times, that is, in some days of the week, in some weeks of the month, or in some months of the year.

when a pregnant women did not have access to work and alleged facts from which it may be presumed that there had been direct or indirect discrimination, then it was up to the employer to prove the absence of discrimination on the basis of pregnancy; the same decision awarded compensation for damages of one year's pay.

One of the main problems in relation to maternity leave is the consequences of taking the leave on future pay. The Court of Appeal of Turin recently deemed a clause of a collective agreement at the enterprise level to be discriminatory as it infringed Articles 3 and 37 of the Constitution, 25 Paragraph 2bis of Decree No. 198/2006 and Article 3 of Decree No. 151/2001.[56] The clause provided 'real presence at work' as a criteria to be eligible to receive additional remuneration as an incentive, and did not regard family-related leave, including compulsory maternity leave, parental leave and leave for illness as working time. Although the criterion is officially neutral, it results in indirect pay-discrimination (direct as far as maternity leave is concerned), since a higher percentage of female workers than male workers take family-related leave. Moreover, the company in this case had not provided a permissible justification regarding the requirement of 'real presence at work'. The employer was ordered: to cease the discrimination by regarding such leave as actual work with the aim of providing remuneration as an incentive; to pay the additional remuneration incentive to the claimants; and to enhance a plan to remove the discrimination where the change of the criteria mentioned above had to be included in future collective bargaining at the enterprise level. The latter was promoted by the intervention of the regional equality adviser, as it was a case of collective discrimination (in such cases the advisers can act on their own in court).

Another case is on the right to return to the same job after taking maternity leave: during the employee's maternity leave, the company hired another worker to whom she had to report for duties that she used to carry out autonomously. This change, which occurred when she returned to work, put her in a disadvantageous condition, and the Tribunal of Ferrara of 11 September 2017 stated it was not justified by objective reasons. The company was sentenced to cease the discriminatory behaviour by eliminating the supervision of her activity, to refund damages and to advertise the judgment both in the firm and in a local newspaper.

Some published cases dealt with the right to the compulsory maternity leave allowance: the right to the allowance for vertical part-timers, workers performing their job in seasonal activities and workers whose employment relationship legitimately ended during pregnancy.[57]

A judgment of the Tribunal of Florence of 6 February 2014 found gender discrimination where the Health and Insurance Institute, which had to pay the maternity allowance to a hostess of an airline company, calculated only 50 % of the 'flight allowance' in the definition of remuneration, making reference to the same definition of remuneration used to calculate the sick pay allowance. The judgment is particularly interesting as it deals with the problem of the comparator in the gender pay gap. In particular, the tribunal emphasised that discrimination does not necessarily involve a comparison (between some subjects who suffer detrimental treatment compared to other subjects in the same conditions), as maternity is biologically connected to gender. As a consequence, the detrimental treatment is discriminatory in that it affects a working woman on the ground of her condition, without any need to find an existing or hypothetical comparator.[58]

There are a few other cases of relevance, relating to: considering compulsory maternity leave as part of the length of service in a public competition; the legitimacy of the worker's

[56] Court of Appeal of Turin, 10.1.2018.

[57] Constitutional Court, 29-03-1991, No. 132*;* Pretura of Milan, 23-10-1987*;* Court of Cassation civ., 09-11-1984, No. 5668.

[58] See CJEU, judgment of 8 November 1990, *Dekker* v. *Stichting Vormingscentrum voor Jong Volwassenen*, C-177/88, ECLI:EU:C:1990:383.

behaviour if she does not inform the employer of her pregnancy before recruitment on a fixed-term contract; the legitimacy of the employer's behaviour if a pregnant women is not hired, despite her overcoming the practical test, because there is no job in the firm compatible with her health during pregnancy; the illegitimacy of the employer's behaviour if a pregnant women is not hired because she should be assigned to a job dangerous for her and her child's health; the illegitimacy of the exclusion from access to work of a pregnant worker by an employment exchange; the illegitimacy of pregnancy tests for access to work.[59]

5.4 Adoption leave

5.4.1 Existence of adoption leave in national law

Decree No. 151/2001 extends the same provisions on maternity leave and the respective rights/protection to national and international adoption and official custody of a child. The Italian regulations fulfil the EU requirements, as the general rules on the forms of leave provided by the decree have been adapted to the particular needs of adoption and official custody: for example, for adoption, maternity leave must be taken during the first five months after the minor comes to live with the family and it lasts for five months (with no limits as to the age of the child); in the case of an international adoption, maternity leave can also be taken before the child has entered the family, that is during the stay in the territory of the country involved in the adoption. In the case of fostering, the leave must be taken within five months of the minor coming to live with the family and it lasts for three months. Just as for natural mothers, if the child is in hospital such periods of leave can be postponed – but only once.

5.4.2 Protection against dismissal (Article 16 of Directive 2006/54)

The same protection against dismissal provided for natural parents is granted to adoptive or foster parents until one year after the child has entered the family. In the case of an international adoption, the ban on dismissal provided by Article 54 of Decree No. 151/2001 is enforceable from the communication of the proposal by the association that is in charge of the case. Article 56 of Decree No. 151/2001 also extends the same rights after the end of adoption leave, as provided for the maternity leave, to adoptive and foster parents until one year after the child has entered the family.

5.4.3 Case law

There is no relevant national case law available in relation to adoption leave, related employments rights and/or return to work after adoption leave.

5.5 Parental leave

5.5.1 Implementation of Directive 2010/18

Directive 2010/18 was implemented by the 2013 Budget Act: Act No. 228/2012 (Article 1, Paragraph 339) which provided some slight amendments to Decree No. 151/2001.[60] The terms of the implementation were very limited, however. This was because Articles

[59] Puglia Regional Administrative Court (TAR), sez. I, 25-06-1990, No. 570; Tribunal of Siracusa of 10-05-2017; Court of Cassation civ., sez. lav., 24-08-1995, No. 8971; Court of Appeal of Milan, 17-06-2009; Pretura Florence, 05-08-1988; Court of Cassation civ., sez. lav., 09-10-1997, No. 9800; Pretura Pistoia, 06-04-1996; Court of Cassation, civ., 16-04-1991, No. 4064; Council of State, sez. VI, 05-08-1991, No. 505; Pretura Domodossola, 15-10-1981.

[60] Act No. 228/2012 did not mention its implementing nature and no tables were drawn up to illustrate the correlation between Directive 2010/18 and the transposition measures. Indeed, the implementing nature of Paragraph 339 of Article 1 of Act No. 228/2012 can be assumed by a previous attempt at fulfilling Directive 2010/18/EU, which mentioned its objective and the content of which was identical to that of Paragraph 339. This Government Decree (No. 216/2011), however, was never converted into law and has thus lapsed.

32 to 38 of Decree No. 151/2001 already provided for a scheme on parental leave that was very comprehensive in comparison with EU standards.

5.5.2 Applicability to public and private sectors (Clause 1 of Directive 2010/18)

The provisions on parental leave provided by Decree No. 151/2001 apply to: all the employees of the private and the public sector, including apprentices and employees of cooperative companies (i.e. companies formed by workers who work within the company but who are at the same time associated with the company).

5.5.3 Scope of the transposing legislation

The legislation on parental leave provided by Decree No. 151/2001 also applies to: contracts of employment or employment relationships related to part-time workers; fixed-term contract workers or persons with a contract of employment; or an employment relationship with a temporary agency.

5.5.4 Length of parental leave

Parental leave lasts for a total of 10 months for both parents. As a general rule, each parent cannot take up more than six months of the leave, although single parents are entitled to 10 months. It may be taken by either the father or the mother during the first 12 years of the child's life, or during the 12 years after the child entered the family in the case of adoption or fostering (however the leave cannot be taken when the child comes of age). If a working father decides to take no less than three months off from work, the total time allowed to both parents is eleven months. This law is clearly an incentive for working fathers to take leave (Articles 32 and 36 of Decree No. 151/2001).

5.5.5 Age limits

Parental leave can be taken during the first 12 years of the child's life or from when the child entered the family in the case of adoption or fostering (Article 32 of Decree No. 151/2001). Therefore, in the case of adoption or fostering, the age of the child is irrelevant.

5.5.6 Individual nature of the right to parental leave

Parental leave is an individual right for each of the parents.

5.5.7 Transferability of the right to parental leave

As the total period of parental leave is 10 months, and the total for each parent is six months, the result is that two months of leave can be transferred from one parent to the other; in this case the 'donor parent' retains the right to four months of leave for his/her own use (Articles 32 and 36 of Decree No. 151/2001).

5.5.8 Form of parental leave

Parental leave can be taken for one continuous period or various periods. The means of application of the parental leave on an hourly basis are stipulated by collective agreements or by the law (Article 32, Decree No. 151/2001).

As an alternative to parental leave for mothers and as a temporary measure until 2018, Article 4, Paragraph 24(b), of Act No. 92/2012 (as modified by Article 1, Paragraphs 282 and 283 of Act No. 208/2015 and by Article 1 of Act No. 232/2016), provides for the introduction of paid vouchers for babysitting services or as a contribution to crèche expenses (a total of EUR 3 600 to be used for a maximum of six months), that will be made available to mothers from the end of compulsory maternity leave for the following

11 months. The same (a total of EUR 1 800 and a maximum of three months) is made available for professionals and autonomous workers. The fact that the vouchers are not provided to fathers can be regarded as a retrograde step in relation to the recognition of the relevance of the role of paternity in the labour market, which is very difficult to reconcile with the principle of equality.

5.5.9 Work and/or length of service requirements (Clause 3(b) of Directive 2010/18)

There is no work and/or length of service requirement in order to benefit from parental leave.

5.5.10 Notice period

Notice must be given by the employee to the employer when exercising the right to parental leave and cannot be less than five days or two days in case of hourly use. The worker, as a consequence of the implementation of Directive 2010/18/EU, has to specify the beginning and the end of the period of leave. The worker's interests have priority in respect of parental leave. Previous notice is not required to be given in case of an objective impossibility (Article 32 of Decree No. 151/2001, as modified by Decree No. 80/2015). The Ministry of Labour has, however, issued a lawful interpretation – *interpello* (under Article 9 of Decree No. 124/2004, specifically Interpello No. 13 of 11 April 2016)[61] – of Article 32 of Decree No. 151/2001. The amendment provided by Decree No. 80/2015 reduced the notice period to take parental leave from 15 to 5 days, but the *interpello* stated that clauses of collective agreements signed before the amendment and providing for a longer period of notice of 15 days (by reference to the previous text of the decree) are still enforceable.

5.5.11 Postponement of parental leave (Clause 3(c) of Directive 2010/18)

Parental leave cannot be postponed. Act No. 228/2012, however, provided that special arrangements for the application of parental leave – including the possibility to postpone the granting of the leave by the employer – can be stipulated by collective agreements, for the security/defence sector and the fire service. Moreover, the Ministry of Labour issued a lawful interpretation or *interpello* (under Article 9 of Decree No. 124/2004, Interpello No. 13 of 11 April 2016)[62] that reiterated that, where the employer wishes to postpone the parental leave, the worker's interest has priority, although it opened up the possibility for possible monthly agreements with the worker or union representative aimed at reconciling the right to parental leave with the needs of the enterprise.

5.5.12 Special arrangements for small firms (Clause 3(d) of Directive 2010/18)

There are no special arrangements for small firms.

5.5.13 Special rules and exceptional conditions for parents of children with a disability or long-term illness (Clause 3(3) of Directive 2010/18)

Under Article 33 of Decree No. 151/2001 an extension of parental leave for up to three years in total during the first 12 years of the child's life is provided on condition that the child is not hospitalised in a specialist institution (unless the presence of the parents is required by doctors). This leave can be taken for a continuous period or during various periods, and is an alternative to the legally sanctioned rest periods for the parents of disabled children (amounting to two hours paid rest each day, or three days paid rest each month). The time off/leave is paid by the employer, who then deducts the amount from what is owed to the relative welfare agency.

[61] http://www.lavoro.gov.it/notizie/Documents/13-2016.pdf.
[62] http://www.lavoro.gov.it/notizie/Documents/13-2016.pdf.

Moreover, working mothers or fathers of children who have been severely disabled for at least five years may also take a continuous or split period of up to two years off from work. The benefit during this period is the same as the last salary earned, up to an annual ceiling. Notional contributions are calculated (Article 42, Paragraph 5 of Decree No. 151/2001).

5.5.14 Measures addressing the specific needs of adoptive parents (Clause 4 of Directive 2010/18)

Parental leave provisions apply to all parents, on the same conditions, including in the case of national and international adoption and legal custody of children. Parental leave can be taken during the first 12 years after the child entered the family in the case of adoption or fostering. Therefore, in respect of adoption or fostering, the age of the child is irrelevant; however the leave cannot be taken when the child comes of age (Article 36 of Decree No. 151/2001).

5.5.15 Provisions protecting workers against less favourable treatment or dismissal (Clause 5(4) of Directive 2010/18)

According to Article 25 of the Equal Opportunities Code (Decree No. 198/2006) and Article 3 of Decree No. 151/2001, less favourable treatment related to pregnancy, motherhood or fatherhood as well as to the respective rights, are regarded as direct gender discrimination. This is also true for adoptive mothers and fathers. Dismissal on the grounds of an application for or the taking of parental leave is null and void and the special remedy of reinstatement provided by Article 18 of the Worker's Statute is enforceable (Article 54 Decree No. 151/2001). Compensation is also possible in place of reinstatement.

5.5.16 Right to return to the same or an equivalent job (Clause 5(1) of Directive 2010/18)

Under Article 56 Paragraph 3 of Decree No. 151/2001, at the end of the parental leave workers have the right to return to the same workplace or, if this is not possible, to a workplace in the same municipality as the previous one, to the same job or, if that is not possible, to an equivalent job.

5.5.17 Maintenance of rights acquired or in the process of being acquired by the worker (Clause 5(2) of Directive 2010/18)

There is no explicit provision that states that all rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are maintained as they stand until the end of the parental leave. However, under Article 34 of Decree No. 151/2001, periods of leave count towards the worker's length of service. They do not count as regards paid or unpaid holidays and Christmas bonuses.

5.5.18 Status of the employment contract or relationship during parental leave

The employment relationship is suspended during parental leave.

5.5.19 Continuity of entitlement to social security benefits

The continuity of entitlements to social security covered under the different schemes, in particular healthcare, is provided.

Benefits are granted even if the due premiums have not been paid (under the principle of automatic payment of benefits of Article 2116 of the Civil Code).

5.5.20 Remuneration

During the leave period, the employer only forwards an allowance, which is actually paid by the INPS (National Institute for Social Security).

5.5.21 Social security allowance

During the periods of parental leave, for the first six years of the child's life (or during the first six years from the day that the child enters the family in the case of adoption or official custody),[63] parents are entitled to a benefit equal to 30 % of their normal wages for a total of six months for both parents. So out of the 10 (or 11) months only 6 are partially paid. Notional contributions, that is contributions credited by the state, are taken into account for pension rights and amounts. This also applies to any period of extended leave for parents of severely disabled children.

For any leave taken after the child reaches the age of six, or over the maximum period of six months, the benefit is only paid if the claimant's earnings are less than 2.5 times the minimum pension paid under the general compulsory insurance system and for children aged 8 or under. In this case, the notional contribution calculations for pension purposes are reduced, but the amount can be fully supplemented through the redemption of contributions (Articles 34 and 35 of Decree No. 151/2001).

5.5.22 More favourable provisions (Clause 8 of Directive 2010/18)

Italian legislation provides for more favourable provisions than those laid down by Directive 2010/18/EU. These concern: the length of the leave; its provision on a non-transferrable basis (just two months out of six for each parent can be transferred); the fact that parental leave and the allowance paid during that period are not subject to any qualification periods; high-level provisions for parents of children with a disability or long-term illness; incentives for working fathers to take the leave; the application of the same sanctions system as that which applies to discrimination in relation to any threat to the enjoyment of parental leave and respective rights; the availability of forms of leave paid by the social security system; and the continuity in social security coverage, for example as regards pensions.

5.5.23 Case law

Most of the cases on parental leave, which are very few, concern the relationship between the leave and the employer's organisation of work. For example, the Tribunal Trieste of 13 July 2007 ruled against parental leave being divided into small fractions because it did not fit with the employer's organisation of activity, which was of public interest. On the other hand, the Council of State ruled that a firm's organisation cannot interfere with the enjoyment of parental leave, as this is specifically targeted at the care of children.[64] Similarly, the Court of Cassation has stated that parental leave is linked to the care of children and that it cannot be used to substitute the spouse at work in order to allow her to take care of children.[65]

5.6 Paternity leave

5.6.1 Existence of paternity leave in national law

Under Article 28 of Decree No. 151/2001, paternity leave is granted to the father after the birth for the whole length of the maternity leave or for the remaining period in special cases, that is: the mother, including a professional and self-employed mother, dies or

[63] Article 9 of Decree No. 80/2015, which amended Decree No. 151/2001, extended this period to six years.
[64] Council of State, sez. VI, 25-06-2007, No. 3564. See also: Council of State, sez. VI, 08-05-2008, No. 2112.
[65] Court of Cassation, civ., sez. lav., 16-06-2008, No. 16207.

becomes seriously ill; in the event of the abandonment of the child; if the child is in the exclusive custody of the father. Adoptive and foster fathers can also take paternity leave in place of the maternity leave of mothers in the same special cases (Article 31 of Decree No. 151/2001). The same economic and working conditions as well as notional contributions provided for during maternity leave are granted to the father.

Furthermore, according to Article 4, Paragraph 24, of Act No. 92/2012,[66] fathers are also entitled to five days compulsory paid paternity leave in the first five months following the child's birth. The latter can also be used at the same time as the mother's compulsory leave and is in addition to paternity leave. Moreover fathers are entitled to one day's paid optional leave, (to be taken from the mother's allocation), within the first five months following the child's birth. These forms of leave are also granted in the case of national and international adoption or fostering.

Periods of paid leave are taken into account for pension purposes.

5.6.2 Protection against unfavourable treatment and/or dismissal (Article 16 of Directive 2006/54)

Under Article 54 of Decree No. 151/2001, the same protection against dismissal provided for during maternity leave is extended to the father, natural or adoptive/foster, from the birth/entrance into the family of the child until he or she is one year old. Dismissal on the grounds of an application for or the taking of paternity leave, therefore, is null and void and the special remedy of reinstatement provided by Article 18 of the Worker's Statute is enforceable. The same protection as mothers are entitled to as regards 'blank resignation' is provided by Article 55, Paragraph 4 of Decree No. 151/2012. The mutual termination of the employment contract or the resignations of a working father must be signed in front of an inspector of the Minister of Labour during their child's first three years of age. The same rule applies to adoptive parents or persons who have been given the official custody of a child from the date of birth/entering the family.

The same holds true for the rights after the end of the paternity leave (Article 56). Indeed, at the end of paternity leave, workers have the right to return: a) to the same workplace or, if not possible, to a workplace in the same municipality as the previous one; b) to the same job or, if that is not possible, to an equivalent job. Furthermore, a man on paternity leave has a right to benefit at the end of this period from any improvement in working conditions to which he would have been entitled during his absence. Article 29 of Decree No. 151/2001 stipulates that paternity leave is to be counted as actual work as regards seniority, annual holidays and the 13th-month bonus and that, for the purposes of promotion, paternity leave is to be regarded as a period of employment, unless special requirements have been made for that purpose by collective agreements.

5.6.3 Case law

A male worker contested his dismissal, claiming that it was discriminatory under Article 35 of Decree No. 198/2006, as it took place within the year following his marriage. He argued that the ban on dismissal during the first year of marriage to protect against discrimination applies to male workers in the same way as to female workers. In fact, although Article 35 expressly refers to female workers, it aims to protect the workers' right to have a family. Moreover, he argued that the personal scope of the Equal Opportunities Code (Decree No. 198/2006) includes both sexes and that any differential treatment would not be consistent with EC Directive 76/207 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions as it would cause sex discrimination. The Court of

[66] As modified by Article 1, Paragraph 205 of Act No. 208 of 28 December 2015 (Budget Act 2016), by Article 1, Paragraph 354, Act No. 232/2016 (Budget Act 2017) and by Article 1 Paragraph 278 of Act No. 145/2018 (Budget Act 2019).

Cassation confirmed the second instance judgment, which deemed the personal scope of Article 35 to be limited to female workers.[67] This provision is the expression of the specific constitutional protection awarded to working women. The Court underlined that the protection against discriminatory dismissal on grounds of marriage had been introduced in the 1960s to strengthen the protection of women's employment rights. This specific protection is perfectly in line with the social reality, since employers tend to dismiss recently married female workers as they expect long absences from work due to subsequent pregnancies. Moreover, it responds to the same objectives as the constitutional principles of both the protection of motherhood and equality, which provide that maternity must not be an obstacle to women's effective participation in the labour market. Consequently, this stronger protection awarded to women is not discriminatory, even under EU law. This can justify a differential treatment as men are not in an analogous situation. The Court underlined once again the principle ruled by the Constitutional Court, following which a different protection based on gender cannot be deemed to be discriminatory in itself. It mainly shed light on the development of the protection of female workers as mothers in Italian legislation in order to clarify the reason for excluding male workers from the personal scope of Article 35, and the consistency of this exclusion with the principle of equal opportunities. In particular, it noted the legitimacy of maternity protection measures as an instrument to achieve substantial equality for working women, in line with well-established CJEU case law.[68]

The ruling of the Court of Cassation of 11 July 2012 (No. 11676) ruled that protection against 'blank resignation' only applies if the father is on paternity leave.

5.7 Time off for *force majeure*

5.7.1 Time off for *force majeure*

There are no provisions on time off for *force majeure* in the Italian legal system.

5.7.2 Case law

There is no case law on this issue.

5.8 Care leave

5.8.1 Existence of care (or carers') leave in national law

According to Articles 47 to 52 of Decree No. 151/2001, both parents, alternatively, may take time off from work if a child younger than three becomes ill; the leave can last for the whole duration of the child's illness (without any limits). The parents, alternatively, may also take up to five days off from work per annum if a child aged between three and eight becomes ill. Leave of absence for a sick child is unpaid. However, notional contributions are calculated when the child is younger than three. These are reduced when the child is between three and eight, but the amount can be fully made up through the redemption of contributions. Periods of leave of absence for a sick child count toward a worker's length of service, but they do not count as regards paid or unpaid holidays and Christmas bonuses. Leave is also allowed, with higher age limits, when the child has been adopted or a parent has official custody. The same regulations apply to the civil service. Civil servants, however, enjoy more favourable collective bargaining conditions than workers in the private sector.

[67] Court of Cassation, 12-11-2018, No. 28926.

[68] Such as for instance CJEU, judgment of 19 March 2002, *Lommers* C 476/99, ECLI:EU:C:2002:183, https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:61999CJ0476&rid=1, and judgment of 11 November 2010, *Danosa*, C 232/09, ECLI:EU:C:2010:674, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62009CJ0232&rid=1.

Article 42, Paragraph 5 of Decree No. 151/2001 states that workers in the private or public sector who take care of a severely disabled cohabiting spouse who is not hospitalised (unless continuous assistance is required in hospital) may take a continuous or split period of up to two years off from work. If there is no cohabiting spouse, then this right belongs to the parents of the disabled person. This two-year period may be used only once in an entire working life. The benefit during this period is the same as the last salary earned, up to a maximum of EUR 43 579 per year, but this figure is constantly reviewed. The period of leave is covered by notional contributions but it does not count towards the length of service. The leave is paid by the employer, who then deducts the amount from contributions owed to the relative welfare agency.

Article 33 of Act No. 104/1992 states that workers in the private or public sector who take care of a severely disabled relative who is not hospitalised are granted three consecutive days of leave a month. Both parents, including adoptive parents, of a severely disabled child are entitled to this leave and can use it alternately. The leave also applies to the guardian of a severely disabled person. For these periods of leave, a benefit equal to the claimant's normal wage is paid. The period of leave is covered by figurative/notional contributions. Article 33 also provides (in Paragraph 2) that working parents (including adoptive parents) of a seriously disabled child of less than three years of age are entitled to two hours' paid rest per day; for these periods of rest a benefit equal to the claimant's normal wage is paid. A reduced form of notional contribution calculations is applied to this benefit, but a redemption of contributions can be made to fill the gap that is left.

Employers must allow working mothers, during the first year of the child's life, to take two rest periods of one hour each, which may be added and taken during the working day. In the case of multiple births, the rest periods are doubled. Rest periods are considered to be working hours for the sake of work and pay. A reduced figurative/notional contribution is recognised during the rest periods, but the gap can be made up through a redemption of contributions. These regulations also apply in the case of adopted or foster children for the first year of the child's life within the family. Rest periods are granted to fathers in the following cases: when children are under the father's exclusive custody; as an alternative to the working mother; when the mother is not employed; or when the mother dies or becomes seriously ill. In the event of multiple births, the father may decide to use the extra time allowed (Articles 39-41 of Decree No. 151/2001).

Article 4 of Act No. 53/2000 (implemented by Ministerial Decree No. 78/2000) provides for three days off from work per year, fully paid by the employer, in case of the death or serious illness of a close relative – or the worker can choose, as an alternative, to reach an agreement with the employer to modify his or her working conditions (i.e. part-time, telework, a change of workplace) – and two years unpaid leave for serious family reasons, which can be taken all at once or in parts and may be used only once in an entire working life. The employer may deny such a leave of absence, provided an adequate explanation linked to organisational or productive reasons is given.

5.8.2 Case law

In case law there is only a case – the decision of the Tribunal of Pavia of 19 September 2009 – but it is quite interesting. According to this decision, the unpaid leave for serious family reasons of Article 4 of Act No. 53/2000 must be counted towards the length of service; indeed, the norm that excludes this period from the length of service was regarded by the court as unconstitutional as it infringes Directive 2000/78/EC as interpreted by the CJEU in *Coleman*, which stated that the ban on discrimination on the ground of disability is to be applied to both the disabled person and the care givers of the disabled person.[69]

[69] CJEU, judgment of 17 July 2008, *Coleman*, C-303/06, ECLI:EU:C:2008:415.

5.9 Leave in relation to surrogacy

There are no provisions on surrogacy in national legislation.

5.10 Flexible working time arrangements

5.10.1 Right to reduce or extend working time

Workers/employees have no a general legal right to reduce their working time on request, with the exception of: time off for breastfeeding (two hours a day until the child is one year old under Article 39 of Decree No. 151/2001); the use of parental leave on an hourly basis, or as non-continuous periods/days (Article 32 of Decree No. 151/2001), or as a conversion to part-time work with a maximum reduction of 50 %; other time off/leave for care. There are a few cases in which workers have a right to work part time or the shift to part time is made easier or encouraged.

Under Article 8 (Paragraph 3) of Decree No. 81/2015, a private or public employee has a right to work part time when he or she suffers from an oncological disease that impairs his/her working capacity. A worker who has changed to part time has a right to return to full-time work.

Under the same rule, a priority in converting to part-time work and in returning to full time is recognised when an employee's relative is suffering from oncological diseases, when he or she assists a live-in relative who is not self-sufficient or when an employee takes care of a child who lives with them who is younger than 13 or who is disabled.

Under Article 1, Paragraph 58 of Act No. 662/1996 (as modified by Article 73 of Decree No. 112/2008 and Article 16 of Act No. 183/2010), the public administration can authorise a shift from full-time work to part-time work, within 60 days from the request, on condition that it does not clash with organisational needs. Under Article 6, Paragraph 4 of Decree No. 79/1997, the worker has the right to return to full-time work after two years.

Part-time work is mainly addressed as a reconciliation measure in certain policies. For instance, Article 9 of Act No. 53/2000 provides for the allocation of a part of the Family Fund to public bodies (such as local health units and hospitals), and to private businesses and associated businesses (with priority) that enforce collective agreements concerning targeted positive action by adopting a flexible working schedule through different measures, including part-time work.

5.10.2 Right to adjust working time patterns

A right to adjust working time patterns is provided in limited situations.

Article 53 of Decree No. 151/2001 and Article 11 of Decree No. 66 of 8 April 2003 provide the right not to perform night work for: a working mother of a child up to three years old or alternatively for the cohabiting father (also adoptive or foster until the third year after the child entered the family, subject to the condition that the child is not older than 12); a working mother or father (also adoptive or foster) who is the only person taking care of the child up to 12 years old living with her/him; and a female or male employee who takes care of a seriously disabled person under Act No. 104/1992.

Article 4 of Act No. 53/2000 states that in cases of the certified serious illness of the spouse, the cohabitant or relatives within the second degree, the worker can either take up to three days a month in time off or reach agreement with the employer to modify his or her working conditions (i.e. part time, telework, or a change of workplace, etc).

5.10.3 Right to work from home or remotely

No legal right to work from home or remotely on request is provided in either the private or public sector.

Telework is provided in the public sector, by Article 4 of Act No. 191/1998, Presidential Decree No. 70/1999 and national contractual agreement of 23 March 2000, as an opportunity to assure savings and higher standards of efficiency/quality of services, rather than as a tool for the reconciliation of work and family life. However, there is no right to teleworking and the employer can refuse a request to telework; such working arrangements must be authorised by the employer as part of a project geared towards enhancing the quality and efficiency of services through flexible working. Reconciliation is taken into consideration as a priority criteria only in order to be admitted to teleworking projects where there is a surplus of applications, for disabled workers who find it difficult to reach the workplace and for workers taking care of children who are younger than eight or a live-in relative who has a certified illness or disability. The worker has a right to return to the prior working arrangements and to the same workplace, after the agreed minimum period of teleworking provided in the project has elapsed.

Article 23 of Decree No. 80/2015 states that with the aim of promoting telework as a reconciliation measure, employees who telework are not counted in the application of an employer's obligation that depends on the size of the company.

5.10.4 Other legal rights to flexible working arrangements

Decree No. 151/2015 provides for the possibility for people working for the same employer to transfer for free a part of their days of rest to the parent of children who need continuous care and the parent's presence for health reasons. Limits and criteria for this transfer are to be provided by collective agreements signed by most representative unions.

Moreover, the Minister of Labour and Social Policies, together with the Minister of Economics and Finance, issued a Decree on 12 September 2017 to implement Article 25 of Decree No. 80/2015 on the allocation of resources for measures of reconciliation between family and working life. The decree sets criteria entitling employers who can demonstrate that they promote reconciliation measures through company-wide collective agreements to ask for a reduction in their social contributions. Measures must cover parenthood (an extension of paternity leave and/or the integration of the respective allowance, crèches, e-learning for employees returning to work, vouchers for babysitting services), organisation (smart working, flexible working hours, part-time work and the transfer of holiday leave) and enterprise welfare (offers of time-saving services, offers of care services, vouchers for care services). The collective agreement must provide two measures and at least one must be included in the first two areas to entitle the employer to access the benefit. Moreover, the intervention must be innovative and grant better conditions compared to previous agreements and concern at least 70 % of the workforce employed during the year before the application.[70]

Articles 15 to 20 of Act No. 81/2017 provide for the regulation of smart working, which involves the working activity being performed in a more flexible way in terms of both location and working hours. The act, which applies to both the private and public sectors, sets out a very soft framework and is mainly aimed at boosting the widespread adoption of smart working. The implementation of flexible working relationships will rely almost entirely on an individual agreement with regard to central issues, such as the duration of the working arrangement, the employer's power of control and management, the

[70] Funds have been allocated to sustain the experimental measures in 2016-2018 (EUR 55 200 000 for 2017 and 54 600 000 for 2018). 20 % of the Fund will be shared equally among all employers while 80 % will be shared in proportion to the workforce that they employed during the year before the application. Employers can participate only once given that it is a pilot scheme.

performance of the employee whilst working outside the office, rest periods and the possible use of technological devices for teleworking. The explicit goals of the new provisions are that of increasing productivity and furthering a reconciliation of work with family life. These provisions were recently amended by Article 1, Paragraph 486 of Decree No. 45/2018 (Budget Act for 2019): according to this norm, both public and private employers who sign smart working agreements must give priority to working mothers within three years after the end of the compulsory maternity leave and to working parents of seriously disabled persons). The decision of the legislature to entitle only working mothers and not working fathers, too, to priority in accessing smart working is a step backward in what had been the progressive extension to fathers of the mothers' right to take care of children. Indeed, after the Budget Act came into force, the main trade unions, the public administration and national level agencies (such as the National Labour Inspectorate, the Revenue Agency and the Postal Services Company) signed some agreements implementing smart working, which provide only the priority criteria already ruled by Article 1, Paragraph 486, without any extension to other categories of workers.[71]

5.10.5 Case law

There is no relevant national case law available in relation to workers' requests for flexible working arrangements.

5.11 Evaluation of implementation

Decree No. 151/2001 on the protection of motherhood and fatherhood, which includes all rules on this subject, and also implements Directives 2006/54 and 2010/18, does not provide for a specific definition of a pregnant worker, a worker who has recently given birth or a worker who is breastfeeding.

On the other hand, the protective measures mentioned in Articles 4-6 of Directive 92/85 have been implemented by Decree No. 645/1996, which was later included in Decree No. 151/2001.

As regards prohibition of night work, the Italian legislation goes further than the EU directive, as provides the same guarantees to fathers as to mothers.

In relation to prohibition of dismissals, the EU legislation (Article 10(1) of Directive 92/85) has been fulfilled and the Italian legislation goes even further. Indeed, the protection afforded is ensured purely on grounds of pregnancy, regardless of whether the employer has been informed or not and it lasts for a period of 12 months following the date of confinement, long past the end of maternity leave. Furthermore, there is also a law against 'blank resignation'. Italian law is in compliance with Article 10(2) of Directive 92/85 as employers must indicate substantiated grounds for the dismissal in writing.

The protection of working mothers under Italian law is very comprehensive in comparison with EU standards and complies with the relevant EU legislation, sometimes even greatly exceeding EU protection, for example in terms of the length of paid leave and guarantees for fathers. Furthermore, less favourable treatment related to pregnancy, motherhood or fatherhood (including for adoptive parents), as well as to the respective rights are considered equal to direct gender discrimination (Article 25 of the Equal Opportunities Code).

[71] Agreement on the Experimentation of Smart Working signed by the National Labour Inspectorate on 8 January 2019, published on https://www.ispettorato.gov.it/it-it/progetti/Documents/Protocollo-intesa-INL-OO-SS-per-avvio-sperimentazione-lavoro-agile-08012019.pdf; Agreement on Smart Working signed by the Revenue Agency on 10 January 2019, published on https://www.fisaccgilag.it/wp-content/uploads/2019/01/Smart-working-10-gen-2019.pdf; Agreement on Smart Working signed by the Postal Services Company on 23 January 2019, published on http://www.slp-cisl.it/documenti/allegati/Accordo%2023genn2019%20e%20allegati.pdf.

As regards the provisions of adequate rights during leave, it is important to refer to Article 56 of Decree No. 151/2001, as modified by Act No. 101/2008, which lays down the right of a woman on maternity leave to benefit, at the end of this period, from any improvement in working conditions to which she would have been entitled during her absence.

Italian law also provides the right of a woman to return to her job or to an equivalent job after her maternity leave.

The maternity leave allowance is considerably higher than the sick leave benefit in both the private and public sector.

The Italian legislation also goes further than the EU directives in respect of conditions for eligibility, as maternity benefits do not require a minimum amount of national insurance contributions to have been paid.

Decree No. 151/2001 extends the same provisions on maternity leave and the respective rights/protection to cases of national and international adoption and official custody of a child. The Italian regulations fulfil the EU requirements, as the general rules on the forms of leave provided by Decree No. 151/2001 have been adapted to the particular needs of adoption and official custody.

EU legislation on parental leave was implemented by the 2013 Budget Act (Act No. 228/2012, Article 1, Paragraph 339). However, the terms of the implementation were very limited because Articles 32 to 38 of Decree No. 151/2001, on the protection of motherhood and fatherhood, already provided legislation on parental leave that was comprehensive in comparison to EU standards.

The Italian legislation provides for more favourable provisions than those set by Directive 2010/18/EU as regards: the length of leave; provision of leave on a non-transferrable basis (just two months out of six for each parent can be transferred); the fact that parental leave and the allowance paid during that period are not subject to qualifications periods whatsoever; a postponement of the granting of parental leave can only be authorised in the security/defence sector and for firemen; the high-level provisions for parents of children with a disability or long-term illness; the incentives for working fathers to take the leave; the application of the same sanctions system as discrimination in relation to any threat to the enjoyment of parental leave and respective rights; and the availability of leave paid by the social security system.

The situation is less satisfying as regards paternity leave. Indeed, paternity leave is allowed to fathers only as an alternative to maternity leave in very specific cases: that is, if the mother dies or becomes seriously ill, or in the event of the abandonment of the child, or if the child is in the exclusive custody of the father. This is a limitation on the rights of the father, and on promoting a better balance in care duties as well as the reconciliation of work and family life. Furthermore, the special paternity leave introduced by Act No. 92/2012 is also a very weak measure from the perspective of the promotion of a better balance in care duties within the family – which is the declared aim of the measure – as it is short and temporary. Fathers rarely used the three days allowed (which must be taken from the mother's leave allocation).

As regards the existence of care leave in national law (Clause 7 of Directive 2010/18), the Italian legislation goes further the EU requirements, as it provides for a structured system of care leave. However, the lack of specific protection against dismissal for those who take care of disabled people and who are not mothers or fathers (including adoptive parents) is a problem, as they do not have specific anti-discrimination legislation to protect them.

5.12 Remaining issues

Article 24 of Decree No. 80 of 15 June 2015, implementing Delegation Act No. 183/2014 introduced some measures aimed at supporting victims of gender violence. A period of leave of three months is given to women victims of gender-based violence who are under a protection programme certified by local authorities.

6 Occupational social security schemes (Chapter 2 of Directive 2006/54)

6.1 General (legal) context

6.1.1 Surveys and reports on the practical difficulties linked to occupational and/or statutory social security issues

Research on the implementation of the EU anti-discrimination legislation as regards occupational schemes in Italy is non-existent. The lack of debate is, first, a consequence of the limited attention paid to the subject of social protection: despite the importance of social protection at both the social and economic levels, there is only a small number of outdated studies and research in the field. Secondly, the EU anti-discrimination legislation has not yet been absorbed by the judiciary.

The main gender discriminatory features in occupational funds relate to the survivors' pensions rights of cohabitants and partners, who are often women; it must also be reminded that the regulation of occupational funds makes no provisions for the recovery of wasted contributions during pregnancy/maternity. Some occupational funds do not allow subscriptions to short-term employees. Sometimes, disability benefits are conditioned on extra contributions or age requirements. Over and above this, one has to bear in mind that the benefits rights of atypical workers, intermittent, temporary, occasional and part-time workers as well as those of workers with earnings inferior to the average standards, many of whom are women and young workers, will be always at risk, as their qualifying conditions, contributions record and benefit amount depends on the regularity of their careers. The occupational funds, in particular, tend to mirror the differences between workers in the labour market and this is a cause for concern in the light of a social protection system in which public and supplementary schemes are seen as complementary to the end of maintaining adequate levels of welfare cover.

The situation described above is reflected in a recent research study on occupational and private complementary social protection funds.[72] This study shows that the gender gap in the labour market is also reflected in occupational pensions schemes, where 61.1 % of the participants are men and only 38.9 % are women. As regards the gender percentage of workforce, 27.2 % of the male workforce takes part in occupational funds compared to 23.5 % of the female workforce. The fact that occupational funds tend to mirror the differences between workers that exist in the labour market and the gender pay gap in particular is also shown by the 2016 survey led by the Labour Commission of the Chamber of Deputies at the Italian Parliament.[73] The commission recommends: the introduction of better instruments to evaluate the gender impact in the pensions system; an increase of notional contributions[74] and instruments that help to avoid the consequences in the pension system of periods of absence for caring reasons; and finally, the introduction of a safety net in the social security system for those whose careers are fragmented and characterised by instability.

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[72] See on this also Valeriani, A. (2017) *Le prospettive evolutive della previdenza complementare. Un'opportunità per superare anche il gap previdenziale di genere* (*The evolution of occupational and integrative funds. A chance of overtaking the gender gap in social security*), in Working Paper Adapt, University Press. Valeriani is a member of COVIP (the Supervisor Commission for Pension Funds). Available at: https://moodle.adaptland.it/pluginfile.php/29543/mod_resource/content/0/wp_5_2017_valeriani.pdf.

[73] Published in http://www.camera.it/leg17/1079?idLegislatura=17&tipologia=indaq&sottotipologia=c11_pensionistici&anno=2016&mese=07&giorno=06&idCommissione=11&numero=0013&file=indice_stenografico#stenograficoCommissione.tit00030.

[74] Those are contributions that are credited without cost to the employee for periods during which the worker has not worked (for example, in the case of illness or maternity) and therefore he or she has received benefit payments from the national social security system (INPS).

6.1.2 Other issues related to gender equality and social security

No other issues that have not been reported so far emerge as regards occupational funds and gender equality.

6.1.3 Political and societal debate and pending legislative proposals

Occupational schemes are regulated by Decree No. 252/2005. Decree No. 5/2010 has added Article 30bis to the Equal Opportunities Code in order to implement the Recast Directive as regards occupational funds. At present, there is no political or social debate on gender equality in occupational schemes, nor are there pending reforms.

6.2 Direct and indirect discrimination

Article 30*bis* of Decree No. 198/2006, introduced by Article 1 of Decree No. 5/2010 to implement the Recast Directive, states:

> 'There shall be no direct or indirect discrimination on grounds of sex in occupational social security schemes, in particular as regards: a) the scope of such schemes and the conditions of access to them; b) the obligation to contribute to and the calculation of contributions; c) the calculation of benefits, including supplementary benefits due in respect of a spouse or dependants, and the conditions governing the duration and retention of an entitlement to benefits'.

There is no case law on the interpretation of this article.

6.3 Personal scope

Article 30*bis* of Decree No. 198/2006 applies the principle of non-discrimination to occupational schemes regulated by Decree No. 252/2005. This decree's personal scope includes workers in all sectors, private and public, self-employed, professionals and working partners of cooperative societies. Therefore, the personal scope of this rule is not as wide as that of the EU directive: persons seeking employment and those claiming under the rights of workers included in occupational schemes in accordance with national law and/or practice are not mentioned.

6.4 Material scope

Article 30*bis* of Decree No. 198/2006 refers to Decree No. 252/2005, which regulates occupational pensions. The decree is applicable to invalidity, retirement, old-age and survivors' pensions. It does not include: sickness, unemployment, industrial accidents and occupational diseases. Therefore, the material scope of Article 30bis is more restricted than that of the EU directive.

6.5 Exclusions

The exclusions from the material scope as specified in Article 8 of Directive 2006/54 have not been implemented in national law.

6.6 Laws and case law falling under the examples of sex discrimination mentioned in Article 9 of Directive 2006/54

As regards Article 9(g) of Directive 2006/54, the law on supplementary funds does not contain any provision which ensures that fictional contributions are made (by the employer/the state) on behalf of the employee during her maternity leave/leave for serious family reasons. Therefore, the law does not require the fund regulations to include provisions which would ensure compliance with Article 9g. In the case of maternity, many

fund regulations provide for a reduced rate of notional contributions, i.e. only the contributions corresponding to the amount of the maternity allowance are credited.[75]

Collective agreements and regulations of funds may contain other indirectly discriminatory features, as some of them not do not offer subscriptions to short-term employees, who often are women.

6.7 Actuarial factors

Decree No. 5/2010 implementing the Recast Directive allows the setting of different levels of benefits in so far as may be necessary to take account of actuarial calculation factors, which differ according to sex in the case of defined contribution schemes. In the case of funded defined benefit schemes, certain elements may be unequal where the inequality of the amounts results from the effects of the use of actuarial factors differing according to sex at the time when the scheme's funding is implemented. The decree states that the actuarial factors used must be sound, relevant and accurate; the Supervisory Commission for Pension Funds (COVIP) and the Equal Opportunities National Committee are called upon to monitor the legitimacy and the non-discriminatory nature of the actuarial factors used. The limits of Article 9(1) of Directive 2006/54/EC have been fulfilled; the legislation goes even further by providing for monitoring of the use of these factors.

Both the funds with defined contributions and those with defined payments take actuarial factors into account for the benefit calculation. Among the actuarial factors, the higher life expectancy of women is taken into consideration. No other gender-related factors are taken into consideration.

The funds of self-employed workers do not have different levels for workers' contributions in relation to the use of actuarial calculation factors.

The exclusions of Article 8 of Directive 2006/54 would not necessarily be detrimental for women if applied – and they are not applied in Italian law anyway. The examples of sex discrimination in Article 9 of Directive 2006/54 might amount to direct or indirect gender discrimination: thus the lack of provision on recovery of notional contributions during care leave and the banning of short-term employees by some funds may be detrimental to gender equality. Finally, actuarial factors that take sex into account might be detrimental for women, for example if their life expectancy, higher than that of men, is taken into account as this can reduce the monthly pension amount or increase their contributions.

6.8 Difficulties

The European Court of Justice in *Commission* v. *Italy*,[76] declared the pension scheme for civil servants managed by INPDAP to be discriminatory on the basis of Article 141 EC, since it provides that the general pensionable age for men is 65 and for women 60. The Court, therefore, regarded the INPDAP scheme as occupational. By contrast, Italian legislation dealt with it as a statutory pension scheme and regulated it according to the legislation on public schemes (Act No. 335/1995). Obviously, if the INPDAP pension scheme was considered to fall under the scope of Directive 79/7, then the pensionable age would have been a possible exception to the application of the equality principle on grounds of gender under Article 7(1)(a). However, following the Court of Justice decision,

[75] Until 2017, legislation on occupational pensions failed to implement the Recast Directive as regards the pensionable age (Article 9(f) of Directive 2006/54), which was different for men and women. Indeed, the occupational old-age pension is awarded upon reaching the pensionable age as established in the statutory system, where, until 2017, women's pensionable age was lower than that for men. Since 2018, however, men and women have the same pensionable age, fixed at 66 years and 7 months (Act No. 214/2011, which provided for a gradual increase in the pensionable age, which has been equalised for men and women since 2018). Thus the Recast Directive has now been implemented as regards the pensionable age in occupational funds in both the private and public sectors.

[76] Judgment of 13 November 2008, *Commission* v. *Italy*, C-46/07, ECLI:EU:C:2008:618.

Act No. 102/2009, as modified by Act No. 122/2010, equalised the pensionable age for men and women in the civil service. Finally, INPDAP was abolished by Article 21 of Act No. 214/2011 and no longer exists.

6.9 Evaluation of implementation

As regards the introduction of direct and indirect discrimination, Article 30*bis* of Decree No. 198/2006 implements the Recast Directive. However, the personal scope of this rule is not as wide as that of the EU directive: persons seeking employment and those claiming under the rights of workers covered by occupational schemes in accordance with national law and/or practice are not mentioned. Moreover, the material scope has not been implemented correctly, as pensions related to sickness, unemployment, industrial accidents and occupational diseases are left out.

The exclusions from the material scope as specified in Article 8 of Directive 2006/54 have not been implemented in national law.

As regards Article 9(g) of Directive 2006/54, the supplementary funds regime makes no provision for the recovery of notional contributions during maternity leave or during leave for serious family reasons. Collective agreements and regulations of funds may contain other indirectly discriminatory features, as some of them not do not allow short-term employees, who are often women, to subscribe to them.

Finally, the limits of Article 9(1) of Directive 2006/54/EC have been fulfilled as regards actuarial factors; the legislation goes even further by providing for monitoring by COVIP (the Supervisory Commission on Pension Funds) on the use of these factors.

6.10 Remaining issues

There are no remaining issues regarding occupational social security schemes and gender equality that have not been discussed so far.

7 Statutory schemes of social security (Directive 79/7)

7.1 General (legal) context

7.1.1 Surveys and reports on the practical difficulties linked to statutory schemes of social security (Directive 79/7)

There is very little research on the implementation of the EU anti-discrimination legislation as regards statutory schemes in Italy. The lack of academic debate is a consequence first, of the limited attention paid to the subject of social protection – despite the importance of social protection at both the social and economic levels, there is only a small number of studies and research – and secondly, the fact that the EU anti-discrimination legislation has not yet been absorbed by the judicial culture.

The main issues that have been tackled by the few scholars working in the area of social protection are: the discriminatory ground of nationality in social assistance benefits; indirect gender and age discrimination of non-standard workers; the problem of benefits for cohabitants and same-sex partners; gender discrimination in occupational funds; and gender discrimination in pensionable age and early retirement. Some academic essays address the European perspective and, in particular, deal with discrimination in social assistance in the European legislation as well as with the case law of the CJEU in relation to gender equality in statutory and occupational pensions. The principal problem is that the European and domestic perspectives are rarely compared, that is to say the domestic law is not analysed in the light of EU law.

The lack of familiarity with the EU legislation is shown by the total absence of references to it in the little case law on discrimination in social security. Different factors are at the root of this issue: lack of awareness of the anti-discrimination legislation among the judiciary and lawyers; a general feeling of distrust about the efficacy of the anti-discrimination legislation; difficulties of proof; and the absence of a policy of strategic litigation. Another element that makes the anti-discrimination framework hostile territory for social protection case law is the fact that Government decisions in the social security field are mainly determined by economic constraints – judges are aware of that and avoid decisions that can radically modify the social security budget allocation. When EU legal rights are involved, judges tend to use general principles and instruments, such as the principle of reasonableness, and to bypass the EU provisions on discrimination. In this context, it is not surprising that CJEU case law that does not concern Italian domestic law has no impact on the Italian case law on discrimination. The case law of the CJEU generally gives rise to a theoretical interest among academics, rather than a practical one: the impact of such decisions on the Italian system is not taken into consideration.

As regards statutory social security schemes, aspects of indirect discrimination in relation to gender are evident in the areas of part-time and temporary work and other non-standard working patterns, where there is a massive presence of women and young people. In particular, under the pay-based pension scheme, the amount and number of contributions paid and continuity of payment determine the eligibility to social insurance as well as the benefit levels; the increase in minimum insurance and contribution requirements in Italy during the past decades is bound to have a negative impact on the pensions of atypical workers, such as intermittent, temporary, occasional and part-time workers. Moreover, those who have high pay fluctuation during the period of reference for the calculation of pensionable income are disadvantaged in relation to the calculation of the amount of pension. Again, a temporary worker will have substantial reductions of his/her contribution period for the purpose of calculating the amount of pension and this will naturally cause a reduction of the pension amount. Under the contribution-based pension system, the earnings variations as well as the continuity and regularity of employment of the claimants appear once more to be of crucial importance, as the qualifying conditions for benefits and the pension amount are very sensitive to these

factors. Furthermore, in invalidity pension schemes, the working contribution condition is one that is almost impossible for workers with recent spells of inactivity to fulfil.[77]

The fact that statutory pension schemes tend to mirror the differences between workers existing in the labour market and the gender pay gap in particular is also shown by the 2016 survey by the Labour Commission of the Chamber of Deputies at the Italian Parliament.[78] The commission recommends the introduction of better instruments to evaluate the gender impact in the pensions system; the proposal is to increase notional contributions[79] and the instruments that help to avoid the consequences in the pension system of periods of absence for caring reasons. The commission also recommends the introduction of a safety net in the social security system for those people whose careers are fragmented and characterised by instability.

7.1.2 Other relevant issues

Cohabiting and same-sex partners are not entitled to survivors' pensions and to family income support.

7.1.3 Overview of national acts

The basic national act that contains provisions on statutory social security schemes is Act No. 335/1995: the principal aims of this law were to balance the budget and harmonise the various pension schemes. This act moved away from a pay-based system when calculating pensions, based on what the applicant's salary had been, to a contributory one, based on the amount of contributions paid over the years. Moreover, this act stabilised pensions expenditure, in rigorous accordance with the trends in the gross domestic product (GDP) and its variations. The 1995 reform provided for an extremely long transition period before the act came fully into force: this was determined by the necessity of granting to workers their acquired rights as well as their expectations. However, this led to a postponement of the operation of the financial equilibrium mechanisms and, consequently, new instruments for an immediate saving of resources had to be devised. That is the reason for limits being imposed on the aggregation of contributions and the constant increase of contributions rates. In the years following the reform, the legislative changes have been characterised by the continuous search for immediate savings, regardless of the eventual inconsistencies introduced into the system. In attempting to adapt the social security system to the changing socio-economic situation, the legislature has: progressively enhanced the pensionable age, which is now equal for men and women in all sectors of the economy and is biannually adjusted to the increase of the average life expectancy; abolished the years-of-service pension; modified the transformation coefficients of the individual contribution total so as to reduce the pension amount; shifted social protection from the public to the private funds.[80] Act No. 214/2011, in particular, had the objective of strengthening the sustainability of the pensions system over time in relation to the impact of social protection expenses on gross domestic product. This piece of legislation generalised the contribution system criteria of pension calculation for all contributions matured since 1 January 2012 onwards. Moreover, several solidarity

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[77] See on this also Valeriani, A. (2017) *Le prospettive evolutive della previdenza complementare. Un'opportunità per superare anche il gap previdenziale di genere* (The evolution of occupational and integrative funds. A chance of overtaking the gender gap in social security), Working Paper Adapt, University Press. Valeriani is a member of COVIP. Available at: https://moodle.adaptland.it/pluginfile.php/29543/mod_resource/content/0/wp_5_2017_valeriani.pdf.

[78] Labour Commission (2016) 'Study on the impact of legislation on the disparity between men and women's pensions', published in http://www.camera.it/leg17/1079?idLegislatura=17&tipologia=indag&sottotipologia=c11_pensionistici&anno=2016&mese=07&giorno=06&idCommissione=11&numero=0013&file=indice_stenografico#stenograficoCommissione.tit00030.

[79] Those are contributions that are credited without cost to the employee for periods during which the worker has not worked (for example, in the case of illness or maternity) and therefore he or she has received benefit payments from the national social security system (INPS).

[80] Italy, Act No. 243/2004, Act No. 247/2007, Act No. 102/2009, Act No. 214/2011.

contributions were introduced, the automatic equalisation was reduced and the costs of unification of national insurance periods were increased.

Article 30 of the Equal Opportunities Code (Decree No. 198/2006), is important in this respect. The rule, as modified by Decree No. 5/2010 implementing the Recast Directive, states that: women workers who have reached the requirements to apply for pensions have a right to keep on working until the same age as men; women have the same rights as men to benefit from family income support; women have the same right as men to survivors pensions; and men and women have the same rights as regards survivors pensions under the scheme in relation to industrial accidents and professional diseases.

Finally, it is notable that the social security system has been strongly conditioned by the constitutionalisation of the European Union budgetary constraints contained in the fiscal compact and embodied in Article 81 of the Italian Constitution.

7.1.4 Political and societal debate and pending legislative proposals

The current social debate is focused on pensionable age and on the possibility to retire earlier than the statutory age (67 years of age for both men and women in all sectors), which is to be changed biannually on the basis of life expectancy, although the age requirement can be replaced by having a contribution record of 42 years and 10 months for men and 41 years and 10 months for women. In particular, Decree No. 4/2019 makes it possible, as a trial for the years 2019-2021, to claim an early pension at 62 years of age with 38 years of contributions (known as 'quota 100'). The option of taking an early pension provided by Decree No. 4/2019, however, is not likely to favour women, but instead favours men. Indeed, this option favours those with a stable and long-term presence in the labour market and with higher pay levels, which are normally men as women usually have more fragmented careers and lower pay levels.[81] The same decree postpones the operation of the 'women's option': women aged 58 (59 for self-employed women) and with 35 years of contributions by 31 December 2018, can benefit from an early pension, although it is calculated entirely on the contributory system.

7.2 Implementation of the principle of equal treatment for men and women in matters of social security

Directive 79/7/EEC on statutory schemes of social security has never been specifically implemented, although domestic legislation is, on the whole, in line with EU law on gender equality.

Article 30 of the Equal Opportunities Code (Decree No. 198/2006), as modified by Decree No. 5/2010, implementing the Recast Directive, states that: women workers who have reached the requirements to apply for pensions have a right to keep on working until the same age as men; women have the same rights as men to benefit from family income support; women have the same right as men to survivors pensions; men and women have the same rights as regards survivors pensions under the scheme in relation to industrial accidents and professional diseases.

The main element of gender discrimination in statutory schemes can be found in the area of part-time working and other non-standard working patterns. Indeed, the earnings variations as well as the continuity and regularity of employment of the claimants appear to be of crucial importance, as the benefit qualifying conditions and the pension amount are very sensitive to those factors. Advantages as regards old age pensions are also

[81] Canal T., Cirillo V. (2019), *Pensioni: chi beneficierà della cosiddetta quota cento e quanto l'opzione donna aiuta davvero le lavoratrici? Un'analisi di genere delle nuove politiche previdenziali* (Pensions: who will benefit from quota 100 and to what extent will women benefit from the 'women's option'? A gender analysis of the new pension policies) in: http://www.ingenere.it/articoli/quota-cento-opzione-donna-politica-non-ci-vede.

granted to women for the purpose of child rearing. Cohabitants and partners are not included in survivors' schemes and family income support.

There is no leading case law on those issues.

7.3 Personal scope

The statutory system is compulsory for all types of workers and its coverage is not subject to any limitations.

7.4 Material scope

The compulsory statutory system covers the risks listed in Article 3(1) of Directive 79/7.

The Italian family income support scheme comes under the exclusions in Article 3(2) of the directive. The scheme reveals discriminatory features as regards part-time workers working less than 24 hours a week and vertical part-timers, who are entitled to benefits in proportion to the number of days spent at work, independent from the number of hours worked each day. Indeed, workers are entitled to full weekly family benefits when they work at least 24 hours a week. Part-time employees working less than 24 hours a week are entitled to family benefits in proportion to the number of days spent at work, independent from the number of hours worked per day: thus, if a part-timer works one hour a day for five days a week, they will receive five daily family benefits, while if she/he works 21 hours a week during three days, they will receive only three daily benefits; vertical part-timers do not get any benefit in relation to the spells of inactivity.

On the other hand, Article 30 of the Equal Opportunities Code (Decree No. 198/2006) lays down the principle of gender equality in relation to survivors' pensions.

Cohabitants and partners, however, are not included in survivors' schemes and family income support.

7.5 Exclusions

The exclusions in Article 7(1) of the directive have been used in the pension system in relation to the advantages as regards old-age pensions for the purpose of child rearing, under the new contribution system, for the benefit of women. More favourable coefficients of transformation (according to which pensions are calculated) are fixed for maternity. In relation to maternity, a reduction in the retirement age of four months per child is granted, with a maximum limit of 12 months. As an alternative to this, it is also provided that women with children are able to receive a retirement pension subject to reduced conditions.

There also is a difference between men and women in early pension provisions: this difference does not depend on the pensionable age, but depends on the number of contributions required to benefit from an early pension, that is 42 years and 10 months for men and 41 years and 10 months for women. Moreover, Decree No. 4/2019 postpones the operation of the 'women's option': women aged 58 (59 for self-employed women) who have 35 years of contributions by 31 December 2018, can benefit from an early pension, although the amount is calculated entirely according to the contributory system.

7.6 Actuarial factors

Sex is not used as an actuarial factor in statutory schemes.

7.7 Difficulties

The fact that domestic legislation, on the whole, is fairly in line with EU law on gender equality may explain the lack of a specific act transposing the EU directives: the adoption of a specific act may be considered less urgent at the political level. Nonetheless, in the view of the author of this report, such a transposition is still crucial because EU directives provide a benchmark for domestic law. Indeed, the main problems as regards gender equality can be detected in those fields that have been omitted from the EU gender anti-discrimination framework, such as family allowances. Moreover, the latest legislation on pensions is far from women-friendly and the relevant conditions are particularly difficult to fulfil for those engaged in non-standard work, such as intermittent, temporary, occasional and part-time work, which is often done by women.

7.8 Evaluation of implementation

Directive 79/7/EEC on statutory social security schemes has never been specifically implemented. Notwithstanding that, domestic legislation is, on the whole, in line with EU law on gender equality.

The main feature of - indirect - gender discrimination in statutory schemes can be found in the areas of part-time and temporary working and other non-standard working patterns, where there is a massive presence of women and young people. In particular, under the pay-based pension scheme, the amount and number of contributions paid and continuity of payment determine the eligibility to social insurance as well as the benefits level. The increase in minimum insurance and contribution requirements in Italy during the last few decades is bound to have a negative impact upon the pensions of atypical workers, such as intermittent, temporary, occasional and part-time workers. Moreover, those who have high pay fluctuation during the period of reference for the calculation of pensionable income are disadvantaged in relation to the calculation of the pension amount. Again, a temporary worker will have substantial reductions in his/her contribution period for the purpose of calculating the amount of pension and this will naturally cause a reduction in the pension amount. Under the contribution-based pension system, the earnings variations as well as the continuity and regularity of employment of the claimants appear once more to be of crucial importance, as the benefit qualifying conditions and the pension amount are very sensitive to those factors. Furthermore, the option of an early pension provided by Decree No. 4/2019 is not likely to favour women, but rather men. Indeed, it favours those with a stable and long-term presence in the labour market and with higher pay levels, which are normally men, given that women usually have more fragmented careers and lower pay levels. Furthermore, in invalidity pension schemes, the working contribution condition is one that is almost impossible for workers with recent spells of inactivity to fulfil. Finally, cohabiting and same-sex partners are not entitled to survivors' pensions and to family income support.

The statutory system is compulsory for all types of workers and its coverage is not subject to any limitations.

The compulsory statutory system covers the risks listed in Article 3(1) of Directive 79/7. The Italian family income support scheme falls under the exclusions in Article 3(2) of the directive. The scheme reveals discriminatory features as regards part-time workers working less than 24 hours a week and vertical part-timers.

The exclusions in Article 7(1) of the directive have been used in the new contribution pension system in relation to advantages as regards old-age pensions for the purpose of child rearing, for the benefit of women.

Sex is not used as an actuarial factor in statutory schemes.

7.9 Remaining issues

There are no remaining issues regarding statutory social security that have not been discussed so far.

8 Self-employed workers (Directive 2010/41/EU and some relevant provisions of the Recast Directive)

8.1 General (legal) context

8.1.1 Surveys and reports on the specific difficulties of self-employed workers

The Italian labour market has always been characterised by a high level of self-employment. According to an ISTAT (the National Institute for Statistics) survey, in 2017, self-employed workers made up about 23.2 % of the total workforce (compared to an EU average of 15.7 %). Despite a decrease in self-employment of over 10 % in the last nine years, this accounts for a large part of the gross domestic product (about 18 %). This sector includes many different occupations, such as farmers, professionals, shopkeepers, quasi-subordinated workers (that is, a sort of dependent self-employed worker, known as DSE, among whom the majority are women), small entrepreneurs and self-employed workers without employees. Their work organisation and regulation can differ greatly. As a consequence, each category has its own peculiarities. In general terms we can say that their representative associations usually highlight the same chronic problems, that is a lack of infrastructure, bureaucracy, delays in payments, absence of illness protection and fiscal pressure. All categories of self-employed workers have had to face the economic crisis through income reduction, increased costs of production, or difficulties arising from a more complex market.[82]

According to the results of a 2013 study by ISFOL (the Institute for the Development of Vocational Training for Workers),[83] another common and remarkable problem affecting those in self-employment is the lack of professional training. In practice, resources are mainly allocated to maintain workers in the employment sector and the cost of professional training, which is compulsory only for some categories, rests entirely on the self-employed. The research also showed the average self-employed person, irrespective of the category, to be fully dedicated to their profession, performing the activity on his own, following a typically and deeply-rooted male model of work, characterised by long hours, which tend to extend into and mix with private life. This is probably one of the main reasons why women are traditionally underrepresented in self-employment and account for a lower average turnover and income, than men. In fact, the research focused on professionals, tradesmen, craftsmen, farmers and small businessmen, the majority of whom are men. The problems faced by self-employed women are mainly linked to de facto obstacles rising from double work in and out of the family or to old-fashioned stereotypes.

However, the diverse world of self-employment also includes quasi-subordinated workers, where women are in the majority. These forms of collaboration – which also includes very different situations, from the performance of a professional service in favour of different customers to (in most cases) a job for a single employer, coordinated by the latter and performed within his enterprise – are often arranged simply to save on social contributions and to avoid the enforcement of labour law rules, but in practice hide an employment relationship. To counteract the misuse of DSE contracts, contribution charges have been gradually increased, reducing the gap in comparison with dependent work, and some strict legal requirements for the contracts have been provided. The problems that can affect these working relationships are obviously similar to those affecting employees, because they are often carried out in the enterprise. The legislature has also extended the protection against blank resignation to these workers.

[82] ISTAT (2018), *Independent workers - Data for 2017*, available at: https://www.istat.it/it/files//2018/11/Focus_indipendenti_2018.pdf.

[83] ISFOL (2013), *Lavoratori autonomi: identità e percorsi formativi* (*Self-employment: identity and professional training*) in: http://bw5.cineca.it/bw5ne2/opac.aspx?WEB=INAP&IDS=19286.

8.1.2 Other issues

There are no other issues in relation to self-employed workers that might be considered relevant in order to sketch the general context.

8.1.3 Overview of national acts

The main national acts relating to self-employment are: the Equal Opportunities Code (Decree No. 198/2006), the Decree on the protection of motherhood and fatherhood (Decree No. 151/2001), Act No. 228/2012 and Act No. 81/2017.

The Equal Opportunities Code and the Decree on the protection of motherhood and fatherhood implement Directive 2010/41/EU. Act No. 228/2012 issued slight amendments to both decrees to avoid an action for non-compliance.

Act No. 81/2017 (the Jobs Act for self-employed workers), aims to strengthen their rights and welfare. Some improvements involve the protection of motherhood and fatherhood. Moreover, Article 13 states that all autonomous workers performing a continuous activity for a customer will have the right to suspend their working relationship for pregnancy, illness and accident at work for a maximum period of 150 days during each year, taking into account the customer's interests.

8.1.4 Political and societal debate and pending legislative proposals

The debate on self-employment is focused on the main problems, which are: lack of infrastructure, bureaucracy, delay in payments, lack of illness protection and fiscal pressure. These problems were left open by the last legal intervention, the so-called Jobs Act for self-employed workers. In particular, it is stressed that the category of dependent self-employed worker (DSE), who are most in need of social protection, has not been specifically addressed.[84]

At present, there is a legislative proposal to address the problem of those forms of collaboration – which include very different situations, from the performance of a professional service in favour of different customers to (in most cases) a job for a single employer, coordinated by the latter and performed within his enterprise – which are often stipulated just to save on social contributions and to avoid the enforcement of labour law rules, but which, in practice, hide an employment relationship. It is proposed to counteract the misuse of such contracts by changing the VAT regulations.[85]

8.2 Implementation of Directive 2010/41/EU

The Equal Opportunities Code, issued by Decree No. 198/2006, and the Decree on the protection of motherhood and fatherhood, (Decree No. 151/2001), already ensured a good level of implementation of Directive 2010/41/EU. Act No. 228/2012 made slight amendments to both decrees to avoid an action for non-compliance. In particular, Act No. 228/2012 changed Article 27 of the Equal Opportunities Code and applied the ban on discrimination in the access to work to the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity.

[84] See: https://www.altalex.com/documents/news/2017/07/03/jobs-act-del-lavoro-autonomo and Tiraboschi, M. (2017), *Lavoro autonomo: il nuovo quadro legale* (Self employment: the new legal framework), in *Bollettino Adapt.it*, available at: http://www.bollettinoadapt.it/lavoro-autonomo-il-nuovo-quadro-legale/.

[85] See the bill proposed by the political party M5S (Five Star Movement), in https://www.informazionefiscale.it/partita-iva-legge-falso-lavoro-autonomo-novita.

8.3 Personal scope

8.3.1 Scope

Neither the Code of Equal Opportunities nor the Decree on the protection of motherhood and fatherhood defines self-employment. The legislature has laid down no specific conditions. Therefore, the concept of self-employment that is relevant for the enforcement of the principle of equal treatment is very broad and includes a large number of very different categories, as well as self-employed persons who employ other persons.

8.3.2 Definitions

Neither the Equal Opportunities Code nor the Decree on the protection of motherhood and fatherhood defines self-employment. The legislature has laid down no specific conditions. Therefore, the concept of self-employment that is relevant for the enforcement of the principle of equal treatment is very broad and includes a large number of very different categories, as well as self-employed persons who employ other persons. The provisions in other pieces of legislation define self-employed persons (Article 2222 of the Civil Code) as 'persons who commit themselves to make a service or a work totally or mainly by means of their labour and without any subordination towards the customer' and small entrepreneurs (Article 2083 of the Civil Code) as 'small independent farmers, craftsmen, traders and those who professionally perform an activity which is organised mainly with their work and with the work of their family.' The law does not define quasi-subordinated work, that is, a sort of dependent self-employed worker (known as DSE).

As regards the protection of the working mother, Decree No. 151/2001 provides for a definition of a worker that refers to employees save in cases where it is specified differently. In fact, two chapters of the decree specifically address all self-employed workers and professionals and another one addresses various categories, including quasi-subordinated workers, thereby providing for the respective maternity/paternity rights.

8.3.3 Categorisation and coverage

Although the regulations covering the respective categories of self-employed persons can be remarkably different, they all are fully covered by the decrees implementing Directive 2010/41/EU, as they are included in the general concept of self-employment.

The agricultural sector has specific regulations, but all rights provided by Directive 2010/41/EU are also guaranteed to these self-employed persons.

8.3.4 Recognition of life partners

Italian legislation does not recognise life partners. However, under the regulations of the Decree on the protection of motherhood and fatherhood, maternity rights are individual rights. Moreover, allowances for poor families, which are paid by the municipalities, do not depend on marriage. Where life partners (e.g., the partner whether formally married or not) habitually participate in the activities of the self-employed partner and perform the same or ancillary tasks, this relationship has to be considered as an employee relationship.

8.4 Material scope

8.4.1 Implementation of Article 4 of Directive 2010/41/EU

National legislation has implemented Article 4 of Directive 2010/41/EU through the Equal Opportunities Code (Decree No. 198/2006).

8.4.2 Material scope

The very wide formulation of Article 1 of the Equal Opportunities Code, which states that 'Equal treatment between men and women must be assured in all fields, including employment, work and remuneration' assures the implementation of Article 4 of the directive. The definitions of harassment and sexual harassment also repeat the wording of the directive and are regarded as discrimination; these definitions include less favourable treatment based on a worker's rejection of or submission to harassment or sexual harassment (Articles 26, 50*bis* and 55*bis* of the Equal Opportunities Code). The same goes for instructions to discriminate (Article 25 of the Equal Opportunities Code).

Specifically as regards the ban on discrimination, the wide definition provided by Article 27 refers to all forms of work, employment, self-employment or any other work, including the 'establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity.' The latter amendment provided by Act No 228/2012 has definitely clarified the personal scope of the Equal Opportunities Code, dispensing with all possible doubts arising from the fact that autonomous work and entrepreneurship do not fully correspond; therefore, the ban on discrimination also applies to entrepreneurship. Article 27 is also enforceable, under Paragraph 3, for vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience and for the membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry out a particular profession (including the benefits provided for by such organisations).

8.5 Positive action

Before the implementation of Directive 2010/41/EU, the Equal Opportunities Code (Articles 52 et seq. Decree No. 198/2006) already provided for positive action in the field of entrepreneurial activity. The Equal Opportunities Code implements the principle of substantive equality, providing for the promotion of female self-employment through preferential measures meant to favour access to bank credits and public funds, to improve professional training and qualifications for women in this field, and to promote the presence of businesses owned or managed by a high percentage of women in the most innovative areas of different production sectors.

In the field of entrepreneurial activity, in particular, positive action measures are provided as preferential measures meant to favour access to bank credits and public funds (Articles 52 to 55 of the Equal Opportunities Code). The subjects entitled to these benefits are partnerships or cooperatives made up of at least 60 % women, limited and unlimited companies at least two-thirds owned by women and whose board of management is made up of at least two-thirds women, individual female businesses and finally businesses, their consortia (*consorzi*) and associations, and bodies for the promotion of entrepreneurial activity that promote professional training on self-employment or services for professional advice and assistance on management techniques reserved to a quota of at least 70 % women.

Possible problems in the effectiveness of these measures are mainly linked to insufficient funds and to bureaucratic aspects, such as the complexity of the application and timing in the assessment and payment of the projects. Positive action measures may have a positive effect on the creation of start-up enterprises, but they are less efficacious as regards the performance and survival of such enterprises. In any case, expectations for these projects are rather high as the applications definitively exceed the amount of funds available.

8.6 Social protection

Self-employed persons fall under the protection of social insurance as regards old-age pensions, invalidity benefits and survivors' pensions, industrial accidents and occupational

diseases, maternity and family income support and sickness benefits. The pensions system is contribution-based. The self-employed are also covered by the National Health System, as are all other Italian citizens. The various categories of self-employed persons are protected by different pension systems, but all of them are mandatory and contribution-based.

As regards helping spouses and life partners, the Italian system includes different notions of a family business, which often overlap. What is relevant in relation to social protection, however, is both the form that the work relationship within the family enterprise takes and the fact that the work carried out produces an income. If this relationship takes the shape of a contract of employment, all provisions concerning employees will cover the assisting spouse. If the person engaged in a family business is regarded as self-employed – and particularly as a 'helping relative' – the coverage in terms of social protection is provided, as stated above, by specific public schemes.

On the other hand, it is not completely clear which kind of social protection could be reserved for those engaged in the family business described in Article 230*bis* of the Civil Code (that is, family businesses). It could be argued that when the work relationship within the enterprise is not classified as one of self-employment or as a contract of employment, then it is regulated by Article 230*bis* of the Civil Code. These workers, at any rate, are covered by the old-age, invalidity and survivors' schemes of self-employed persons, which are both contribution-based and mandatory.

If the work carried out cannot be regarded as a source of income, then there is no obligation to pay contributions for pension purposes; the sole social insurance provision that covers helping spouses in this case is the accident at work and professional diseases insurance.

8.7 Maternity benefits

The Decree on the protection of motherhood and fatherhood (Decree No. 151/2001) guarantees the right to maternity allowances provided by Article 8 of the directive to all categories of self-employed persons.

The maternity allowance is granted to quasi-subordinated workers (a sort of dependent self-employed worker, known as DSE) for a period of five months. They are entitled to the allowance under a mandatory system subject to the condition that they have paid at least three months of contributions in the year before the period covered by the allowance, regardless of their decision as to whether or not to suspend their working activity.[86] The latter amounts to 80 % of 1/365 of the income based on which the contribution has actually been paid in the preceding 12 months, which is consistent with Article 8(3)(b) of the Directive, which refers to the average loss of income or profit in relation to a comparable preceding period subject to any ceiling laid down under national law.

Self-employed women, including self-employed fisherwomen in small-scale coastal, inland fishing and helping spouses, are entitled to a maternity allowance, regardless of their decision as to whether or not to suspend their working activity.[87] The allowance is paid for five months and amounts to 80 % of the minimum pay for contribution purposes.

[86] Italy, Act No. 81/2017, Article 13 and Article 13 of Decree No. 80/2015, which amended Decree No. 151/2001; the right to the allowance is also recognised when the employer does not pay the contribution (previously this rule only applied to employees).

[87] Article 15 of Decree No. 80/2015, which amended Decree No. 151/2001, states that the self-employed father is entitled to benefit from the self-employed mother's maternity allowance after the birth for its whole length or for the remaining period in special cases (the mother dies or becomes seriously ill, or in the event of the abandonment of the child, or if the child is under the exclusive custody of the father he is entitled to the same period of leave of the mother), as well as fathers working under an employment contract. The same extension concerns professional fathers under Article 18 of the decree, as a permanent amendment.

Women engaged in the liberal professions and members of the Welfare and Assistance Fund of their category (i.e. advocates, doctors, surveyors, architects, accountants) are also entitled to five months of maternity allowance, regardless of interruption of their work. The allowance amounts to 80 % of 5 months of the yearly income earned during the second year preceding the birth. Five months of contributions are credited for pension purposes here.

During the types of leave mentioned above, notional contributions[88] are counted towards pension rights and amounts. All these categories are obliged to pay contributions to sustain maternity allowances and they are all covered for this risk, including in cases of national and international adoption and fostering.

Italy does not have services supplying temporary replacements and the only provision that is aimed at favouring the replacement of the working mother in the enterprise has been extended to self-employed persons. Article 4, Paragraph 5 of Decree No. 151/2001 states that in businesses where self-employed women are engaged, if women go on maternity leave they can be replaced, in the first year after childbirth or after the child has entered the family in the event of an adoption, by an employee working on a fixed-term contract and (if the enterprise employs less than 20 people) with special reductions in contributions for the business.

The maternity allowance is not an alternative to any national social service or services supplying temporary replacements. Social services can be accessed by everybody depending on their revenue regardless of the subordinate or autonomous nature of the working relationship.

Finally, Article 8, Paragraph 4 of Act No. 81/2017 provides for six months of paid parental leave, to be taken within the first three years of the child's life for those workers who are registered in the so-called *gestione separata*, which is a compulsory pension scheme covering quasi-subordinate workers (DSE) and similar categories (including professionals in those categories who do not have their own pension schemes). Furthermore, Article 13 provides an allowance for maternity leave for them irrespective of the actual absence from work, the same as is provided for professionals. These provisions are also enforceable in cases of adoption or fostering.

Moreover, Article 14 of Act No. 81/2017 states that all self-employed workers performing a continuous activity for a customer have the right to suspend their working relationship for a maximum period of 150 days for pregnancy during each year, while also taking into account the customer's interests; in this case, the worker can be substituted by a colleague or by a partner.

8.8 Occupational social security

8.8.1 Implementation of provisions regarding occupational social security

The Recast Directive has been implemented as regards occupational social security by Decree No. 5/2010, which has added Article 30*bis* to Decree No. 198/2006. This piece of legislation, however, does not include any provisions on self-employment. Despite this, the domestic legislation, on the whole, is fairly in line with EU anti-discrimination law. However, the regulations on occupational funds make no provisions for the recovery of wasted contributions during pregnancy/maternity.

[88] Those are contributions that are credited without cost to the employee for periods during which the worker has not worked (for example, in the case of illness or maternity) and therefore he or she has received benefit payments from the national social security system (INPS).

8.8.2 Application of exceptions for self-employed persons regarding matters of occupational social security (Article 11 of Recast Directive 2006/54)

The Recast Directive has not been implemented as regards self-employed occupational social security. Therefore no use was made of the option to make exceptions as provided in Article 11 of the Recast Directive.

8.9 Prohibition of discrimination

Under Article 27 of the Equal Opportunities Code, the prohibition on direct and indirect discrimination concerns access to employment, self-employment or any other form of work, as well as selection criteria, recruitment conditions at all levels of the professional hierarchy, and promotion. It applies to all sectors, both public and private, and encompasses all types of work relationships, subordinate, autonomous or 'any other', including entrepreneurship.

8.10 Evaluation of implementation

The Equal Opportunities Code, issued by Decree No. 198/2006, and the Decree on the protection of motherhood and fatherhood, (Decree No. 151/2001), already ensured a good level of implementation of Directive 2010/41/EU. Act No. 228/2012 made slight amendments to both decrees to avoid an action for non-compliance. In particular, Act No. 228/2012 changed Article 27 of the Equal Opportunities Code and applied the ban on discrimination in the access to work to the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity. Act No. 228 also extended the regulations on both maternity allowance and parental leave provided for self-employed workers by the Decree on the protection of motherhood and fatherhood to self-employed fisherwomen in small-scale coastal and inland fishing. It also changed the regulations on parental leave by entitling parents to use this leave by the hour, according to criteria to be established by collective agreements. Following Act No. 228/2012, specific regulations (including the option to postpone the leave) are also to be provided by collective agreements for the defence forces, the public rescue sector and firemen, with the aim of taking into consideration the specific organisational needs of these services.

It is also to be recalled here that Italian legislation does not recognise life partners. However, under the regulations of the Decree on the protection of motherhood and fatherhood, maternity rights are individual rights (available to life partners). Moreover, allowances for poor families, which are paid by the municipalities, do not depend on marriage. Where life partners (e.g., the partner whether formally married or not) habitually participate in the activities of the self-employed partner and perform the same or ancillary tasks, this relationship has to be considered as a remunerated work relationship.

Finally, the Recast Directive has been implemented as regards occupational social security by Decree No. 5/2010, which has added Article 30*bis* to Decree No. 198/2006. However, it does not include any provisions on self-employment. Despite this, the domestic legislation, on the whole, is fairly in line with EU anti-discrimination law.

8.11 Remaining issues

There are no remaining issues regarding self-employed persons.

9 Goods and services (Directive 2004/113)[89]

9.1 General (legal) context

9.1.1 Surveys and reports about the difficulties linked to equal access to and supply of goods and services

In Italy, there is no debate regarding discrimination based on sex in the access to or prices of services and such differential treatment is very rare. The sector where discrimination is most likely to take place is that of insurances and financial services, and with respect to this, the directive is crucially important in Italy, as elsewhere. There is no case law on the enforcement of Directive 2004/113.

9.1.2 Specific problems of discrimination in the online environment/digital market/collaborative economy

We are not aware of any specific problems of gender discrimination concerning the access to and supply of goods and services in the online environment/digital market/collaborative economy. There is no evidence of any engagement in gender discrimination in relation to this issue by any private or public stakeholders, such as national equality bodies and collective agreements. On the side of consumer protection bodies, however, the Consiglio Nazionale dei Consumatori e degli Utenti (CNCU) 2016 report recommends responsibility, respect of general rules – therefore also anti-discrimination rules contained in our Constitution and labour law legislation – and platform transparency in the online environment/digital market/collaborative economy. The report was presented at the region's conference, where the question of whether the collaborative economy increases or decreases equality was raised.[90]

9.1.3 Political and societal debate

There is no debate among scholars or any other initiatives aimed at spreading awareness of Directive 2004/113. This is probably both the cause and the effect of the merely formal implementation of the directive. Indeed, Decree No. 196/2007, which implemented EC Directive 2004/113, repeats the text of the directive literally. Substantive implementation would require measures aimed at making people and institutions aware of the importance of this issue.

9.2 Prohibition of direct and indirect discrimination

EC Directive 2004/113 has been implemented by Decree No. 196/2007, which adds 10 articles to the Equal Opportunities Code (Articles 55*bis* to 55*decies* of Decree No. 198/2006). The decree literally repeats the text of the directive.

We do not yet have any examples of cases regarding the implementation of Directive 2004/113. Nor were there any reported cases on gender discrimination regarding goods and services before the implementation of the directive.

9.3 Material scope

The Italian transposition is worded in the same way as the directive (Article 55*ter* Decree No. 198/2006).

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[89] See e.g. Caracciolo di Torella, E. and McLellan, B. (2018) *Gender equality and the collaborative economy*, European network of legal experts in gender equality and non-discrimination, available at https://www.equalitylaw.eu/downloads/4573-gender-equality-and-the-collaborative-economy-pdf-721-kb.

[90] See http://www.newtuscia.it/2017/04/19/ruolo-delle-associazioni-dei-consumatori-nelleconomia-collaborativa/.

9.4 Exceptions

The Italian transposition is worded in the same way as the directive (Article 55*ter* Decree No. 198/2006).

9.5 Justification of differences in treatment

The differences in treatment provided by the directive have been copied by Article 55*bis*, Paragraph 7 of Decree No. 198/2006. No explicit examples or specific exceptions have been provided in the national legislation.

9.6 Actuarial factors

Article 55*quater* of Decree No. 198/2006, modified by Article 25, Paragraph 1 of Act No. 161/2014, states that

> 'in all new contracts concluded after 20 December 2012, the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services shall not result in differences in individuals' premiums and benefits.'

The rule also states that 'In any event, costs related to pregnancy and maternity shall not result in differences in individuals' premiums and benefits.' The Institute for Insurance Supervision (IVASS) must ensure that Article 55*quater* is respected by insurance companies. Any breach of the rule is qualified as gender discrimination.

9.7 Interpretation of exception contained in Article 5(2) of Directive 2004/113

Test-Achats has been implemented in Italy by Article 25, Paragraph 1 of Act 30 October 2014, No. 161, which has amended Article 55*quarter* of Decree No. 198/2006. The rule provides that, before 21 December 2012, proportionate differences in individuals' premiums and benefits are allowed only on condition that the Institute for Insurance Supervision (IVASS) ensures that the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data. After 20 December 2012, the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services must not result in differences in the premiums and benefits of individuals.

9.8 Positive action measures (Article 6 of Directive 2004/113)

Article 55*novies* of Decree No. 198/2006 expressly provides for positive action to be promoted by the office for the promotion of equal treatment in access to goods and services at the Minister for Equal Opportunities and Family. Positive action measures can be carried out by public and private bodies and, in particular, by associations and organisations promoting equal treatment listed in a ministerial decree. At present, however, there are no records of positive action in this field.

9.9 Specific problems related to pregnancy, maternity or parenthood

There are no specific grounds or case law on discrimination on the grounds of pregnancy, maternity or parenthood in relation to the access to and the supply of goods and services. Article 4(2) of Directive 2004/113 has been applied to maintain the exemption from fees for all clinical tests related to pregnancy and for certain clinical tests during the same period. Moreover, having children is regarded as a preferential ground to gain access to public housing, while having more than one child is a preferential ground to gain access to a public kindergarten. These are sex neutral provisions.

9.10 Evaluation of implementation

Decree No. 196/2007 literally repeats the text of the EU directive, including the provisions on its substantive scope and on the allowed exceptions. It has to be emphasised that the textual reproduction of directives in our system can be regarded as bad practice, which certainly does not ensure the necessary coordination with other existing provisions.

One provision that is slightly different from the text of the directive relates to the body for the promotion of equal treatment. On this specific item, it can be observed that some doubts have arisen regarding the real independence of the Equality Office provided by Article 55*novies* of Decree No. 198/2006, as it comes under the general division of the Minister for Equal Opportunities and Family, part of the Prime Minister's Offices, without any budget allocation. Article 55*novies* adds the promotion of studies, research, professional training and exchange of good practice, aimed at working out guidelines on fighting discrimination, to the other functions expressly provided for by the directive as regards equality bodies. It also states that, for this purpose, the general division can partner with associations, organisations or other legal entities that have a legitimate interest in ensuring that the provisions of the directive are complied with and that are entitled on this ground to engage, on behalf or in support of the claimant, with his or her approval, in any judicial and/or administrative procedure.

In case of ascertained discrimination by public or private subjects that have contracts for public works, or services or supplies, the public administration can revoke financial or credit benefits allowed to them (Article 55*quinquies* of Decree No. 198/2006, as modified by Article 34 of Decree No. 150/2011).

9.11 Remaining issues

There are no other issues regarding goods and services that have not been discussed so far.

10 Violence against women and domestic violence in relation to the Istanbul Convention

10.1 General (legal) context

10.1.1 Surveys and reports on issues of violence against women and domestic violence

One of the objectives of the 'Extraordinary plan against violence' provided under Article 5 of Decree No. 93/2013 is to provide for annual data collection on cases of all forms of violence, including a map of specialist support services. The decree also provides for coordination of the existing data collection (Paragraph 2 of Article 5). So far, data collection on all forms of violence has been made available by ISTAT, the National Institute for Statistics. The ISTAT datasets are available to the public.

The latest collection of data on violence against women was led by ISTAT in cooperation with the Department of Equal Opportunities and dates back to 2014. According to the survey, 6 788 000 women have been victims of some form of violence, either physical or sexual, during their life, that is 31.5 % of women aged 16-70: 20.2 % have been the victim of physical violence; 21 % of sexual violence; and 5.4 % of the most serious forms of sexual violence such as rape and attempted rape. Furthermore, foreign women are victims of sexual or physical violence on a similar scale to Italian women. However, physical violence is experienced more frequently by foreign women, while sexual violence is more commonly experienced by Italian women. Current and former partners of victims are those who commit the most serious crimes: 62.7 % of rapes are committed by the current or the former partner, while in the majority of cases of sexual harassment, the perpetrators are unknown (76.8 %). As to the age of the victim, 10.6 % of women have been victims of sexual violence prior to the age of 16. The rate of children witnessing violence against women in cases has increased to 65.2 % (compared to the 2006 figure of 60.3 %). Women who are separated or divorced are far more exposed to physical or sexual violence (51.4 % as compared to 31.5 % relating to all other cases). The situation of women with disabilities or illnesses remains a great concern: 36 % of women with bad health conditions and 36.6 % of those with serious limitations have been victims of physical or sexual violence. The risk of being exposed to rape or attempted rape doubles compared to women without any health problems (10 % compared to 4.7 %). However, compared to 2006, the number of sexual and physical violence cases has decreased from 13.3 % to 11.3 %. This is the result of an increased awareness by women of existing protection tools and public opinion in general, in addition to an overall social climate of condemnation and no tolerance for such crimes. Women are far more aware that they have survived a crime (from 14.3 % to 29.6 % in case of violence by the partner) and the violence is reported far more often to the police (up from 6.7 % to 11.8 %). Victims are increasingly likely to talk about the violence with someone (up from 67.8 % to 75.9 %) and look for professional help (up from 2.4 % to 4.9 %). The same applies in the event of violence by a non-partner. Compared to the 2006 figures, survivors are far more satisfied with the relevant work carried out by the police.

The improved data are certainly linked to the enactment of Decree No. 93/2013 implementing the Istanbul Convention. Conversely, negative results emerge in relation to cases of rape or attempted rape. The forms of such violence are far more serious and there has been an increase in the number of victims with injuries (from 26.3 % to 40.2 % in cases when the partner is the perpetrator); and an increase in the number of women who feared that their life was in danger (from 18.8 % in 2006 to 34.5 % in 2014). The forms of violence inflicted by a non-partner are also more serious: 3 466 000 women (16.1 %) have been victims of stalking during their lifetime, of whom 1 524 000 have been stalked by their former partner and 2 229 000 by a person other than a former partner.

The ISTAT survey also presents estimated data on the years 2015-2016, on sexual harassment suffered by women and men and of women victims of sexual blackmail at work. It is estimated that 8 816 000 women between 14 and 65 years of age (43.6 %) were victims of sexual harassment in the course of their lives. In the last three years approximately 3 118 000 women will have been the victims of sexual harassment (15.4 %). Taking only the forms of sexual harassment recorded in the 2008-2009 survey, the data showed a significant decrease. Male victims of sexual harassment were estimated to be 3 754 000 (18.8 %) in the course of their life, with 1 274 000 men (6.4 %) experiencing sexual harassment in the last three years. Perpetrators of sexual harassment were mostly men.

Other forms of harassment were those perpetrated through the internet: 6.8 % of women had inappropriate proposals or obscene or malicious comments on their account through social networks and 1.5 % of women were the victims of someone using their accounts (identity theft) to send embarrassing or threatening or offensive messages to other people. In this respect, the data regarding men are not particularly different (2.2 % and 1.9 % respectively).[91]

Another survey was carried out by Ipsos (a private survey firm) in 2018. This reveals that 57 % of the persons interviewed (1 300) are convinced that violence against women is an understated subject, and 71 % of them consider that public authorities do not do enough about it. Furthermore, 83 % of those interviewed asked for a state fund for victims of violence.

Finally, in 2018, a survey was conducted by associations against violence against women.[92] The survey highlights the obstacles to a full implementation of the Istanbul Convention, including: lack of education and professional training on these issues; low financing of services such as shelters and anti-violence centres; lack of accountability in relation to services against violence; lack of homogeneity of data collection; problems as regards the high percentage of violence against disabled and immigrant women, with respect to whom little attention is given in the legislation and services provided; low effectiveness of the criminal and civil redress system.

10.1.2 Overview of national acts on violence against women, domestic violence and issues related to the Istanbul Convention

Italy signed the Istanbul Convention on 27 September 2011 and ratified it with the Act of 27 June 2013, No. 77. Following Italy's accession to the Istanbul Convention, Decree 14 August 2013, No. 93 (converted in Act No. 119/2013) was introduced. The decree strengthened measures aimed at tackling crimes such as domestic violence, sexual violence, and 'persecutory acts'.

Stalking (that is, 'persecutory acts'), was regulated for the first time by Decree No. 11/2009, converted into Act No. 38/2009. Article 12 of Decree No. 11/2009 provides for a free-of-charge, state-wide, round-the-clock telephone helpline (1522), to offer initial psychological and judicial assistance and to report to the police urgent cases on the victim's request.

Article 24 of Decree No. 80 of 15 June 2015 implementing Delegation Act No. 183/2014 introduced some measures aimed at supporting victims of gender violence. A period of leave of three months is given to women victims of gender-based violence who are under

[91] Data are quoted from the ISTAT Survey on violence against women of 2014, published in https://www.istat.it/it/files//2015/09/EN_Violence_women.pdf and https://www.istat.it/en/archivio/209122.

[92] Grevio (2018) *L'attuazione della Convenzione di Istanbul in Italia. Rapporto delle associazioni di donne* (The implementation of the Istanbul Convention in Italy. Report of women's associations) available at: https://www.direcontrolaviolenza.it/wp-content/uploads/2018/10/GREVIO.Report.Ital_.finale-1.pdf.

a protection programme certified by local authorities. The leave is remunerated and equal to the last month of remuneration; it is counted as actual work with regard to seniority, the annual vacation, and severance pay, and can be used on a daily or hourly basis, within the time frame of three years, following criteria stipulated by collective agreements or by law. Victims of gender-based violence are also entitled to convert their working relationship from full time to available part-time positions, on a temporary basis. A suspension of the working relationship for a maximum period of three months is also provided for continuous and coordinated collaborations that are a form of self-employment. Moreover, Article 1, Paragraph 217 of Act No. 205/2017 (Budgeting Act 2018) extended the period of leave available to female victims of gender-based violence who are under a protection programme for domestic workers.

10.1.3 National provisions on online violence and online harassment

There are not yet specific provisions on online violence and online harassment of women and girls, despite the fact that the phenomenon is quite common in Italy. Indeed the Parliamentary Commission set up in 2017 to investigate the scale and causes of feminicide and violence against women recommended the adoption of a specific law on the issue.[93] The recommendation has not been disregarded as Act No. 69 of19 July 2019, known as 'the Red Code', on the improvement of criminal law and redress protection of victims of violence, has recently been approved. The Act aims to accelerate legal proceedings regarding domestic violence against women and to improve privacy in these cases and specific crimes are also introduced for identity injuries and online revenge porn. In addition, compulsory professional training on these issues is provided for police forces.[94]

10.1.4 Political and societal debate

The problem of violence against women and domestic violence is strongly recognised in Italy and the issue is present across the media. In particular, a Parliamentary Commission was set up in 2017 in order to investigate the scale and causes of feminicide and violence against women.[95] The commission recommended: the improvement of statistical data collection; better criminal legislation in relation to child witnesses, the issuing of emergency orders for preventing violence, identity injuries and feminicide; the promotion of a socio-cultural change through education, professional training of police, social services and physicians, guidelines to the media on how to report on gender violence; the adoption of specific norms on online violence and online harassment; and the improvement of psychological assistance for male perpetrators of violence.

Finally, the Government is planning to finance the creation of a specific state fund for victims of violence and to encourage the setting up of regional structures of first responders with legal first aid for victims of violence.[96]

10.2 Ratification of the Istanbul Convention

Italy signed the Istanbul Convention on 27 September 2011 and ratified it with the Act of 27 June 2013, No. 77. Our country did not issue any reservation to the provisions of the Convention. The pre-existing legal framework was not completely in compliance with the obligations under the Convention. In particular, it did not comply as regards forced abortion, which is not mentioned by Article 18 of Act No. 194/1978 on abortion; moreover, crimes such as forced sterilisation and forced marriage were not included in the Italian Criminal Code. Furthermore, free legal aid for victims was not provided and protective measures had to be strengthened.

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93 http://www.senato.it/documenti/repository/commissioni/femminicidio/DocXXII-bis_9.pdf.
94 https://www.altalex.com/documents/leggi/2019/07/26/codice-rosso.
95 http://www.senato.it/documenti/repository/commissioni/femminicidio/DocXXII-bis_9.pdf.
96 https://alleyoop.ilsole24ore.com/2018/11/25/limpegno-del-governo-contro-la-violenza-33-milioni-nel-2019-e-un-fondo-per-le-vittime/?refresh_ce=1.

Following Italy's accession to the Istanbul Convention, Decree No. 93 of 14 August 2013, (implemented in Act No. 119/2013) was introduced. The decree strengthened measures aimed at tackling crimes such as domestic violence, sexual violence, and 'persecutory acts' (stalking, which was regulated for the first time by Decree No. 11/2009, implemented in Act No. 38/2009). Two articles are particularly important as regards the implementation of the Convention: Articles 5 and 5bis of Decree No. 93/2013. Article 5 provides for an 'Extraordinary plan against violence' to tackle such crimes to be issued by the Prime Minister's Adviser on Equal Opportunities, including multiple measures aimed at prevention, strengthening anti-violence centres and social services, increasing the protection of victims, improving the professional training of experts, gathering figures on these cases and carrying out positive action measures. Article 5bis promotes and finances both the creation and the consolidation of specialist support services and shelters, which can be set up by local authorities or voluntary associations and organisations and that are due to operate in coordination with the National Health Service network of local clinics.

Article 4 of Decree No. 93/2013 provides for a special residence permit for reasons of protection of foreign victims of domestic violence. The permit is issued by the competent authority, authorised by the judge, when there is a situation of domestic violence against a foreign person, detected during policy operations, investigations or criminal proceedings. The permit can also be issued when the domestic violence is detected during the intervention of general and specialist support services.

The issuing of Decree No. 93/2013 was a further and important step towards better protection for woman against violence. Stronger sanctions have been provided, together with further precautionary measures and some improvements in the protection of the victim. Nevertheless, criticisms have been raised concerning the merely repressive nature of this intervention and on the lack of funding, which risks depriving it of any effectiveness. In particular, it has been highlighted that the decree is extremely weak as regards prevention, which is crucial to combating violence and no attention at all has been paid to the professional training of experts and to health and social help/assistance aimed at the rehabilitation of the perpetrator. The extraordinary plan itself is unlikely to work at little cost.

The extraordinary plan against violence, which will be two-yearly, will be monitored annually by the Minister for Equal Opportunities and Family. The first plan was implemented by a Decree of the Prime Minister of 25 August 2015 and after the first plan expired, a new plan was published for the period 2017-2020. The new plan contains measures aimed at: the prevention of violence against women by raising social awareness, professional training and social education, and treatment of abusers; the support of women who have experienced violence by the creation and the consolidation of specialist support services and shelters, economic and financial empowerment of women and incentives to housing autonomy; the prosecution and punishment of the perpetrators of violence; regular monitoring of the plan's effects and impact; constitution of a control room to coordinate the local and national policies geared towards tackling violence against women.[97]

No other legal provisions are currently planned to be introduced.

[97] See on these issue http://www.pariopportunita.gov.it/contro-la-violenza-sessuale-e-di-genere/.

11 Compliance and enforcement aspects (horizontal provisions of all directives)

11.1 General (legal) context

11.1.1 Surveys and reports about the particular difficulties related to obtaining legal redress

There are no surveys and/or reports that have been published in Italy over the last five years that provide insights into the particular difficulties that victims of gender discrimination face in practice in obtaining legal redress.

11.1.2 Other issues related to the pursuit of a discrimination claim

A step forward in legal aid and the spreading of a 'culture' of bringing legal proceedings was taken by the allocation of funds to support the equality advisers (which strengthens the worker's financial and psychological position and assures the assistance of an expert both before and during the trial), but funding has been progressively cut every year and the ability to fully maintain equality advisers has been reduced.

11.1.3 Political and societal debate and pending legislative proposals

There is no political and/or societal debate or pending legislative proposals.

11.2 Victimisation

Article 26 of the Equal Opportunities Code provides protection against victimisation for employees and all other persons who are victims of detrimental treatment by their employer in reaction to requiring compliance with the principle of equal treatment between men and women. Italian legislation fully complies with the directives in this respect. Moreover, Article 1, Paragraph 218 of Act No. 205/2017 (Budgeting Act 2018) partially amended Article 26 so as to expressly state that acts, pacts or provisions amending the employment relationship of workers who are victims of less favourable treatment and adopted in retaliation for the worker's rejection or reporting of harassment on the ground of sex or sexual harassment are null and void. The same law also added Paragraph 3bis to Article 26, specifying that all types of less favourable treatment mentioned above, including dismissal, transfer and change of job or any organisational measure that has a direct or indirect negative effect on the working condition of the worker who brings a case to court for harassment or sexual harassment are null and void. The sole exception to the enforcement of this protection is in case of ascertained criminal liability of the claimant for libel or slander. No case law has been recorded on this type of discrimination.

Article 41bis of the Equal Opportunities Code also provides for an extension of special legal redress (assistance by the equality advisers, trade unions and other associations promoting equal opportunities) to cases of victimisation.

11.3 Access to courts

11.3.1 Difficulties and barriers related to access to courts

Some obstacles in relation to access to redress procedures are likely to arise from: the discouragement of women, that is a general lack of faith in the legal system; the fact that the legal proceeding are often too slow and in some cases provide sanctions (such as nullification of the discriminatory act that provides advantages to one gender) that do not award any benefit to the victims; the difficulty of proof as regards discrimination cases; and the lack of a widespread knowledge and consciousness of these items by the victims themselves and by union representatives, lawyers, judges and labour inspectors.

11.3.2 Availability of legal aid

Articles 37 and 38 of Decree No. 198/2006 empower equality advisers to assist victims of discrimination. National and regional equality advisers can act directly in their name in cases of collective discrimination, even where the employees affected by the discrimination are not immediately identifiable. Regional and provincial advisers can also proceed when delegated by an individual employee or can intervene in a process initiated by the latter.

National and regional equality advisers can also propose a conciliation agreement before going to court, asking the person responsible for the discrimination to set a plan to remove it within 120 days. If the plan is considered to be suitable for removing the discrimination, on the equality adviser's request, the parties sign an agreement, which becomes a writ of execution through a decree of the judge.

Under Article 38 of Decree No. 198/2006, associations and organisations promoting respect for equal treatment between male and female workers, as well as trade unions, are entitled to act on behalf of workers.[98]

The sensitivity of social partners on these issues, however, is still not uniform in all regions and sectors.

Case law is really scarce on gender anti-discrimination issues and no relevant examples are to be recorded as regards gender equality interest groups or other legal entities.

11.4 Horizontal effect of the applicable law

11.4.1 Horizontal effect of relevant gender equality law

The question of the horizontal effect of the applicable gender equality law is accepted in Italy and it does not pose any particular problem in ensuring compliance with or in enforcing gender equality legislation.

11.4.2 Impact of horizontal direct effects of the charter after *Bauer*

The recognition of horizontal direct effects of the Charter provisions (in the *Bauer* ruling of the CJEU)[99] might have relevance for better enforcement of gender equality law in our country. Indeed, the *Bauer* ruling dispels any possible doubt as to the precise, clear and unconditional nature of the Charter articles involved, and those articles similar to them, as well as about the fact that they do not call for additional measures, at either national or European level.

11.5 Burden of proof

On the whole, the partial reversal of the burden of proof provided by Decree No. 198/2006 can be deemed to be a satisfactory implementation of Directive 54/2006/EC (in light of CJEU case law, as well), also considering that in labour law disputes, under Article 421 of the Code of Civil Procedure, the judge can order the acquisition of whatever sort of proof at any time. The partial reversal of the burden of proof has been used by the little case law that there is on indirect discrimination. As regards the use of quantitative/statistical

[98] Italy, Act No. 205/2017 (Budgeting Act 2018), Article 1, Paragraphs 465 and 466, provide for amendments to civil and criminal procedural law respectively. Para. 465 states that, when the defendant certifies her pregnancy or an adoption/fostering procedure, the judge must decide on a continuation of the trial taking into consideration the period of two months before and three months after the birth/adoption/fostering. The amendment also states that this provision should not be seriously detrimental to the parties where urgent treatment is necessary. Paragraph 466 provides that during the period mentioned above the defendant does not have to attend court.

[99] Judgment of 6 November 2018, *Stadt Wuppertal v Maria Elisabeth Bauer and Volker Willmeroth v Martina Broßonn*, joined Cases C-569/16 and C-570/16, EU:C:2018:871.

data, the Equal Opportunities Code goes further than EU law as it requires companies with more than 100 employees to draw up reports every two years (and to deliver them to the company union representatives and to the regional equality advisers) on the situation of male and female workers as regards, for example, recruitment, professional training, career opportunities, remuneration, dismissals and retirement.

11.6 Remedies and sanctions

11.6.1 Types of remedies and sanctions

Minor criminal sanctions were provided for the infringement of the prohibition on discrimination in access to work and working conditions, The decriminalisation provided by Decree No. 8 of 15 January 2016, however, involved changes in the sanctions for the infringement of the ban on gender discrimination in the working relationship: that is minor criminal sanctions (a fine from EUR 250 to 1 500) have been substituted by administrative sanctions of fines ranging from EUR 5 000 to 10 000. The change concerns all cases of discrimination covered by the Equal Opportunities Code (Decree No. 198/2006), that is all sectors, both public and private and all aspects of the working relationship. Both administrative and criminal sanctions are provided for the protection of motherhood and fatherhood.

Positive action measures are also provided as remedies against collective discrimination ascertained by the judge. The revocation of public benefits or even the exclusion, for a certain period, from any further award of financial or credit inducements or from any public tender is also provided in the case of direct or indirect discrimination. The general remedy of nullity is enforceable for all discriminatory acts; moreover, the special remedy (reinstatement) provided by Article 18 of the Workers' Statute is enforceable in the case of a dismissal on the ground of pregnancy or marriage after the finding of gender discrimination in such cases. Compensation for economic damage can also be awarded following the general principles on contractual and extra-contractual liability. In general, the prohibition on the setting of an upper limit for compensation or reparation is not provided by the law, as such a limit does not exist in the Italian system.

The backdating of awards follows the general rules on prescription: 5 years for wage credits, under contractual liability;[100] and 10 years for awards of damages under extra-contractual liability, with the right to damages to be proved by the claimant.

11.6.2 Effectiveness, proportionality and dissuasiveness

This piece of national legislation can reasonably be considered to be in line with the directive in the light of the principles stated by the CJEU case law on sanctions. However, the 2016 decriminalisation provided by Decree No. 8 of 15 January 2016, although it aims to reduce the workload of the criminal courts, represents a retrograde step in the effectiveness of sanctions. Indeed, although the new sanctions are harsher than the previous ones, they have lost both the greater deterrent effect of criminal sanctions and the enforceability of the special procedure of Article 15 of Decree No. 124/2004, which allowed the employer to avoid a criminal trial by the restoration of a lawful condition (i.e. halting the unlawful situation, if possible) and the payment of a quarter of the maximum fine.

11.7 Equality body

As regards the functions required by EU law, a central role is played by the Equal Opportunities National Committee (EONC) set up by the Labour Ministry Central Offices

[100] See Court of Cassation, 8-07-2002, No. 9877.

(Articles 8 *et seq* Decree No. 198/2006),[101] which is in charge of preparing (by 28 February of each year) a programme to fix the targets for positive action measures and of monitoring their implementation as well as the enforcement of equality principles. It can also propose solutions to collective disputes and, among other things, is entrusted with the task of stimulating social dialogue and dialogue with non-governmental organisations on equality issues and of exchanging information with the EU bodies that operate in the field of equal treatment.

The National Equality Adviser[102] is a member of the EONC and coordinates the Conference of Equality Advisers,[103] which gathers all local equality advisers and has been established to support their activities through the spreading of information and good practice. Equality advisers are charged with several tasks: they participate in central and local (following their respective territorial competence) employment commissions with the appropriate powers; promote positive action; monitor the results of positive action measures; and monitor gender underrepresentation, employment policies, and the consistency of territorial development plans with European directives on equal opportunities (Articles 12 *et seq* Decree No. 198/2006). Furthermore, Decree No. 151/2015 has strengthened the collaboration of equality advisers with the labour inspectors.

The law states that equality bodies will perform independent activities, but it is up to the Minister of Labour and the local bodies to set the conditions for the organisation and the functioning of the equality advisers' staff. Equality bodies have been excluded from the 'spoil system', provided by Article 6(1) of Act No. 145 of 15 July 2002; as a consequence of this, they cannot be removed from office solely on the ground of a change in Government (Decree No. 151/2015).

Providing assistance to the victims of discrimination is also a duty of equality advisers. According to the national or local significance of a case of discrimination, the national adviser and the regional advisers can act directly in cases of collective discrimination. Regional and provincial advisers can also proceed under the delegation of the individual employee or intervene in a process initiated by the latter, according to their territorial competence.

11.8 Social partners

Under Article 44 of the Equal Opportunities Code (Decree No. 198/2006), the social partners can access funding for voluntary positive action plans and priority in admission to the reimbursement of costs is provided for positive action plans adopted on the basis of collective agreements reached between employers and trade unions. The social partners also participate in the Equal Opportunities National Committee (EONC) with their representatives.

As regards legal redress, under Article 38 of the Equal Opportunities Code, trade unions can bring discrimination cases to court on the worker's behalf using an urgent procedure.

Moreover, the biannual report on working conditions differentiated by gender in enterprises employing more than 100 workers, provided by Article 46 of the Equal Opportunities Code, must also be submitted to the workers' representatives at the workplace. It can be an important instrument in detecting and providing evidence of discrimination as it summarises the worker's situation (male and female), as regards

[101] https://www.lavoro.gov.it/temi-e-priorita/parita-e-pari-opportunita/focus-on/Comitato-Nazionale-Parita/Pagine/default.aspx and http://sitiarcheologici.lavoro.gov.it/AreaLavoro/ParitaPariOpportunita/comitatoNazionaleParita-SPOSTATO-/Pages/default.aspx.

[102] http://consiglieranazionale.lavoro.gov.it and https://www.lavoro.gov.it/ministro-e-ministero/Organi-garanzia-e-osservatori/ConsiglieraNazionale/Consigliera-nazionale-di-parita/Pagine/default.aspx.

[103] That is the former network of equality advisers, which was renamed by Decree No. 151/2015. Website: https://www.lavoro.gov.it/notizie/Pagine/Conferenza-Nazionale-Consigliere-di-Parita.aspx.

recruitment, professional training, career opportunities, remuneration, dismissal and retirement. Nevertheless, the intervention of trade unions in this field seems quite marginal, although it must be underlined that no data are available as regards, for instance, possible extrajudicial agreements. This can be regarded as a good practice.

The collective agreements are not binding and are not used as a means to implement EU gender equality law.

11.9 Other relevant bodies

No other relevant agencies or bodies that are engaged in the enforcement of gender equality law (e.g. through strategic litigation) are provided for by legislation in our country.

11.10 Evaluation of implementation

Italian legislation on victimisation fully complies with the directives. Article 41*bis* of the Equal Opportunities Code even provides for an extension of special legal redress (assistance by the equality advisers, trade unions and other associations promoting equal opportunities) to cases of victimisation.

The Italian legislation fully complies with EU law in respect of access to court. However, some obstacles in relation to access to redress procedures arise from: the discouragement of women, that is a general lack of faith in the legal system, which is often too slow and in some cases provides sanctions (i.e. nullification of the discriminatory act that provides advantages to one gender) that do not award any benefit to the victims; the difficulty of proof as regards discrimination cases; the lack of a widespread knowledge and consciousness of these tools by the victims themselves and by union representatives, lawyers, judges and labour inspectors. These may be the reasons why we do not have good case law on gender issues.

The question of the horizontal effect of the applicable gender equality law is accepted in Italy and it does not pose any particular problem in ensuring compliance with or in enforcing gender equality legislation.

On the whole, the partial reversal of the burden of proof provided by Decree No. 198/2006 can be deemed to be a satisfactory implementation of Directive 2006/54/EC. As regards the use of quantitative/statistical data, the Equal Opportunities Code goes further than EU law as it requires companies with more than 100 employees to draw up reports every two years (and to submit them to the company union representatives and to the regional equality advisers) on the situation of male and female workers as regards recruitment, professional training, career opportunities, remuneration, dismissals and retirement.

The legislation on remedies and sanctions can be considered to be reasonably in line with the directive in the light of the principles stated by the CJEU case law on sanctions. However, the 2016 decriminalisation provided by Decree No. 8 of 15 January 2016, although it aims to reduce the workload of the criminal courts, represents a retrograde step in the effectiveness of sanctions. On the other hand, that positive action measures are provided as remedies against collective discrimination ascertained by the judge is an effective tool. Also effective is the sanction of revocation of public benefits or even the exclusion, for a certain period, from any further award of financial or credit inducements or from any public tender in the case of direct or indirect discrimination.

Finally, the legislation on the role of equality bodies and social partners also complies with the EU law. However, equality bodies have problems in relation to financing, which Decree No. 151/2015 did not solve: it amended Article 18 of Decree No. 198/2006, which regulates the fund for the activity of equality advisers, with the result that the situation on the financing of the remuneration/allowance for local equality advisers is not as clear

as before. Furthermore, Article 18 does not make any mention of expenses for the activities of local equality advisers, including trial expenses, which local governmental bodies can hardly meet. Another problem for equality bodies, which is linked to that of financing, is their independence. Indeed, the EONC's president and deputy president are appointed by the Minister of Labour. Some doubts on the body's independency are also raised by the fact that its functioning, organisation and financing depend on the Ministry of Labour. Equality advisers have been excluded from the 'spoil system', provided by Article 6(1) of Act No. 145 of 15 July 2002, which means that they cannot be removed from office solely on the ground of a change in Government, as happened in the past (Article 14 Decree No. 198/2006, as modified by Article 32 of Decree No. 151/2015). However, equality advisers are financed and organised by the Ministry of Labour or the local bodies where they are set up, which implies that they are, to say the least, economically dependent on the bodies that host them.

11.11 Remaining issues

There are no remaining issues regarding enforcement and compliance that have not been discussed so far.

12 Overall assessment

The following transposition problems were mentioned in this report:

1. There is no system to monitor positive action measures and their impact or their lack of financing.
2. There is no specific protection for transgender, intersex, and non-binary persons.
3. Domestic legislation lacks an explicit provision on multiple discrimination.
4. In relation to job classification, no formalised job evaluation and job analysis systems are available in our legal and industrial relationships arrangements.
5. National law does not lay down any parameters for establishing the equal value of the work performed.
6. The European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency has not yet been applied.
7. Paternity leave is allowed for fathers only as an alternative to maternity leave and only in very special cases; the special paternity leave introduced by Act No. 92/2012 is a very weak measure from the perspective of the promotion of a better balance in care duties within the family.
8. Workers returning from parental leave are not generally entitled to a right to change their working hours and/or patterns for a set period of time as a consequence of the leave or of their condition as parents, and employers are not obliged to consider and respond to such requests.
9. In occupational social security schemes, the personal scope of Article 30*bis* of Decree No. 198/2006, which implements the Recast Directive, is not as wide as that of the EU directive; the material scope has not been implemented correctly.
10. As regards Article 9(g) of Directive 2006/54, the law on supplementary funds does not contain any provision which ensures that fictional contributions are made (by the employer/the state) on behalf of the employee during her maternity leave/leave for serious family reasons.
11. Directive 79/7/EEC has never been specifically implemented in respect of statutory social security schemes.
12. Italian legislation does not recognise life partners.
13. The implementation of the Recast Directive as regards occupational pension schemes, by Decree No. 5/2010, does not include any provisions on self-employment.
14. The equality bodies lack independence and resources.

Legislative interventions during the last 20 years have resulted, on the whole, in an effective implementation of the EU directives on gender discrimination in Italy and, sometimes, domestic legislation has gone even further than EU law. Decree No. 198/2006, a consolidating act called the Code of Equal Opportunities between Men and Women' (the Equal Opportunities Code), contains all anti-discrimination provisions relating to gender that were issued to implement EU directives or that were already in conformity with them. It combined all the provisions on gender discrimination and equal opportunities in all civil, political, social and economic fields, including working relationships. Another important piece of legislation in this field is Act No. 53/2000 (and its subsequent amendments) on supporting motherhood and fatherhood, time for care and for vocational training, and coordination of hours in the town's public services. Decree No. 151/2001 on the protection of motherhood and fatherhood, includes all rules on pregnancy, maternity, paternity, parental leave and leave related to work-life balance, as well as implementing Directives 2006/54 and 2010/18. Act No. 120 of 12 July 2011 introduced a quota system for the appointment of managing directors and auditors of listed companies and state subsidiary companies, where each sex cannot be represented in a proportion lower than one third. Furthermore, Act No. 215 of 23 November 2012, Act No. 13/2014 and

Act No. 65/2014 introduced new regulations aimed at achieving gender equality in politics and in hiring procedures in public administration.

In relation to the implementation of central concepts, several legislative interventions in the last 20 years have created, on the whole, a good level of implementation of EU directives. Sometimes domestic legislation has gone further than EU law in the implementation of central concepts.

As regards the justification clauses, the definition of indirect discrimination, for example, is stricter than EU law: in fact, neutral criteria which result in a disparate impact are only legitimate if they are essential requirements for the job. Furthermore, in relation to the use of quantitative/statistical data, Decree No. 198/2006 goes further than EU law, as Article 46 requires companies with more than 100 employees to draw up reports every two years (and to submit them to the company union representatives and to the regional equality advisers) on the situation of male and female workers as regards recruitment, professional training, career opportunities, mobility between categories and grades, other mobility aspects, remuneration, dismissals and retirement.

The definition of direct discrimination literally repeats the concepts defined by the Recast Directive.

The concept of positive action adopted in Italy is harmonised with that provided by the EU legislation. Further, this is an area where the Italian legislation goes further than the EU directives, as it provides for a structured system with different types of measures. Indeed, in relation to positive action, the difficulties are mainly financial, that is, there is little financing of the plans and few incentives to create positive action plans. Furthermore, we lack a system to monitor positive action measures and their impact.

The legislation on sexual harassment is also in line with EU legislation.

An important gap in our legislation, on the other hand, is the absence of specific protection for transgender, intersex and non-binary persons. Nonetheless, in the view of the author of this report, gender reassignment, can be included under the discrimination grounds of sexual orientation and even of gender discrimination, despite the fact that it is not explicitly provided for by our legislation.

Another gap is the lack of an explicit provision in domestic legislation on multiple discrimination.

The principle of equal pay for equal work or work of equal value is satisfactorily implemented in national legislation. This is despite the fact that in Italy, the equal pay principle and gender equality at work have a very low profile on the policy agenda. Therefore, there is a problem of awareness and of political priorities. It is important to enhance policies directed at the dissemination of information among those engaged in wage bargaining to raise awareness of the extent and seriousness of the problem.

The concept of pay is not defined by the law, but has widely been construed by the Italian courts, on the basis of collective agreements, as including any economic benefit in cash or in kind directly and indirectly paid on the ground of the employment relationship. Therefore it fully complies with the definition of Article 157(2) TFEU.

Article 4 of Recast Directive 2006/54 is explicitly implemented by Article 28 of the Equal Opportunities Code (Decree No. 198/2006), which states that occupational classification systems applied for the purpose of determining remuneration must adopt common criteria for men and women and be drawn up so as to eliminate any discrimination. Therefore, job classification, normally contained in collective agreements, is gender neutral; however, no

formalised job evaluation and job analysis systems are available in our legal and industrial relationships systems.

No justifications for differences in pay are provided by the Equal Opportunities Code, except those permitted on the ground of the general notion of indirect discrimination.

The general definitions of both direct and indirect discrimination provided by Article 25 of the Code of Equal Opportunities (Decree No. 198/2006) refer to a comparator and are enforceable with regard to all working conditions, including remuneration. The concise wording of the definition of direct discrimination opened a debate on the real need for a comparison. No overriding opinion has been recorded that calls for the need for an actual comparator.

National law does not lay down any parameters for establishing the equal value of the work performed.

The European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency has not yet been applied. We have, however, Article 46 of the Equal Opportunities Code on the release of information on pay to individuals and other data at firm level.

Under the broad definition of Article 27 Paragraph 1 of the Equal Opportunities Code, the personal scope in relation to access to work and vocational training expressly encompasses all types of contracts, subordinate, autonomous or 'any other'.

With regard to the implementation of Article 14 of Directive 54/2006, the prohibition on discrimination provided by the Equal Opportunities Code applies to all persons employed in any sector (both public and private), irrespective of the length of the employment relationship, including part-time workers, fixed-term workers, apprentices, employees on education contracts, home workers, working spouses or relatives, as well as persons working in cooperatives, and irrespective of the size of the enterprise/employer. On the whole the personal scope of these provisions is very wide and covers the notion of a worker as defined by CJEU.

As regards material scope (Article 14(1) Recast Directive 2006/54), Article 27 of the Equal Opportunities Code merely translates the wording of the Recast Directive and of Article 4(1) of Directive 41/2010, except as regards vocational training, where the prohibition on discrimination expressly includes both access to and the content of vocational training.

The implementation of the exception on occupational activities (Article 14(2) Recast Directive 2006/54) has always been deemed to comply with the exceptions provided by EU law.

National law and case law provide for sufficient protection against the non-hiring, non-renewal of a fixed-term contract, non-continuation of a contract and dismissal of women connected to their state of pregnancy and/or maternity.

The exception on the protection of women as regards pregnancy and maternity (Article 28 of the Recast Directive) has not been expressly provided. Nevertheless, Decree No. 198/2006 on Equal Opportunities refers to Decree No. 151/2001 for the protection of maternity and paternity, which provides for all specific rights linked to motherhood and fatherhood involving the safeguarding of these provisions.

In the area of work-life balance, the main difficulties in our country are not related to a lack of legislation on reconciliation of work and family life or care leave, but are related to a lack of services. In fact, the structures and services useful to workers who have care

duties are greatly insufficient and access to them is also too expensive compared to the average income of workers; all the more so for women whose income is normally lower than that of men. Furthermore, the quality of public transport is often a problem. Part-time working, which is not always a solution considering the economic aspect mentioned above, is neither a worker's right in the private sector nor offered as a temporary measure. Moreover, except for the cases where a leave (even unpaid) is granted to the worker, the choice of giving up the job is a hard one, as re-entering labour market is not an easy task due to the high unemployment rate. Traditional stereotypes concerning the parents' roles and the low percentage of women in high qualified and well paid jobs and in positions of responsibility does not help, but acts as a multiplier.

We also have a problem of effectiveness of legislation: workers tend to refrain from exercising their rights, as they are afraid of the consequences from their employer. In particular, employees on fixed-term contracts or in project work or other types of temporary work, are afraid that their contract will not be renewed. This is especially true for younger generations: the majority of young people, the potential parents, work in precarious jobs, lacking a secure and constant income as well as the respective pension and insurance contributions. This deprives them of the choice to exercise their rights.

Furthermore, it is quite unusual in Italy for fathers to take parental leave. The gender pay gap and the fact that men are the main breadwinners has a great influence on this. As parental leave is calculated as a percentage of the worker's pay, it is more convenient for families to lose part of the woman's pay than of the man's pay, because men earn much more than women and the percentage of pay lost in the event of parental leave is higher for men than for women.

Another problem is that paternity leave is allowed to fathers only as an alternative to maternity leave and only in very special cases. On the other hand, the special paternity leave introduced by Act No. 92/2012 is also a very weak measure from the perspective of the promotion of a better balance in care duties within the family.

Finally, a weak point of the Italian legislation, despite Article 9 of Act No. 53/2000 (which funds businesses that enforce collective agreements on positive action aimed at allowing parents to adopt a flexible working time schedule, even after parental leave), is that workers returning from parental leave are not generally entitled to a right to change their working hours and/or patterns for a set period of time as a consequence of the leave or of their condition as parents, and employers are not obliged to consider and respond to such requests.[104]

The only answer to all this is to change the social stereotypes of the distribution of roles within the family. This means improving leave provisions for men and improving services and facilities, such as kindergartens. In particular, access to social services, such as crèches, school holiday camps and other school activities, mainly depend on the income of the parent/s and the offer is dramatically insufficient in comparison with the needs of families (both for employed and self-employed parents).

The protection of working mothers under Italian law is very comprehensive in comparison with EU standards and complies with the relevant EU legislation, sometimes even greatly exceeding EU protection.

EU legislation on parental leave has been implemented by the 2013 Budget Act (Act No. 228/2012, Article 1, Paragraph 339). The terms of the implementation were however very limited, because Articles 32 to 38 of Decree No. 151/2001, on the protection of motherhood and fatherhood, already provided for a parental leave scheme that was

[104] As regards flexible working arrangements, see Directive 2019/1158/EU.

very comprehensive in comparison with EU standards. Indeed, the Italian scheme even exceeds EU protection in some areas.

Furthermore, the Italian legislation goes further the EU requirements in relation to care leave Clause 7 of Directive 2010/18), as it provides for a structured system of care leave.

In occupational social security schemes, as regards the introduction of direct and indirect discrimination, Article 30*bis* of Decree No. 198/2006 implements the Recast Directive. However, the personal scope of this rule is not as wide as that of the EU directive. Moreover, the material scope has not been implemented correctly.

The exclusions from the material scope as specified in Article 8 of Directive 2006/54 have not been implemented in national law.

As regards Article 9(g) of Directive 2006/54, the regime of the supplementary funds makes no provision for the recovery of notional contributions during maternity leave or during leave for serious family reasons. Collective agreements and regulations of funds may contain other indirectly discriminatory features, as some of them not do not allow short-term employees, who often are women, to subscribe to them.

Finally, the limits of Article 9(1) of Directive 2006/54/EC have been fulfilled as regards actuarial factors; the legislation goes even further by providing for monitoring by the COVIP (the Supervisory Commission on Pension Funds) of the use of these factors.

Directive 79/7/EEC has never been specifically implemented in respect of statutory social security schemes. Notwithstanding that, domestic legislation is, on the whole, fairly in line with EU law on gender equality.

The main features of – indirect – gender discrimination in statutory schemes can be found in the areas of part-time and temporary working and other non-standard working patterns, where there is a massive presence of women and young people. In particular, under the pay-based pension scheme, the amount and number of contributions paid and continuity of payment determine the eligibility for social insurance as well as the benefits level; the increase in minimum insurance and contribution requirements in Italy during the last few decades is bound to have a negative impact upon the pensions of all atypical workers, such as intermittent, temporary, occasional and part-time workers. Moreover, those who have high pay fluctuation during the period of reference for the calculation of pensionable income are disadvantaged in relation to the definition of pension amount. Again, a temporary worker will have substantial reductions in his/her contribution period for the purpose of calculating the amount of pension and this will naturally cause a reduction of the pension. Under the contribution-based pension system, the earnings variations as well as the continuity and regularity of employment of the claimants appear once more to be of crucial importance, as the benefit qualifying conditions and the pension amount are very sensitive to these factors.

Sex is not used as an actuarial factor in statutory schemes.

The fact that domestic legislation, on the whole, is in line with EU law on gender equality may explain the lack of a specific act transposing the EU directives on statutory schemes: the adoption of a specific act may be considered less urgent at the political level. Nonetheless, in the view of the author of this report, such a transposition is still crucial because EU directives provide a benchmark for domestic law. Indeed, the main problems as regards gender equality can be detected in those fields that have been omitted from the EU gender anti-discrimination framework, such as family allowances.

In the area of self-employment, the Equal Opportunities Code, issued by Decree No. 198/2006, and the Decree on the protection of motherhood and fatherhood (Decree

No. 151/2001), already ensured a good level of implementation of Directive 2010/41/EU. Act No. 228/2012 made slight amendments to both decrees to avoid an action for non-compliance.

Italian legislation does not recognise life partners. However, under the regulations of the Decree on the protection of motherhood and fatherhood, maternity rights are individual rights. Moreover, allowances for poor families, which are paid by the municipalities, do not depend on marriage.

Finally, the implementation of the Recast Directive as regards occupational pensions schemes, by Decree No. 5/2010, does not include any provisions on self-employment. Despite this, the domestic legislation, on the whole, is in line with EU anti-discrimination law.

In the area of goods and services, Decree No. 196/2007 literally repeats the text of the EU directive, including the provisions on its substantive scope and on the allowed exceptions. It has to be emphasised that the reproduction of the texts of the directives in the Italian legal system can be regarded as bad practice, which certainly does not ensure the necessary coordination with other existing provisions. There is no debate among scholars or any other initiatives aimed at spreading the knowledge of Directive 2004/113. This is probably both the cause and the effect of the merely formal implementation of the directive. Substantive implementation may need measures aimed at making people and institutions aware of the importance of this issue.

Italy signed the Istanbul Convention on 27 September 2011 and ratified it with the Act No. 77 of 27 June 2013. Following Italy accession to the Istanbul Convention, Decree No 93 of 14 August 2013, (converted in Act No. 119/2013) was introduced. The decree strengthened measures aimed at tackling crimes such as domestic violence, sexual violence, and 'persecutory acts'. Stalking (that is, 'persecutory acts'), was regulated for the first time by Decree No. 11/2009, converted into Act No. 38/2009. Article 24 of Decree No. 80 of 15 June 2015 implementing Delegation Act No. 183/2014 introduced some measures aimed at supporting victims of gender violence, such as a period of leave of three months to be given to women victims of gender-based violence who are under a protection programme certified by local authorities.

The problem of violence against women and domestic violence is strongly recognised in Italy and the issue is present across the media. In particular, a Parliamentary Commission was set up in 2017 in order to investigate the scale and causes of feminicide and violence against women.[105] The commission recommended: the improvement of statistical data collection; better criminal legislation in relation to child witnesses, the issuing of emergency orders for preventing violence, identity injuries and feminicide; the promotion of socio-cultural change through education, professional training of police, social services and physicians, guidelines to the media on how to report on gender violence; the adoption of specific norms on online violence and online harassment; and the improvement of psychological assistance for male perpetrators of violence.

Act No. 69/2019, known as 'the Red Code', on the improvement of criminal law and redress protection of victims of violence has been approved.[106]

In relation to compliance and enforcement aspects, Italian legislation on victimisation fully complies with the directives. Article 41*bis* of the Equal Opportunities Code even provides for an extension of special legal redress (assistance by the equality advisers, trade unions and other associations promoting equal opportunities) to cases of victimisation.

[105] http://www.senato.it/documenti/repository/commissioni/femminicidio/DocXXII-bis_9.pdf.
[106] https://www.altalex.com/documents/leggi/2019/07/26/codice-rosso.

The Italian legislation fully complies with EU law in relation to access to court. However, some obstacles in relation to access to redress procedures arise from: the discouragement of women; a general lack of faith in the legal system, which is often too slow and in some cases provides sanctions (i.e. nullification of the discriminatory act that provides advantages to one gender) that do not award any benefit to the victims; the difficulty of proof as regards discrimination cases; and the lack of a widespread knowledge and awareness of these tools by the victims themselves and by union representatives, lawyers, judges and labour inspectors. These may be the reasons why we do not have good case law on gender issues.

The question of the horizontal effect of the applicable gender equality law is accepted in Italy and does not pose any particular problem in ensuring compliance with or in enforcing gender equality legislation.

On the whole, the partial reversal of the burden of proof provided by Decree No. 198/2006 can be deemed to be a satisfactory implementation of Directive 54/2006/EC. As regards the use of quantitative/statistical data, the Equal Opportunities Code goes further than EU law as it requires companies with more than 100 employees to draw up reports every two years (and to submit them to the company union representatives and to the regional equality advisers) on the situation of male and female workers as regards recruitment, professional training, career opportunities, remuneration, dismissals and retirement.

The legislation on remedies and sanctions can be considered to be reasonably in line with the directive in the light of the principles stated by the CJEU case law on sanctions. However, the 2016 decriminalisation provided by Decree No. 8 of 15 January 2016, although it aims to reduce the workload of the criminal courts, represents a retrograde step in the effectiveness of sanctions. Nevertheless, the fact that positive action measures can be provided as remedies against collective discrimination ascertained by the judge is an effective tool. Also effective is the sanction of revocation of public benefits or even the exclusion, for a certain period, from any further award of financial or credit inducements or from any public tender in the case of direct or indirect discrimination.

Finally, the legislation on the role of equality bodies and social partners complies with the EU law, too. However, equality bodies experience problems in relation to financing. Another issue for equality bodies, linked to that of financing, is their independence. Indeed, the EONC's president and deputy president are appointed by the Minister of Labour. Some doubts as to the body's independence are also raised by the fact that its functioning, organisation and financing depend on the Ministry of Labour. Equality advisers are financed and managed by the Ministry of Labour or the local bodies where they are set up, which implies that they are, to say the least, economically dependent on the bodies that host them.

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