

Valuing Care, Closing the Gap. The European Union's New Approach to the Principle of Equal Pay

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Introduction: Care Work as a Major Factor in Gender Economic Inequality

Care work remains the most prominent form of invisible labour undertaken by women. It is at the forefront of mobilization around International Women's Day each year (Hirata 2021). Joan Tronto and Bernice Fischer (1990, 40) defined care as “a generic activity that includes everything we do to maintain, perpetuate, and repair our ‘world’, so that we can live in it together as well as possible”. It covers a variety of acts and tasks linked by their common orientation towards satisfying the needs of others. Care is rather an analytical framework. Care studies focus on “systems and forms of social devaluation that marginalize the activity of caring for others” (Ibos 2019, 183). They reject the notion of the autonomous individual and instead place people at the centre of a network of interconnectedness structured around asymmetrical power relationships (Tronto 1993; Fineman 2004; Ibos 2019). They demonstrate that due to their social role women are held responsible for and are trained to meet the needs of others.

This assignment of women to care traverses both reproductive and productive labour. The former can be defined as unpaid work carried out within the household to ensure the biological and social reproduction of the population (Hirata 2021). According to a study, “in spite of the strong increase in female participation in the labour market in recent decades, gender roles persist in the home, where women continue to assume the main role in providing direct care and doing routine housework” (EIGE 2021, 15). In 2019, 81 % of women reported engaging in daily caregiving activities – including childcare, long-term care, and housework – compared to only 48 % of men (ibid.). This “gender care gap” leads to a lower representation of women on the labour market while being over-represented in atypical forms of contract. According to Eurostat (2023, 2024), in 2023, 28 % of female workers were engaged in part-time employment, compared to less than 8 % of men. The fact that a worker works fewer paid hours has a direct impact on her total annual pay and, hence, also on how her pay evolves overtime: part-time workers are offered fewer opportunities for progression and will also benefit less from extra-legal benefits (Lahssaini 2020).

Concomitantly, care work can also be commercialized and contribute to the provision of services for the market. In this case, it falls under the definition of productive work, carried out within an employment relationship in exchange for remuneration (Hirata 2021). According to the International Labour Organization (ILO), paid care work includes all the education, health and social work sectors, as well as domestic workers providing childcare, personal care and cleaning as part of an employment relationship. This accounted for 21 % of total employment in the European Union

(EU) in 2018, corresponding to 49 million workers (ILO 2018). Traditional gender roles associated with the private sphere are replicated in the labour market: women are overrepresented in care employment constituting more than 90% of the workforce (EIGE 2021). Due to this occupational segregation and its combination with the systemic devaluation of women's work, work in the care sector is characterized by unfavourable working conditions, and care workers are among the 20% of employees with the lowest pay (EIGE 2021). These interrelated factors contribute to women's disadvantaged position in the labour market.

Over the past decades, the EU has established itself as a central actor in the promotion of gender equality. It started with the principle of equal pay for equal work in the 1957 EEC Treaty (van der Vleuten 2007). Over time, the EU has played a significant role in advancing women's economic, political, and social rights via gradual development of a comprehensive legal and political framework addressing various forms of discrimination (Debusscher 2023; Jacquot 2023). Nevertheless, the persistence of the gender pay gap demonstrates, until now, the principle's limited capacity to address structural economic inequalities.

In this contribution I argue, first, that the persistence of the gender pay gap is a direct consequence of the failure to address social structures assigning care work disproportionately to women. I suggest that the implementation of the principle of pay equality has been structured around the economic relationship between a worker and an employer, focusing primarily on ensuring equal hourly pay for male and female workers performing the same tasks. In the absence of the comprehensive approach needed to address systemic forms of discrimination, the principle has remained ill-suited to adapt to the realities of women's work and ensure the economic recognition of care work.

However, I advance a second argument according to which the European Commission's Gender Equality Strategy 2020–2025 (COM (2020) 152 final),¹ alongside the European Care Strategy (COM (2022) 440 final) introduced under the first von der Leyen Commission, reflects a growing political commitment to mainstream the valorization of care work within EU equality policies. Within this strategic framework, the implementation of the Work-Life Balance Directive ((EU) 2019/1158), due for 2022, and of the Pay Transparency Directive ((EU) 2023/970), scheduled for 2026, represent a potential turning point in redefining the principle of equal pay. I argue that their shared ambition to move beyond the economic framework of employment relationships and to address the root causes of pay inequity signals a paradigm shift in EU discrimination law.

To support this hypothesis, a legalistic approach is proposed relying on a twofold study. Firstly, the analysis seeks to substantiate the initial argument by confronting the Court of Justice of the EU (CJEU) and its case law on the principle of equal pay for equal work, or work of equal value, with the social realities of care work. This principle is enshrined in Article 157 of the Treaty on the Functioning of the EU (TFEU) and reaffirmed in Directive 2006/54/EC on gender equality in employment.

In parallel, Council Directive 79/7/EEC on equal treatment in social security ensures equal levels of social security benefits for men and women. An examination of the CJEU's jurisprudence allows us to assess how this principle is applied in practice and to identify its limitations in addressing the structural dynamics that continue to assign women disproportionately to care work.

Secondly, the Gender Equality Strategy 2020–2025 focuses on two key legislative instruments for “closing gender gaps in the labour market”: the Work-Life Balance Directive (in short: WLB; Directive (EU) 2019/1158) and the Pay Transparency Directive (in short: PT; Directive (EU) 2023/970; see also European Commission 2020, 7–12). I examine both directives and how they address the shortcomings identified in the CJEU case law. I aim to explore the potential of leveraging social and procedural rights to reinforce the principle of equal pay and strengthen the protections for carers. This methodology is applied successively to unpaid care work carried out within the private sphere, and to remunerated care work performed within an employment relationship.

Addressing the Lack of Recognition of Unpaid Care Work

Article 157 TFEU refers to work accomplished in the context of an employment relationship and is therefore inadequate in ensuring economic recognition for privately carried out care task. The WLB Directive facilitates the integration of care responsibilities into careers and employment relationships. The introduction of care leaves represents a new approach towards substantive equality by recognizing social protection to carers.

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The gendered division of labour continues to shape the labour market. Women remain restricted due to societal norms, which lead them to opt for part-time contracts in order to balance work and family responsibilities. Consequently, they curtail their remunerated working hours in order to attend to their unremunerated tasks (Lahssaini 2020).

Article 157 TFEU prohibits any difference in pay between men and women performing equal work. In relation with atypical contract, the CJEU has consistently held that a difference in pay between full-time and part-time work constitutes indirect discrimination where “a much lower proportion of women than of men work full time” (C-170/84, *Bilka*, 1986, §29)², and where this difference is not objectively justified (C-96/80, *Jenkins v. Kingsgate*, 1981). “However, that requirement of equivalence between full-time and part-time workers in respect of employment conditions is without prejudice to the appropriate application (...) of the principle of *pro rata temporis*” (C-841/19, *Fodosa*, 2021, §42). This principle refers to determining the rights of part-time workers in proportion to the hours actually worked and is con-

sidered an objective justification for a pay difference (C-476/12, *Österreichischer Gewerkschaftsbund*, 2014). As soon as a benefit in kind or a financial benefit falls within the CJEU's definition of remuneration, it considers that the application of the *pro rata temporis* principle is objectively justified (Sharpston 2014). The latter has thus been applied not only to pay but also to old-age pension (C-137/15, *Plaza Bravo*, 2015), child benefits (C-476/12, *Österreichischer Gewerkschaftsbund*, 2014), or redundancy pay (C-841/19, *Fodosa*, 2021).

“The purposes of part-time work, and whether or not it is essentially voluntary for the vast majority of women workers, remain absent from case law analyses” (Jacqmain 2021, 439). After pointing out that the application of identical rules to different situations constituted discrimination, the CJEU ruled that “the worker who exercises the right to educational leave (...) is in a specific situation, which cannot be equated with that of a man or woman who works, since this leave is characterized by the suspension of the employment contract and, consequently, of the respective obligations of the employer and the worker” (C-333/97, *Lewen*, 1999, §37). The CJEU confirmed this jurisprudence in relation to the acquisition of rights to social security benefits during periods of interrupted employment dedicated to child raising (C-537/07, *Gómez-Limón Sánchez-Camacho*, 2009). This case law validates the economic loss incurred by parental leave. Although this work is formally organised through a special status, it remains economically unvalued. The reduction in income and social contributions of workers on parental leave illustrates the wider logic of the invisibility of care work, which in turn increases the risk of economic precariousness for carers.

Part time contracts affect also the entitlement to social benefits, particularly pensions. Indeed, pension schemes are typically structured around the concept of a “full” career. The cumulative pay gap over the course of a worker's career is reflected in the amount of pension benefits received. The pension gap stands, on average, at 30% lower pensions for women and, in some cases, they are even excluded from access to social benefits (D'andrea 2022). Several member states have addressed this economic precarity by recognizing, at the level of pensions, the value of unpaid domestic work carried out during career breaks or alongside paid employment. The CJEU, however, adheres to a strict interpretation of the principle of equal treatment; it has repeatedly ruled that such compensatory policies are discriminatory.

Indeed, taking the view that men and women are equally capable of performing caring tasks, the CJEU ruled that differentiated retirement ages (C-262/88, *Barber*, 1990; C-408/92, *Smith*, 1994; C-192/18, *Commission v. Poland*, 2019) and bonuses for periods of care work reserved exclusively for women were discriminatory (C-366/99, *Griesmar*, 2001; C-450/18, *WA c. INSS*, 2019). Although Article 157 §4 TFEU authorizes member states to adopt “measures providing for specific advantages in order to (...) compensate for disadvantages in professional careers”, the CJEU has declined to recognize the possibility of implementing positive action at the pension stage. According to the court, pensions benefits are limited to granting

women a surplus at the time of the granting of a pension without effectively addressing the obstacles they face throughout their careers and therefore does not appear to be capable of “ensuring full equality in practice between men and women in working life” (C-450/18, *WA c. INSS*, 2019, §48). As noted by Advocate General Bobek (2019), “the practical result of excluding positive actions in relation to pensions ‘would be morally questionable’, since it would exclude any form of compensation to women after they exit the labour market, even though they suffer disadvantages directly linked to inequalities experienced during their working lives”.

Although these rulings aim to end gender stereotypes linked to care tasks, they ignore the actual social reality of care work. The structural constraints that assign women to care tasks also manifest themselves in “a-gendered” bonus measures. In the 2014 *Léone* judgment (C-173/13), the court condemned a system of bonuses open to all arguing that it was available to a significantly higher number of female civil servants. It is a particularly striking illustration of the formalistic CJEU approach and its limits: refusing to consider the unequal sharing of care duties, the court refutes any possibility of financially valuing care work at the pension stage.

The Mechanisms Introduced by the Work-Life Balance Directive

The Gender Equality Strategy acknowledges that “improving the work-life balance of workers is one way of addressing gender gaps in the labour market” and commits to ensure the correct transposition and implementation of the 2019 WLB Balance Directive (European Commission 2020, 8). The directive’s main contribution lies in formally recognising three distinct care leave entitlements: firstly, paternity leave (minimum 10 days) is granted to either the father or second parent, and must be taken at the time of the child’s birth (art. 4); secondly, each parent is guaranteed parental leave of at least four months (two of which are not transferable to the other parent) to enable them to provide childcare (art. 5); thirdly, care leave (at least five days per year) is designed to enable individuals to support relatives facing serious health issues (art. 6). By setting minimum standards for family leave, the directive aims to better integrate caring responsibilities into professional careers and promote the equal sharing of such responsibilities between parents.

The adoption of social legislation to improve the status of women workers is nothing new. Examples include the agreement on part-time work (Council Directive 97/81/EC), the directive on maternity leave (Council Directive 92/85/EEC), and the agreement on parental leave (Council Directive 2010/18/EU), which was subsequently repealed by the WLB Directive. However, the WLB Directive goes a step further by explicitly affirming its intersectional nature between equality and social law. It does so by grounding its measures in the Union’s competence to support member states in ensuring “equality between men and women with regard to labour market opportunities and treatment at work”, and by placing its implementation under the oversight of an equality body (art. 15). Recital 11 underscores this approach: “Policies on equal

treatment should aim to address the issue of stereotypes in both men's and women's occupations and roles". It confirms that the action of the directive is driven by the fact that the "use of work-life balance arrangements by fathers such as leave or flexible working arrangements has been shown to have a positive impact in reducing the relative amount of unpaid family work undertaken by women and leaving them more time for paid employment" (ibid.).

The directive enforces these rights by several provisions that are now standards in non-discrimination law (Oliveira/De la Corte-Rodriguez/Lutz 2020). Notably, they guarantee the retention of employment rights acquired or in the process of being acquired prior to leave, as well as the right to return to the same or an equivalent position (art. 10). Dismissal solely on the grounds of taking care leave is prohibited (art. 12) and workers are protected from discriminatory treatment (art. 11). Lastly, the directive establishes procedural safeguards (art. 12-13) and protection against victimization in case of complaints related to the enforcement of the leaves (art. 14). Additionally, the directive acknowledges the necessity of adequate remuneration or allowances to ensure the effective utilization of care leaves. Art. 8 mandates that workers on paternity leave receive a payment or allowance at least equivalent to the level of sick pay; and encourages alignment with the level of maternity pay (recital 30). The two months non-transferable parental leave must also be accompanied of a payment or allowance but it must only be up to "facilitate the take-up of parental leave by both parents". Recital 31 underlines "that the take-up of parental leave often results in a loss of income for the family and that first earners in a family are able to make use of their right to parental leave only if it is sufficiently well remunerated, with a view to allowing for a decent living standard". The determination of an adequate level of pay or allowance should therefore consider various factors, such as minimum wages, guaranteed minimum income, unemployment benefits and sickness benefits, in order to assess their sufficiency to ensure a decent standard of living (Oliveira/De la Corte-Rodriguez/Lutz 2020). Although recital 32 encourages member states to introduce a payment or allowance for care leave *sensu stricto*, the directive does not impose an obligation.

Yet, several limitations remain such as the eligibility criteria to care leave. The directive applies to individuals within an employment relationship as defined by national law, which may result in the exclusion of certain non-standard workers. This risk is however mitigated by the requirement to consider the CJEU precedents (art. 2). Member states may impose qualifying periods for access to care leaves and require that parental leave must be taken before the child reaches the age of eight (art. 4). Furthermore, paternity and parental leave are associated with a level of pay or allowance limited at providing financial support during childbirth and child-rearing and no mandatory remuneration is required for care leave *sensu stricto*.

Recognizing unpaid care work as a socially and economically valuable activity would not only expand the rights provided by the WLB Directive but also shift the balance between business interests and family responsibilities (Arabadjieva 2022,

20). A broader understanding of what constitutes “work” would lead to profound structural changes in the organisation of work and employment norms. This could pave the way for a revision of the Directive, incorporating “provisions for much lengthier, fully remunerated and flexible parental leave, combined with changes to other regulatory frameworks such as that on working time; or indeed a complete re-imagination of the way in which unpaid labour is rewarded and/or reconciled with professional responsibilities” (ibid.).

Addressing the Undervaluation of Remunerated Care Work

In its European Care Strategy, the Commission states that: “Inadequate care services have a disproportionate impact on women as supplementary or informal care responsibilities still fall predominantly on them and this affects their work-life balance and options to take on paid work” (COM (2022) 440 final, 2). It calls for the development of high-quality care services that are affordable, available, and accessible.

Outsourcing care actually exacerbates existing gender inequalities by deepening the divide between families who can or cannot afford to delegate care responsibilities. Moreover, it fosters gender economic inequality since the sector is marked by occupational segregation (women represent more than 90% of the work force) and the systemic undervaluation of women’s work. Chicha (2006, 6) emphasizes “a close match between female or male predominance and pay levels. Generally speaking, both in the labour market and in organisations, the most poorly paid occupations are those where women predominate, while the better paid are those where men prevail.” Since these skills have traditionally been provided without remuneration in the domestic sphere, abilities traditionally associated with women are devalued in wage-setting processes compared to skills typically attributed to men (Fredman 2022).

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As expressed by Ellis and Watson (2012, 224), “(t)he ‘market value’ of women’s jobs is the very thing which Article 157 seeks to address and to remedy”. The equal pay principle guarantees that workers receive equal pay also for work of equal value and serves as a powerful tool against occupational segregation and the undervaluing of women’s work. As illustrated by the *Nikoloudi* case, “the fact that at OTE (the workplace concerned) there is no man carrying out the same work as that performed by Ms. Nikoloudi (a cleaner) does not preclude application of the principle of equal pay. (...) The work which may serve as a comparison need not be the same as that carried out by the person who invokes that principle of equality in his favor” (C-196/02, *Nikoloudi*, 2005, §27-28).

However, despite the persistence of a significant gender pay gap, the actual number of pay discrimination claims brought before national courts remains low in most member

states. The European Commission (2020) and the European Parliament (2015) have both emphasised the responsibility for the lack of transparency in pay systems, various procedural barriers, and the absence of a clear definition of “work of equal value” at EU level. Establishing appropriate comparisons often constitutes a significant obstacle for victims of pay discrimination seeking to bring claims before national courts.

The Mechanisms Introduced by the Pay Transparency (PT) Directive

In the Gender Equality Strategy, the Commission pledged to introduce binding measures on pay transparency to help identify discrimination. The resulting PT Directive establishes two key mechanisms: the implementation of structured pay systems and the possibility of relying on hypothetical comparators. Although they are not exclusively aimed at paid care work, these mechanisms hold significant potential to address the systemic undervaluation of women’s work and ensure that care workers receive the economic recognition they deserve.

Article 4 of the PT Directive requires that employers establish pay structures enabling the assessment of whether workers are in a comparable situation in terms of the value of their work. However, job classification systems entail the risk that, in assessing job components, unconscious stereotypes and biases may influence the evaluation process (Bender/Pigeyre 2016). This concern was already highlighted by the CJEU: “Any criterion based on values appropriate only to workers of one sex carries with it a risk of discrimination and may jeopardize the main objective of the directive” (Case C-237/85, *Rummeler v. Dato-druck*, 1986, § 23). While it is permissible to apply criteria typically associated with male-dominated roles (i.e. physical effort), the classification system as a whole must also include criteria reflecting aptitudes more commonly associated with women, so as to exclude any form of sex-based discrimination (ibid., § 24). Article 4 of the PT Directive requires that pay structures are based on objective and gender-neutral criteria, including skills, effort, responsibility, and working conditions. Article 4 §4 emphasizes that the application of such structures must not give rise to either direct or indirect discrimination and explicitly mandates that soft skills must not be undervalued.

Compliance is ensured through three distinct mechanisms: *Firstly*, the establishment of transparency obligations linked to pay structures, which aim to expose potential gender biases and facilitate the identification of in/direct discrimination. Employers must ensure that the criteria used to determine pay, pay levels, and pay progression are easily accessible to employees (PT Directive, art. 6 §1). Workers have the right to request information on their individual pay level, as well as the average pay level, broken down by sex, for categories of workers performing the same work or work of equal value (ibid., art. 7). Additionally, regular reporting on gender pay gap is compulsory for employers (ibid., art. 9). The reports must include various gender-disaggregated data on the pay structure and must be submitted to the monitoring body which is responsible for publishing the information (ibid., art. 29 §3).

Pay gap reporting also triggers proactive obligations for employers. As a general rule, when a gender pay gap is identified and cannot be justified by objective and gender-neutral criteria, employers are required to take corrective measures in collaboration with workers' representatives, the labour inspectorate, or the equality body (ibid., art. 9 §10). Furthermore, if the report reveals an unjustified gender pay gap exceeding 5 % within a category of workers performing work of equal value that is not followed by corrective measures, a joint pay assessment must be carried out by the employer and the workers' representative. Through assessing corrective measures already in place and defining new ones, joint pay assessments should lead to the elimination of gender-based pay discrimination within the organisation (ibid., Recital 43 and art. 10 §2).

Secondly, if the employer fails to address disparities in its pay structure internally, in collaboration with social partners, the directive establishes various procedural safeguards to facilitate administrative and judicial remedies. Transparency measures are key. First and foremost, they reinforce the reversal of the burden of proof. If an employee provides evidence indicating direct or indirect discrimination – such as criteria relating to pay structures or pay gaps between employees in the same job category – the employer must prove that no such discrimination has occurred (ibid., art. 18 §1). However, if an employer has not fulfilled transparency obligations, this also creates a presumption of discrimination, unless s/he can establish that the non-compliance was manifestly unintentional and of a minor nature (ibid., art. 18 § 2-4). Furthermore, the directive allows for the possibility of exempting an unsuccessful claimant from bearing the legal costs of the proceedings, provided that the claim was brought on reasonable grounds (ibid., art. 22). Recital 54 of the directive explicitly states that this exemption “should in particular apply where a successful respondent has not complied failed with the pay transparency obligations”.

Thirdly, the pay structure is put under the supervision of an institutional framework involving workers' representatives, labour inspectorates, the equality body and a designated monitoring body. Notably, the directive strengthens the position of unions which “are seen as one of the primary actors in eradicating equal pay barriers” (Carlson 2024, 9). Their participation is particularly significant for care workers, whose limited bargaining power has been identified as a contributing factor to their low economic recognition (EIGE 2021). The directive requires the objective and gender-neutral criteria used by employers to assess the value of work to be agreed upon with workers' representatives (PT Directive, art. 4 §4). In doing so, it mandates collective bargaining on pay structures, thereby strengthening the negotiation power of social partners. Worker's representatives also play a key role in monitoring pay structures. They systematically receive the pay gap report (ibid., art. 9 §9) and can request a joint pay review if they believe that a pay gap of more than 5 % within a category of employees is unjustified (ibid., art. 10 §1). Any corrective action must then be taken in close cooperation with them (ibid., art. 9 §10; art. 10 §4). Their involvement ensures that job realities are accurately reflected and that – potentially

overlooked or undervalued – skills are properly considered. By leveraging their historical role in wage-setting procedures, the directive positions social partners as key guardians of the principle of equal pay (Rubery/Johnson 2019).

However, these enforcement mechanisms have been criticised for excluding a large number of workers from their scope. Employers with fewer than 50 workers are not required to disclose the criteria used for pay progression (PT Directive, art. 5), while those employing fewer than 100 workers are exempt from pay gap reporting and, consequently, from conducting joint pay assessments (*ibid.*, art. 9 §2-5). This limitation is especially problematic, given that transparency measures form the cornerstone of the operational framework for enforcing the PT Directive. By introducing these exemptions, the directive appears to prioritize employers' economic interests over the fundamental right to pay equality (Mignano 2024).

The issue of occupational segregation persisting in the care sector has also been perpetuated by the requirement that pay differentials must be attributed to a single source of remuneration. The single source, initially a judicial creation, may take the form of legislative provisions, collective labour agreements or a single employer (C-320/00, *Lawrence and Others*, 2002; C-256/01, *Allonby*, 2004). Its *ratio legis* was explained by the CJEU by the fact that in its absence “there is no entity which is responsible for the inequality, and which could restore equal treatment, with the result that such a situation does not come within the scope of Article 157 TFEU” (C-624/19, *Tesco*, 2021, §36). However, defining the scope of Article 157 TFEU in terms of the responsibility of the single source limits the scope for action against structural and institutional discrimination (Fredman 2022). In a context of a general increase in subcontracting activities in various forms, employers are free to decentralize their payment structures or use subcontracting services in order to avoid having to pay the costs of effective equal treatment (Briere 2020). It also ignores the reality of female-dominated sectors. Given the occupational segregation, an employer may run only female departments, with no possibility of comparison with a male worker (i.e. a school or a care home). This situation is particularly problematic knowing that “women working in workplaces without male comparators may suffer more from the effects of unequal pay precisely because of the absence of men in their workplace” (Faraday 2020, 319f.).

The PT Directive opens the door to the use of hypothetical comparators. It explicitly states that “Where no real comparator can be established, any other evidence may be used to prove alleged pay discrimination, including statistics or a comparison of how a worker would be treated in a comparable situation” (art. 19 §3). This provision allows workers in highly gendered sectors to base their claim on a comparative framework that shows how a hypothetical person of the opposite sex would have been treated. The collection and publication of data on the gender pay gap by the monitoring body enables these comparative frameworks to be established (*ibid.*, art. 29). The validation of this solution by the directive opens new prospects for victims of pay discrimination and for social and public actors involved in the implementa-

tion of the principle of equal pay. It can be mobilized internally, as part of the development of pay structures, and before courts in the context of equal pay litigation (Pillinger 2023).

Conclusion: An Evolution of European Non-discrimination Law

Originally included in the 1957 EEC Treaty to prevent distortions of competition between member states, the social dimension of the equal pay principle was gradually developed by the CJEU until it was finally recognized as a fundamental right and a specific expression of the principle of non-discrimination. My analysis demonstrates that the adoption of the WLB Directive and the PT Directive represents a further evolution. Moving beyond the mere guarantee of formal equivalence between workers performing the same tasks, these two legislations confer a substantial content by mobilizing social and procedural rights.

The CJEU is responsible for interpreting legislation (Guth/Elfving 2021, 171). Consequently, analysing the CJEU case law provides a clear overview of the legal situation preceding the implementation of the directives. It reveals that the implementation of this principle has been structured around the economic relationship between the individual worker and their employer. It is applied in an abstract manner, largely disconnected from the broader social and structural context in which pay inequalities arise. By limiting its scope to ensuring equal hourly pay for men and women performing the same tasks, the current interpretation of the principle is ill-equipped to address the asymmetrical power relations and structural discrimination underlying the gender care gap and shaping gender economic inequalities.

The European Commission affirmed in various strategies its political commitment to address the inequalities stemming from the persistent assignment of women to care work. I have investigated how this political ambition has been translated into the corpus of EU non-discrimination law. The WLB Directive and the PT Directive seek to tackle the structural causes of pay inequality and introduce key mechanisms aimed at ensuring the economic recognition and protection of both paid and unpaid care work. While the -WLB Directive facilitates the reconciliation of professional life with care responsibilities by establishing entitlements to various forms of care leave, the PT Directive strengthens the effective application of the principle of equal pay by imposing transparency obligations and requiring non-discriminatory pay structures. Together, these instruments reflect a new approach by acknowledging structural dynamics and asymmetrical power relations, and promoting substantive equality by providing procedural and social rights.

Although my focus was on the gendered division of labour, it is important to emphasize that women from ethnic minorities and/or in vulnerable social positions are even more likely to be assigned care tasks. This “vicious circle of the devaluation of care work”, initially identified by Joan Tronto, sees vulnerable individuals tasked with caring for other vulnerable individuals (Tronto 1993; Ibos 2019, 186). Hence,

the PT Directive marks a significant development by explicitly recognizing intersectional discrimination for the first time in EU law. It explicitly includes discrimination based on both sex and an additional prohibited ground, such as racial or ethnic origin, among the forms of discrimination prohibited by the directive (PT Directive, art. 3 §2 (e)). While it is regrettable that employers are not required to collect data on grounds of discrimination other than sex – a measure that would facilitate the detection of intersectional discrimination (*ibid.*, art. 3 §3) – this recognition nevertheless constitutes a crucial step forward. It is a necessary development to address the structural discrimination faced by women at the intersection of multiple factors of vulnerability and grounds of discrimination.

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Notes

- 1 EU documents referred to in this article like strategy papers and directives are quoted with the official reference and can be found using this reference number in the EUR-Lex database (<https://eur-lex.europa.eu/>).
- 2 All CJEU case law is referenced with the official case number and name; the full decision can be found in the court's case law database (<https://curia.europa.eu/juris/>).