

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.