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Country report

Gender equality

How are EU rules transposed into national law?

Italy

Simonetta Renga

Reporting period 1 January 2024 – 1 January 2025

2025 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, Law 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, Law 903/1977 mainly addressed direct gender discrimination and, as such, implemented a formal notion of equality.[1] It was only with Law 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 Law 125/1991, thus implementing once again a concept of substantive equality. Law 53/2000 subsequently provided for bi-directional positive action (i.e. in favour of both women and men) 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 (inequalities) caused by such differences. Equal opportunities, in other words, are the final end of substantive equality.

[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.

Law 903/1977 and Law 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 working relationships. 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 European 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

- Law No. 168 of 24 November 2023, Provisions aimed at counteracting gender and domestic violence, OJ No. 275 of 24 November 2023;
- Decree No. 105 of 30 June 2022, implementing EU Directive No. 2019/1158 on the balance between work and family life, for parents and carers, OJ No. 176 of 29 July 2022;
- Law 32 of 7 April 2022, OJ No. 97 of 27 April 2022;
- Law 234 of 30 December 2021, Budget Act for 2022, OJ No. 310 of 31 December 2021, ordinary supplement No. 49;
- Decree No 230 of 21 December 2021, implementing Law 46 of 1 April 2021 on the new general family allowance, OJ No. 309 of 30 December 2021;
- Law 162 of 5 November 2021, amending the Equal Opportunities Code, OJ No. 275 of 18 November 2021;
- Law 108 of 29 July 2021, on modifying and converting Decree No. 77 of 31 May 2021, OJ No. 181 of 30 July 2021, Ordinary Supplement No. 26;
- Law 178 of 30 December 2020, Budget Act for 2021, OJ No. 322 of 30 December 2020, Ordinary Supplement No. 46/L;
- Law 160 of 27 December 2019, Budget Act for 2020, OJ No. 304 of 30 December 2019, Ordinary Supplement No. 45/L;
- Law 145 of 30 December 2018, Budget Act for 2019, OJ No. 302 of 31 December 2018, Ordinary Supplement No. 62;
- Law 205 of 27 December 2017, Budget Act for 2018, OJ No. 302 of 29 December 2017, Ordinary Supplement No. 62;
- Law 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;
- Law 65/2014 on amendments to Law 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 Law 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 Law 99/2013, OJ No. 150 of 22 August 2013;
- Law 228/2012, Budgeting regulations, OJ No. 302 of 29 December 2012, Ordinary Supplement No. 212;
- Law 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;
- Law 92/2012 on the reform of the labour market in a perspective of growth, OJ – Ordinary Supplement No. 136 of 3 July 2012;
- Law 214/2011, on growth, equity and consolidation of public spending, OJ No. 284, Supplement No. 251 of 6 December 2011;
- Law 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;
- Law 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 Law 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;
- Law 53/2000 on supporting motherhood and fatherhood, the right to care and vocational training and coordinating the hours of public services in towns and cities, OJ No. 60 of 13 March 2000; and
- 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.

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.

1.4 Main surveys, reports on gender equality and other issues

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]

[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.

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 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 widely held that indirect discrimination is deemed to imply the evaluation of material obstacles to equality, thus leaving aside formal equality in favour of substantive equality.

Until 2018, limited information on the implementation of central concepts could be found in the local equality advisers' reports on their activities, presented in December each year to the local authorities and to the Ministry of Labour. However, these reports, which are still presented to the relevant authorities, are seldom published by the authority concerned; rather, they are officially published through the National Equality Adviser report, which is also based on the local equality advisers' reports.[7]

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.

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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. and Hepple, B. (2000), 'Substantive equality' *Comparative Law Journal*, p. 568.

7 The National Equality Adviser annual report is available at www.lavoro.gov.it/ministro-e-ministero/rapporto-sullattivita-delle-consigliere-nazionali-di-parita-lanno-2022.

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 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]

[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 C-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.

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 has the same rights and, in the case of equal work, the right to 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 will 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

Italy 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 (after a delay of over one year).

Another important piece of legislation in this field is Law 53/2000 on supporting motherhood and fatherhood, the right to care and vocational training and coordinating the hours of public services in towns and cities (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, implementing Directives 2006/54, 2010/18 and 2019/1158. Directive 92/85, on the other hand, has been implemented by Decree No. 645/1996.

Law 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 two fifths.

Furthermore, Law 215 of 23 November 2012, Law 13/2014 and Law 65/2014 introduced regulations aimed at achieving gender equality in politics and in hiring procedures in public administration.

Finally, Decree No. 105 of 30 June 2022, implemented EU Directive No. 2019/1158 on work-life balance for parents and carers.

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 2000/43, 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 2000/78, 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[10]

3.1 Sex/gender/transgender

3.1.1 Definition of 'gender' and 'sex'

The terms gender and sex are not defined in Italian national legislation. The Italian legislation on equal opportunities does not expressly refer to gender reassignment, although the latter can probably be included in the wider concept of sex discrimination.

3.1.2 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 2000/78/ explicitly 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 – Law 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 related to 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 Law 164 of 1982 allows gender reassignment for transgender persons.

Table 1: Protection of transgender, intersex and non-binary persons

Are gender identity/transgender status/intersex status/sex characteristic etc. specific grounds of prohibited discrimination?	**Is discrimination against transgender, intersex and non-binary persons forbidden on the basis of the existing prohibition on sex discrimination?**
No.	No.

3.1.3 Specific requirements

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

[10] See Burri, S. (2018), *EU gender equality law – update 2018*, European network of legal experts in gender equality and non-discrimination, available at www.equalitylaw.eu/downloads/4767-eu-gender-equality-law-update-2018-pdf-444-kb.

3.2 Direct sex discrimination

3.2.1 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. Law 162/2021 has changed the notion of discrimination. As a result, the following is regarded as direct discrimination:

> 'any provision, criterion, practice, act, agreement or behaviour, as well as the order to carry out an act or behaviour, which produces a prejudicial effect by discriminating against candidates during the recruitment stage or workers, by reason of their sex, and that results in less favourable treatment than that of another worker in a similar situation'.

Moreover, the notion of discrimination now includes in detail all changes at the organisational level and in working conditions and scheduling of working hours at the workplace, which put or could put persons having a particular protected characteristic (age, care duties, pregnancy or motherhood/fatherhood, including adoption, or taking up the respective rights) at a disadvantage compared with others or hamper their participation in life and business choices or in their career.

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.[11]

3.2.2 General discrimination

General discrimination is not specifically prohibited in Italy. However, this prohibition can be derived from existing rules. In particular, the rules described above on direct and indirect discrimination contain an implicit prohibition of general discrimination. This is demonstrated by Article 37 of the Equal Opportunities Code: indeed, the norm states that National Equality Adviser and the regional advisers can act directly in their own names in cases of collective discrimination, 'even where the employees affected by the discrimination are not immediately and directly identifiable', which means that the Italian legal system also protects against discrimination without regard to a specific identifiable victim.

As regards case law, the Tribunal of Florence (15-2-2011) decided in a case of collective discrimination, when it ruled that:

> 'The clause of the collective agreement that makes the granting of a company bonus subject to actual presence in service for a minimum number of days must be considered illegitimate and discriminatory, resulting in a position of unjustified

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

> disadvantage for working mothers, both with respect to male and female colleagues not pregnant'.

Also interesting is the ruling of the Tribunal of Prato (21-11-2007), which states:

> 'the objective notion of gender discrimination …, implies the irrelevance of the discriminatory intent and the collective legal action of the Equality Adviser has as a prerequisite not individual discriminatory behaviours on the basis of sex to the detriment of identified subjects, but rather discriminatory facts, agreements or behaviours, leading to the disadvantage, by reason of sex, a community of people, even if not immediately identifiable; such collective action is admissible even when it is proposed at the same time as the intervention in court in support of the workers and may lead to the issuing of the order for the definition of the plan for the removal of ascertained discrimination'.

In cases of collective discrimination, the victims can rely on the action of equality advisers. Indeed, equality bodies can act before the court (through an ordinary or urgent appeal). The judge, in the sentence that ascertains discrimination on the basis of the appeal presented, in addition to providing, if requested, for compensation for damage, including non-pecuniary damage, orders the author of the discrimination to define a plan to remove the discrimination, having heard, in the case of an employer, trade unions and competent equality bodies. In the sentence, the judge sets the criteria, including timescales, to be observed for the purposes of defining and implementing the plan. Moreover, regional equality advisers and the National Equality Adviser can also propose a conciliation agreement before going to court, asking the person responsible for the discrimination to set out 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 that becomes a writ of execution through a decree of the judge (Article 37, Decree No. 198/2006).

3.2.3 Specific difficulties

In Italy, there are no specific difficulties in applying the concept of direct sex discrimination.

3.3 Indirect sex discrimination[12]

3.3.1 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. Law 162/2021 has introduced some changes here, too, meaning that indirect discrimination 'occurs when an apparently neutral provision, criterion, practice, act, agreement or behaviour, including those of an organisational nature or relating to working hours, puts or can put the candidates in the selection phase and workers of a specific sex in a position of particular disadvantage compared to workers of the other sex, unless they concern essential requirements for the performance of the work activity, provided that the objective is legitimate and the means used to achieve it are appropriate and necessary'. In particular, the notion of discrimination now includes in detail all changes at the organisational level and in working conditions and scheduling of working hours at the workplace, which put or could put persons having a particular protected characteristic (age, care duties, pregnancy or motherhood/fatherhood, including adoption, or taking up the respective rights) at a

[12] See for more information Mulder, J. (2021) *Indirect sex discrimination in employment* European network of legal experts in gender equality and non-discrimination, available at: www.equalitylaw.eu/downloads/5362-indirect-discrimination-in-employment-pdf-1-434-kb.

disadvantage compared with others or hamper their participation in life and business choices or in their career.

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.

3.3.2 Statistical evidence

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

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 50 employees to draw up reports every two years on the situation of workers (male and female) as regards recruitment, vocational training, career opportunities, mobility between categories and grades, other mobility aspects, remuneration, dismissals and retirement. The report is made available to the company's union representatives and to the equality advisers. Smaller companies will be enabled to submit the same report on a voluntary basis.

3.3.3 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.

3.3.4 Specific difficulties

In Italy, there are no specific difficulties in applying the concept of indirect sex discrimination.

3.4 Multiple discrimination and intersectional discrimination[13]

3.4.1 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 2000/43 and 2000/78, 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 Law 39/2002, which in Article 29 requires that the implementation of Directive 2000/43 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,

[13] 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.

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.

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 the case 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.[14] 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 women with disabilities full access to healthcare, including sexual healthcare, and protecting their right to self-determination in this sphere; training of healthcare staff to help them assist women with disabilities; ensuring that women with disabilities 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 women with disabilities 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 women with disabilities; and promoting a monitoring system to evaluate both the prevalence of this kind

[14] Motion No. 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 No. 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 No. I-00264 of Motion No. 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.

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.

3.4.2 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 the case until 2018, by which time the pensionable age had been equalised). 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 possibility 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 residents with disabilities, 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 residents with disabilities 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 residents with disabilities 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.

3.5 Positive action[15]

3.5.1 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 Law 53/2000; and Law 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/male 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/men 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 substantive 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, and in this case they address only women.

In the public sector, employers are also entitled to 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 Law 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 of children with disabilities. Funds are accessible to private employers and some public bodies, such as local health units and hospitals. Moreover, the Family Fund can also

[15] See for more information McCrudden, C. (2019), *Gender-based positive action in employment in Europe. A comparative analysis of legal and policy approaches in the EU and EEA*, 2019, European network of legal experts in gender equality and non-discrimination, available at: https://www.equalitylaw.eu/downloads/5008-gender-based-positive-action-in-employment-in-europe-pdf-1-9-mb.

support promotion, planning and 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.

3.5.2 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'.[16] The application of substantive equality leads, therefore, to the fostering 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 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.

3.5.3 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. 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,[17] which shows that positive action plans are implemented where they are encouraged through economic or legal incentives.

3.5.4 Measures to improve the gender balance on company boards[18]

Italy has not yet adopted specific measures to transpose Directive 2022/2381 on improving the gender balance among directors of listed companies and related measures.

However, Law 120 of 12 July 2011 (known as the Golfo-Mosca law) introduced a quota system for the appointment of managing directors and auditors of listed companies and state subsidiary companies,[19] 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 the penalty of the dissolution of the company board can be applied only after two warnings by the Consob (the National

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

[17] See: https://presidenza.governo.it/AmministrazioneTrasparente/AltriContenuti/DatiUlteriori/DSG/PIANO_AZIONI_POSITIVE_PCM_def.pdf.

[18] See for more information Senden, L. and Kruisinga, S., (2018) *Gender-balanced company boards in Europe. A comparative analysis of the regulatory, policy and enforcement approaches in the EU and EEA Member States*, available at https://www.equalitylaw.eu/downloads/4537-gender-balanced-company-boards-in-europe-pdf-1-68-mb.

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

Securities and Exchange Commission), which is also charged with monitoring compliance with the gender balance principle. The same principles are enforceable against state subsidiary companies not quoted on the regulated market (Decree No. 251/2012).

The quota system provided by Law 120/2011 had to be applied only for the first three rounds of appointments following its introduction. As a consequence about 37 % of companies in 2020 and up to 84 % in 2024 would no longer have been obliged to respect this rule. However, this has been addressed by Article 58*sexies* of Decree No. 124/2019, according to which the quota system will apply in the next six rounds of appointments. Moreover, Article 1, Paragraphs 302 and 303 of Law 160/2019 states that the percentage of posts to be obtained by the underrepresented gender, both on the board of directors and auditors, is increased from one third to two fifths. The same principles are enforceable for state subsidiary companies not quoted on the regulated market (Law 162/2021).

Italy, therefore, already had legislation on gender balance on company boards in place; and this legislation in many aspects goes even further than the EU Directive. However, the Directive should induce the legislature to enhance domestic legislation, introducing, for example, a merit-based process for the selection of directors. There is still ample room for improvement of the domestic legislation, especially as regards the presence of women in the positions of director/chief executive officer, in companies with a unique director, unlisted companies and private capital companies. The relevance of this objective also emerges in the context of the *National Strategy on gender equality 2021-2026*, the contents and strategic objectives of which are a reference for the implementation of Italy's national recovery and resilience plan (PNRR).[20] Particular emphasis is placed on the need not only to raise the current quota envisaged by the Golfo-Mosca law (with possible extension to other companies, in particular unlisted companies), but also to introduce a legal provision which would require listed companies to publish anonymised profiles containing information on the gender of internal and external candidates considered in the final selection phase for CEO roles.

Law 15 of 21 February 2024 on delegating to the Government the transposition of European directives and the implementation of other legislative acts of the European Union (European delegation law 2022-2023) anticipates the implementation of Directive 2022/2381, but there has been neither legislation nor proposals on the issue so far.

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

Law No. 215/2012 introduced 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. As regards the regional level, all the regions have adopted specific provisions to promote gender equality in access to elective posts, in implementation of Article 117(7) of the Constitution. Law 20/2016 has also been approved to increase gender equality in regional elections. This Law provides for specific measures that can be

[20] See: https://www.camera.it/temiap/documentazione/temi/pdf/1105539.pdf?_1554030827490.

adopted to this end, outlining them based on the different electoral systems of the various regional councils. Article 4 also provides that the media, as regards broadcasts concerning politics, must respect the principle of gender equality in 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.

Law 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 sexes, and if not, the second and the third preferential vote must be cancelled. Finally, a gender balance in politics is also supported by Law 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.

3.6 Harassment and sexual harassment

3.6.1 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 quoted above.

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

In 2021, Italy was the first EU Member State to ratify ILO Convention No. 190 on the elimination of violence and harassment in the world of work, by Law 4/2021. The ratification of the ILO convention might be an opportunity for some further changes which could contribute to strengthening the protection against harassment and sexual harassment. In fact, although the national notion of harassment and sexual harassment is broader than the international one, as it does not need damage to be caused to the victim to be qualified as harassment, specific behaviours that are to be considered as harassment or sexual harassment may be specified. In particular, it may be useful to clarify that unwanted behaviour, both physical and psychological, can fall within the notion of harassment. Moreover, in order to fully comply with Article 10(g) of the ILO convention, it would be better to equalise resignation and discriminatory dismissal, including for all legal consequences regarding the right to reinstatement and the right to remuneration and compensation for damage, given that the victim often has no choice but to resign in order to avoid harassment.

3.6.2 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 'worker', thus excluding any third parties present in the business; harassment and sexual harassment in access to employment are included in the scope.

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

3.6.3 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 sexual harassment quoted above.

The relevant legislation essentially repeats the wording of the directives.

3.6.4 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; harassment and sexual harassment in access to employment are included in the scope.

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

3.6.5 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, contracts 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; nonetheless, employer responsibility remains part of Italian legislation, as already stated.

3.6.6 Specific difficulties

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

3.7 Instruction to discriminate

3.7.1 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 it is regarded as discrimination.

3.7.2 Specific difficulties

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

3.8 Other forms of discrimination

There are no other forms of discrimination prohibited in national law. In particular, there is no specific legal instrument on algorithmic discrimination. There is, however, some case law on algorithmic discrimination. More specifically, almost all the case law is in the area of public administration. The case law originates from the adoption in schools of an extraordinary hiring plan, which entrusted transfers and assignments to an algorithm. Some of the teachers involved decided to appeal before the court as they believed that they had been discriminated against by the algorithm used. The court of first instance, the Administrative Tribunal (TAR) of Lazio,[21] excluded the possibility of using IT algorithms for making automated decisions for the exercise of administrative, discretionary or restricted activities. The TAR's decision was made on the assumption that the regulation of the administrative procedure (Law 241/1990) actually entails rules and constraints incompatible with a full automation of these processes, such as the obligation to identify a person responsible for the procedure, the citizen's right to participate and the obligation to justify the measure. However, the court of appeal, the Consiglio di Stato (which is the supreme administrative court), legitimised automated administrative procedures in the discretionary activity of the public administration and indicated its criteria and limits in detail, opening up a previously unthinkable scenario:[22] that of the public authority being responsible for the algorithm corresponding to the principle of legality. The rules applying to the use of the algorithms outlined by Consiglio di Stato are: 1. the recognition of the existence of automated decision-making processes, including for the purposes of Regulation 2006/679 (Articles 5, 13, 14 and 15), and the possibility of receiving 'significant information on the logic used'; 2. the non-exclusivity of the algorithmic decision, for which there must be human intervention capable of controlling and validating the decision, a model known as HITL (human in the loop) for which the machine must interact with a human being (on the basis of Article 22 GDPR); 3. the imputability of the decision to the body holding power, which must be able to carry out the necessary verification of the logic and legitimacy of the choice and of the results entrusted to the algorithm; and 4. algorithmic non-discrimination, meaning that the mathematical procedures underlying the software must allow data to be corrected in order not to create discrimination (on the basis of Recital

[21] TAR Lazio, decisions No. 10964/2019, No. 9924/2018 and No. 6606/2019.
[22] Consiglio di Stato, decisions: No. 881/2020; No. 8472, 8473,8474/2019; No. 2936/2019, No. 2270/2019.

71 of the General Data Protection Regulation, GDPR).[23] As regards the knowledge of the mechanisms of the algorithm, this, according to the judges, must be guaranteed in all aspects: from its authors to the procedure used for its development, to the decision mechanism, including the priorities assigned in the evaluation and decision-making procedure and the data selected as relevant. This is in order to be able to verify that the criteria, conditions and results of the automated procedure comply with the prescriptions and purposes established by law or by the administrators of this procedure. In relation to the subjects involved, there is also the problem of managing the related data. Indeed, another decision of the Consiglio di Stato (No. 30/2020), is worth mentioning, as it affirms that: 'the owner of the rights to the source code of a program is "co-interested" in the procedure for requesting access to the algorithm, inasmuch as the acceptance of the request for access would prejudice his own legal position. In fact, the holder of personal data or commercial or technical secrets likely to be disclosed by access to the files has an interest equal to and contrary to that of those who demand the disclosure of the algorithm.'[24]

Finally, on 31 December 2020, the Tribunal of Bologna determined that 'Frank', the algorithm used by Deliveroo, one of the main multinational food delivery companies, is discriminatory. The judge affirmed that: 'The company's organisational model based on digital reputation favours the rider who makes himself completely available to guarantee the booking slots and, vice versa, penalises, by slowly ousting him from the production cycle, the cyclist who does not ensure the same availability for health reasons, assistance to family members or for joining trade union strike initiatives.'[25] The Tribunal held that the evaluation model adopted by the food delivery platform stemmed from a 'conscious choice' of the company not to consider the reasons for the failure to 'log in' to the platform. It is precisely the blindness of the algorithm, insensitive to the various reasons that induce workers to abstain, which makes it discriminatory.[26]

3.9 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 that 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 50 employees to draw up reports every two years on the situation of workers (male and female) as regards recruitment, vocational training, career opportunities, mobility between categories and grades, other mobility aspects, remuneration, dismissals and retirement. The report is made available to the company's union representatives and to the equality advisers. Smaller companies can submit the same report on a voluntary basis.

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

[23] See on these issues: *Norme & Tributi Plus, Enti Locali & Edilizia*; *Altalex*, 'Il Consiglio di Stato apre alla PA robot'; *Agenda Digitale*, Consiglio di Stato, 'Algoritmi per le decisioni della PA, quali principi seguire: le sentenze; *Altalex*, 'Algoritmi in ambito amministrativo, il Consiglio di Stato delinea i limiti'.

[24] Consiglio di Stato, decision No. 30/2020. See also Brevetti News (2020) 'Il titolare dei diritti su un alogritmo puo opporsi all accesso agli atti' (Algorithm copyright owners can object to public access requests), 11 March 2020, https://brevettinews.it/internet-domini/titolare-dei-diritti-algoritmo-puo-opporsi-allaccesso-agli-atti/.

[25] Tribunal of Bologna, 31-12-2020, see: Fassina, L. (2021) 'L'algoritmo Franck, cieco ma non troppo' (The 'Frank' algorithm, blind, but not too blind), in *Lavoro Diritti Europa*, 14 January 2021, https://www.lavorodirittieuropa.it/dottrina/lavori-atipici/626-l-algoritmo-franck-cieco-ma-non-troppo.

[26] Tribunal of Bologna, 31-12-2020, in https://www.lavorodirittieuropa.it/dottrina/lavori-atipici/626-l-algoritmo-franck-cieco-ma-non-troppo.

The concept of positive action adopted in Italy is in tune with that provided by the EU legislation. Moreover, 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 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.

Finally, Directive 2022/2381 on gender balance on company boards should induce the Italian legislature to enhance domestic legislation, by introducing, for example, a merit-based process for the selection of directors. Indeed, although present legislation goes even further than the EU Directive in many aspects, there is still ample room for improvement, for example as regards the presence of women in director/chief executive officer positions in companies with a unique director, unlisted companies and private capital companies.

The legislation on harassment based on sex and on sexual harassment is 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 provision has been moved the responsibility from the employer, as provided by the Directive, to 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, their protection can be included on the grounds of gender discrimination.

Another gap in national legislation is the lack of an explicit provision on multiple discrimination. Moreover, the lack of legislation prohibiting 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 of multiple discrimination (when age, disability, religion/belief and/or sexual orientation intersect outside employment).

Finally, there is a lack of a specific legal instrument on algorithmic discrimination.

3.10 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)[27]

4.1 General (legal) context

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 sectors and occupations, women tend to be overrepresented, while in others men are overrepresented; and pay discrimination.[28]

Therefore, it is important 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 the period of absence from work and the return to work smoother 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 firms; and professional management training on gender diversity.[29]

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 or in paper form. Collective agreements and job evaluation schemes are not usually monitored.

4.1.1 Political and societal debate and pending legislative proposals

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

A campaign called #nopaygap promoted by the Valore D business association obtained the patronage of the Pubblicità Progresso foundation and was broadcast on all the main TV channels (Rai, Mediaset, Sky and Viacom), helping to open a debate on the gender pay gap.[30] In the context of Valore D's #nopaygap campaign, it was shown that, one year after entering the labour market, men's salaries are 12.8 % higher than those of women.[31] With

[27] See on equal pay Burri, S. (2019), *National Cases and Good Practices on Equal Pay,* European network of legal experts in gender equality and non-discrimination, available at https://www.equalitylaw.eu/publications/thematic-reports.
See also Foubert, P. (2017), *The enforcement of the principle of equal pay for equal work or work of equal value: A legal analysis of the situation 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/4466-the-enforcement-of-the-principle-of-equal-pay-for-equal-work-or-work-of-equal-value-pdf-840-kb.
See on the issue of pay transparency: Veldman, A. (2017), *Pay transparency in the EU A legal analysis of the situation 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/4073-pay-transparency-in-the-eu-pdf-693-kb.

[28] See: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/equal-pay/gender-pay-gap-situation-eu_en.

[29] See: https://valored.it/wp-content/uploads/2018/05/Manifesto_Valore_D-2.pdf.

[30] See: https://valored.it/i-progetti/nopaygap/.

[31] Almalaurea (2022), *Profile of Graduates 2021*, available at: https://www.almalaurea.it/sites/default/files/2022-11/almalaurea_profilo_rapporto2022.pdf.

the same position and seniority, female managers receive on average 5.5 % less than their male colleagues. In roles of greater responsibility, the gap widens: women on boards of directors earn as much as 77 % less than their male counterparts.[32]

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.

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.

In relation to Directive (EU) 2022/2041 (the Minimum Wage Directive), the Government, confirmed in Parliament, having already stated its position during the electoral campaign, that it is against setting a minimum wage by law. In Italy, the obligations deriving from the transposition of the Minimum Wage Directive will therefore be limited to monitoring (on which there is in any case a great deal of work to be done) and to the effective application of the minimum levels (an area in which Italy is performing similarly poorly, as shown by the estimates of the number of workers paid less than the minimum levels set by the national collective agreements). Nevertheless, the hope is that the discussion around the transposition of the Directive and the monitoring and data collection work that the European standard requires will help to inform the debate and lead to some progress.

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 Padua of 26 October 2007,[33] 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.

[32] Badenoch & Clark (2021), *Women in charge*, https://www.linkiesta.it/2021/11/women-in-charge-badenoch-adecco-gender-gap/.

[33] Published on the official website of the national equality adviser at: https://lesentenze.it/cercasentenze?q=Venezia (Tribunal of Venice)and https://lesentenze.it/cercasentenze?q=Padova (Tribunal of Padua).

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 2*bis* 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. It may be affirmed that, in such a context, maternity leave could even be regarded as direct sex discrimination (see Case C-136/95, *Thibault*). 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 mainly concerns indirect discrimination.[34] 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 the proportionally disadvantageous effect of the criterion, 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 persons with disabilities, 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 arises 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 test was not addressed.

A dependent worker is defined by Article 2094 of the Civil Code as follows: 'A subordinate worker is a person who undertakes the obligation, through remuneration, to collaborate in the company, by providing one's intellectual or manual work under the direction of the entrepreneur'. According to Article 1 of Decree No. 101/2019, the discipline of the employment relationship also applies to collaborations that take the form of mainly personal, continuous work services, the execution methods of which are organised by the client. These provisions also apply if the procedures for carrying out the service are organised through platforms, including digital ones.

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 must adopt common criteria for men and women and be drawn up so as to eliminate any discrimination.

[34] 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.

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 at 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 that 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 1991 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 asserting the working mother as 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. In doctrine and jurisprudence no actual comparator is required.

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 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 job evaluation and classification systems.

4.2.10 Wage transparency[35]

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. Article 46, which has been amended by Law 162/2021, provides that the biennial report concerning the ratio of male and female employees in all job categories of a company is compulsory for enterprises employing more than 50 workers (100 employees under the previous wording of the provision). Smaller companies are now able to submit the same report on a voluntary basis. The report is filed online on the website of the Ministry of Labour, and regional equality advisers are in charge of analysing the results to be transmitted to the territorial offices of the National Labour Inspectorate, the Ministry of Labour, the Department for Equal Opportunities at the Presidency of the Council of Ministers (Prime Minister's Office), the National Institute for Statistics (ISTAT) and the National Council for Labour and Economy (CNEL). A list of defaulting companies should be publicly be available on the site of the Ministry of Labour. Procedures are provided to allow workers and unions access to data, which may be used to take legal action under the Code. An administrative sanction may be applied by the Labour Inspectorate in the event that a report is incomplete or presents false data. Failure to submit a report after a reminder from the Labour Inspectorate is punishable with an administrative sanction; if non-compliance lasts for more than 12 months, any contributory benefits enjoyed by the company are ordered to be suspended for one year.

Law 162/2021 has also introduced a certification gender equality system. The certification will attest different policies and measures undertaken at the enterprise level and aimed at filling the gender gap in remuneration and careers and will be taken into account to access national and EU funds sustaining investments. Moreover, Article 1(138) of Law 234/2021 provides financing for the certification system in order to reward companies, even those with fewer than 50 employees, that obtain gender equality certification. In order to promote gender equality, Article 2 of Decree No. 57/2023 states that calls for tenders, notices and invitations announced by the contracting parties must indicate that the highest score is to be attributed to companies for the adoption of policies aimed at achieving gender equality. This is based on the possession of gender equality certification.

[35] See Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, OJ L 132/21 (Pay Transparency Directive).

Finally, 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 and/or Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms

The European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, and Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms have not yet been applied. However, the Implementation Act for several EU directives, among them Directive 2023/970, was approved by Parliament on 21 February 2024 (Law No. 15/2024). With this Act, the Parliament delegates the Government to enact a Decree to implement the directive, according to the following criteria: (a) make the changes necessary to the current legislation to ensure the correct and complete application of Directive (EU) 2023/970, also taking into account what is reported in the recitals of the directive itself, in coherence with the strategy for gender equality 2020-2025, referred to in European Commission communication COM(2020) 152 final of 5 March 2020, and respecting the autonomy of the national social partners; (b) introduce provisions aimed at identifying the tools or methodologies for evaluating and comparing the value of work, also providing for the involvement of the social partners in the definition of this value and avoiding interpretative and application uncertainties; (c) for the purposes of strengthening pay transparency mechanisms, extend the obligations concerning the accessibility and communication of information on the pay gap to a wider audience of recipients, taking into account the relevance of the information on the gender pay gap, also verifying the possibility of automatically obtaining the information required from already existing administrative data, such as the information flows transmitted monthly by employers to social security institutions, in order to reduce the administrative burdens for companies.

4.2.12 Other measures, tools or procedures

Under Article 1, Paragraph 138 of Law 234/2021, the implementation of the principle of gender equality was addressed by the Minister of Labour allocating a EUR 52 million fund to enhance measures aimed at sustaining the social and economic value of gender pay equality at work. The aim of this fund has also been extended to increasing the participation of women in the labour market.

Article 1, Paragraph 139 and following of Law 234/2021 provide for the issue of a *National Strategic Plan for Gender Equality*, also aimed at reducing the gender gap in the labour market. To ensure the full implementation of the plan, an interinstitutional control room and a national observatory have been established at the Department for Equal Opportunities. The latter is also charged with enhancing the gender equality certification system, the criteria of which are fixed by a Decree of the Prime Minister.

4.3 Access to work, working conditions and dismissal

4.3.1 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 2010/41, except as regards vocational training, where the prohibition on discrimination expressly includes both access to and the content of vocational training. All types of contracts – subordinate, autonomous or 'any other' - are covered. The same provision is enforceable, under Paragraph 3 of Article 27, 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.

With regard to the implementation of Article 14 of Directive 2006/54, 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.

4.3.2 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, its objective is legitimate and the requirement is proportionate. 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 set of duties. As such, it is based on the (particularly strenuous) nature of the specific occupational activity. The principle of proportionality is not directly considered here and the law does not provide that the exclusion of women must be 'essential' (to the protection of women's health.

However, 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 definitively.[36]

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.

[36] This last remark is based on the effective implementation of this exception starting from the issuing of Law 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).

4.3.3 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 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, vocational 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), Law 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.[37]

There is some published case law regard the interpretation of the exceptions to the ban on dismissal during pregnancy.[38] 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 judgment No. 172 of 27 May 1996, ruled that an employer may dismiss a pregnant employee on the grounds of a negative outcome following a probationary period only if they can prove - or if there is

[37] 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.

[38] 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.

objective evidence - that they did not know of the woman's pregnancy; otherwise, they 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 remuneration from the day of dismissal to that of the reintegration in service of the women concerned, as the dismissal is null and void;[39] 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.[40]

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 that it was 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 to leave the job straight off, considering his family burden and mortgage.

4.3.4 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.

4.3.5 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

[39] Court of Cassation civ., sez. lav. 11-01-2017, n. 475.
[40] Court of Cassation civ., sez. lav., 20-07-2012, n. 12693; Court of Cassation civ., sez. lav. 03-07-2015, n. 13692.

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 arise from its ambiguous text. However, there is no case law or debate on these issues.

4.3.6 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 substantive 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 vocational 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.

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. 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). Finally, the public administration must ensure staff training in proportion to the percentage of representation of each sex in the specific sector and must facilitate this participation through the reconciliation of work and private life.

In addition, there is 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 two fifths. This distribution criterion applies for six consecutive terms (Article 1, Paragraphs 302 and 303, Law 160/2019). The same principles are enforceable for state subsidiary companies not quoted on the regulated market (Law 162/2021).

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. Many positive action plans are carried out in the public sector, in the context of Article 48 of the Equal Opportunities Code, which shows that positive action plans are implemented where they are encouraged through economic or legal incentives.

4.4 Evaluation of implementation

The principle of equal pay for equal work or work of equal value is quite satisfactorily implemented in national legislation. However, 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 or in paper form; finally, collective agreements and job evaluation schemes are not usually monitored.

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. In doctrine and jurisprudence no actual comparator is required.

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 company level, which provides that, every two years, public and private companies employing more than 50 employees draw up a report on the situation of workers (male and female) as regards recruitment, vocational training, career opportunities, mobility between categories and grades, other mobility aspects, remuneration, dismissals and retirement. The report is made available to the company's union representatives and to the equality advisers. Smaller companies will be enabled to submit the same report on a voluntary basis.

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 the 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 2010/41, 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. There may be doubts only in relation to exceptions provided by collective agreements as regards discrimination in access to work for women in cases of particularly strenuous jobs.

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

Four years after it was first proposed, the Act on the reorganisation and improvement of different measures aimed at supporting families, and especially women, in achieving a healthy work-life balance (the Family Act) was finally passed, by Law 32/2022.

The reform mainly aims to promote gender equality within the family by supporting women's participation in the labour market, including through more flexible scheduling, and by providing incentives for the second earner in the family (which is more often the woman in a household). In particular, Article 4 delegates to the Government the task of issuing decrees within two years, to reorganise and strengthen different measures aimed at promoting working mothers' participation in the labour market, the sharing of care duties and a better balance of working and private life.

No further funds have been allocated to finance the majority of the measures envisaged by the Family Act, such as: incentives for employers who will guarantee reversible flexible working conditions to working parents according to national collective agreements; developing tools for the regulation of housework services, babysitting, and care activities for the elderly; a cut in the taxes or contributions payable by employers, aimed at facilitating the substitution of working mothers during their periods of leave with other workers (as

clearly allowed by legislation) and their return to work or training. A gradual adjustment of the remuneration for workers taking up time off in the event of illness of their child will be provided.

Further incentives include the promotion of female entrepreneurship, including financial and digitalisation training.

Collective bargaining for promoting conciliation measures will be supported by cuts in contributions. As regards these reductions in contributions, the Budget Act for 2024 (Law No. 213/2023) provides a cut for working mothers (Article 1(180-182)): from 2024 until 2026, the worker's contribution is cut to zero for working mothers with three or more children until the younger child is aged 18. As an experimental measure for 2024, working mothers of two children are entitled to the same cut until the younger child is 10 years old. This benefit does not concern fixed-term employees or domestic workers and cannot exceed EUR 3 000 a year. These provisions have been confirmed (and extended to those in self-employment and business income recipients) by the Budget Act for 2025 (Article 1 (219), Law No. 207/2024).

In the domestic sector, which mainly employs women, further incentives will have to be provided to encourage the regularisation of undeclared workers.

The family allowance has been reformed as provided by the Family Act, by Decree No. 230/2021 (following the guidelines contained in Law 46/2021). The measure replaces the various other pieces of legislation, such as tax allowances, and is a universal benefit for all families, irrespective of the parents' income and working activity. Households are entitled to this grant from the seventh month of pregnancy up to the 21st year of age of the dependent child attending school or university or working in an internship (on condition that the child's annual income is lower than EUR 8 000) or searching for a job. It is addressed to a wide audience of beneficiaries, including self-employed workers and persons receiving income support. The amount of this grant is adjusted on the basis of the total economic condition of the household (known as ISEE – equivalent economic status index) as well as the age of the dependent child and takes into consideration the possible effect of any disincentive to work for the second earner in the household. Child support will increase for most Italian families, especially for parents who had little or no protection (such as, for instance, self-employed, long-term unemployed and atypical workers). Nevertheless, considering that the grant replaces several measures, it is quite hard to assess its real impact on some categories. Moreover, the reform will probably lower the support for families of employees with a low or medium income. In order to avoid this risk, a safeguard clause has been provided to guarantee automatic compensation for the next three years. Article 1(357) of Law No. 197/2022 raised the amount of the family allowance by 50 %, for the first year of life of the child and for families with three or more children whose annual income does not exceed EUR 40 000 in the case of children aged 1 to 3 years. Moreover, the increases in the universal allowances already provided by Article 5 of Decree No. 230/2021 and by Article 38 of Decree No. 73/2022 for children with disabilities, as temporary measures for 2022, have now become permanent. In its two years of application, however, the measure has revealed an indirectly discriminatory feature. When an application for benefit is made by a single parent whose children have been recognised by the other parent who does not contribute at all to the support of the children, the application procedure always requires the second parent's ISEE. This is often intentionally not made available by the second parent and, as a consequence, only the minimum benefit is paid. This situation mostly affects women on a low income, who would have had access to a considerably higher level of benefit had the father's ISEE been made available.

5 Work-life balance issues: pregnancy, maternity, family-related leave and flexible working arrangements (Directive 92/85, relevant provisions of Directives 2006/54, and Directive 2019/1158)[41]

5.1 General (legal) context

5.1.1 Overview of national acts on work-life balance issues

An important piece of legislation in this field is Law 53/2000 on supporting motherhood and fatherhood, the right to care and vocational training and coordinating the hours of public services in towns and cities (and its subsequent amendments). Law 53/2000 enacts a policy aimed at both reconciling work and family life and developing social solidarity. In particular, Article 9 provides an important measure to promote the reconciliation of work and family life in the form of symmetrical positive action measures that can apply to both women and men.

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 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.

Decree No. 151/2001 on the protection of motherhood and fatherhood is extremely important in this field because it includes all rules on pregnancy, maternity, paternity, parental leave and leave related to work-life balance, and implements Directives 2006/54, 2010/18 and 2019/1158.

Finally, Decree No. 105/2022 implemented Directive 2019/1158. However, even before its implementation, the system was fairly well aligned with EU legislation and therefore the Decree contained only a few changes.

Article 2 of the Decree amends several provisions of Decree No. 151 of 26 March 2001 on the support of motherhood and fatherhood. The Decree finally provides working fathers with a right to 10 days of leave as a permanent measure. The 10-days leave does not need to be taken all at once, they can be spread over time, but cannot be converted to hourly time off. Fathers can take this leave over a period from two months before delivery to five months after, both in the case of birth and in that of the perinatal death of the child. This is an autonomous right on the part of the father, which is raised to 20 days in the event of the birth of twins and can be used together with the mother. It is covered by an allowance of 100 % of the last monthly remuneration and is also to be reckoned as length of service as regards pension requirements, regardless of the length of service of the worker.

An administrative sanction from EUR 516 up to EUR 2 582 will be applied for refusing or obstructing the exercise of this right. Moreover, the ban on dismissal for the period of this leave and until the child is 1 year old will be extended to paternity leave.

This leave adds to the paternity leave to be used as an alternative to the mother's leave in cases of death or serious illness or exclusive custody of the child. The provision has been further strengthened because the reform expressly provides for the same economic and pension conditions as those enforceable for maternity leave and for criminal sanctions in the case of infringement.

[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 De la Corte-Rodríguez, M. (2024), *The transposition of the Work-Life Balance Directive in EU Member States (II): Considerable work still to be done*.

The reform will also increase the period of parental leave covered by an allowance of 30 % of the last monthly remuneration from six to nine months. In fact, each parent is entitled to an autonomous, non-transferable right to three months of remunerated parental leave, and a further three months can be used by one or other of the parents. Parental leave must be reckoned as length of service and cannot reduce holidays and annual remuneration, except for incentives that depend on the actual performance of the job. For single parents, parental leave will be raised from 10 to 11 months, and 9 months will be covered by the allowance.

Moreover, parents of children with severe disabilities will be entitled to this allowance for the three years of parental leave that they can take until the child reaches the age of 12.

There have been further improvements in the area of self-employment. The right to a three-month period of parental leave to be used within the first year of the child's life will be extended to self-employed fathers. The ability to anticipate maternity allowance from two months before the birth will also be provided for self-employed professionals in cases where maternity is at risk.

As regards care provided to persons with severe disabilities, the Decree reduces the notice period to be given to the employer from 60 days to 30 days in the event that the worker asks to take up the two-year leave provided by Article 4(2) of Law 53/2000. In addition to the spouse, the right has also been extended to other relatives or partners living with the person with disabilities.

Article 3 of the Decree provides for amendments to Law 104 of 5 February 1992 on assistance, social integration and the rights of persons with disabilities. A general ban on discrimination will protect workers who benefit from different rights provided by this Law, both as persons with disabilities and as caregivers. A special procedure provided by Article 28 of Law 150/2011 (including an urgent procedure and the partial reversal of proof) will be enforceable in related disputes, and attempts at conciliation are provided for by Article 410 of the Civil Procedure Code.

Law 104/1992 will also be modified as regards persons entitled to time off for two hours a day or three days a month to take care of relatives with severe disabilities, including partners in a civil union and de facto cohabitants. Moreover, these rights will be divisible between different caregivers to ensure a better balance of family duties. Priority in access to 'smart working' (flexible or remote working) will also be granted to the caregivers mentioned above, and protection for the use of these rights has been strengthened by an express reference to the enforcement of Article 56 of Decree No. 151/2001 on the right to return to the same job for working parents.

Article 4 provides for some amendments to Law 81 of 2017 on measures for the protection of self-employment and measures to promote smart working. Parental leave for self-employed workers will become non-transferable: three months for each parent, which may be added to another three months, which can be used by the parents as an alternative to each other's leave, until the child reaches 12 years of age.

Public and private employers who sign agreements on smart working will be required to give priority to requests made by workers with children up to 11 years of age, or without any age limit in the case of children with disabilities. The same priority shall be given by the employer to the requests of working caregivers. Moreover, disadvantageous working conditions cannot be applied to smart workers as they are to be considered as a form of discrimination and are consequently null and void.

Article 5 of the Decree makes some amendments to Law 81/2015 on employment contracts and revising the legislation on tasks, pursuant to Article 1(7) of Law 183 of 10 December 2014. The priority granted to working caregivers in relation to the conversion of their

contract from full time to part time will be extended to partners in a civil union or de facto cohabitants. Under this reform, the same contract conversion will be protected by the ban on discrimination mentioned above for all workers.

Finally, Article 6 of the Decree provides for an annual report on the use of the different types of leave mentioned above to be addressed to the Minister of Labour and to the Department for Family at the Presidency of the Council of Ministers (Prime Minister's Office). This is expected to ensure wide-ranging monitoring, especially regarding the impact of the reform on gender equality in the labour market and the improvement of the sharing of care duties.

The following features are not in line with the Directive: (1) the equivalent second parent is not entitled to paternity or parental leave; (2) with regard to parental leave, the allowance is not set in such a way as to facilitate the take-up of parental leave by both parents (the allowance is too low to encourage the main breadwinner of the family to take this leave); (3) parental leave provisions for parents with a disability are still missing; (4) the bill does not improve the situation as regards flexible working arrangements for workers with children and for carers: a right to adjust working time patterns is still only provided for in limited specific situations.

The personal scope of Italian legislation on this matter covers all workers, men and women, who have an employment contract or an employment relationship, including part-time workers, fixed-term contract workers or persons with a contract of employment or an employment relationship with a temporary agency, whether in the private or public sectors and regardless of the size of the company or organisation. There are no categories of persons that would fit in the EU definition of 'worker' that are not covered by Italian legislation: therefore, Article 2 of the Directive has been satisfactorily transposed in national law.

5.1.2 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 and 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 small 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.[42]

5.2 Pregnancy and maternity protection[43]

5.2.1 Definition in national law (Article 2 of Directive 92/85)

Decree No. 151/2001 on the protection of motherhood and fatherhood 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.

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

[43] Directive 92/85/EEC of 19 October 1992 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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ L 348, 28.11.1992.

5.2.2 Obligation to inform employer (Article 2 of Directive 92/85)

Article 21 of Decree No. 151/2001 states that, before the beginning of the compulsory period of maternity leave, the woman has to present the employer with a general practitioner's certificate attesting to the presumed date of delivery, and the GP 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 and the obligation to inform the employer

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 and the obligation to inform the employer.

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).

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 it also states 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 heavy items 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 in such cases 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, women take maternity leave earlier and thus benefit from a longer period of leave 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 on protective measures

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

5.2.6 Protection against night work (Article 7 of Directive 92/85)

Article 53 of Decree No. 151/2001 provides for a ban on night work (from midnight to 6 a.m.) from the certified beginning of pregnancy until the child is 1 year old. Furthermore, Article 53 states that workers cannot be required to work at night when they are: a mother of children aged under 3 years or their cohabiting father; single parents of cohabitant children aged under 12 years; an adoptive or foster mother of children during the first three years since adoption or the beginning of legal custody or, alternatively, the adoptive or foster father cohabiting with the mother; a mother or father who cares for a person with

disabilities. In these cases, workers are given daytime work, unless this is impossible for the enterprise to arrange.

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 makes it possible to avoid night work, while Article 53 provides for a ban on night work only in certain circumstances.

5.2.7 Case law on the protection against 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 under 3 years who refused to be employed in night work, as the employer had not proved that there was no day job where she could have been employed.

Night work for women in flight crews is a lively issue: there has been discussion in case law on whether Article 53 of Decree No. 151/2001 or the sector-specific legislation on working time, which makes no provisions for exemption from night work, can be applied to them.[44]

5.2.8 Prohibition of dismissal (Article 10(1) of Directive 92/85)

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 as 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. There are no specific procedures.

Moreover, in response to the issue of 'blank resignation', Law 92/2012 changed Article 55(4) of Decree No. 151/2012. 'Blank resignation' refers to an undated resignation letter signed by a worker at the time of recruitment to be used by the employer to make the worker resign when required (i.e. when pregnant). Often the employer makes recruitment conditional on signing such a letter. Law 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 from the Ministry of Labour. This period now starts at the beginning of the pregnancy and ends when the child reaches the age of 3. The same rule applies to adoptive parents or persons who have been given the official custody of a child from birth or 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 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; cessation of the activities of the company; the end of a fixed-term contract; or a negative outcome at the end of a 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 last case.

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

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 cessation of the

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

company's activities. In such cases, the mother will continue to receive the maternity allowance, which is directly paid by the INPS.

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.

5.2.9 Employer's obligation to substantiate a dismissal in writing (Article 10(2) of Directive 92/85)

In these cases, employers must indicate substantiated grounds for the dismissal in writing. Indeed, general rules are enforceable that set out an obligation to indicate the substantiated grounds for the dismissal in writing (Article 2(2) of Law 604/1966). In the event of an infringement of this provision, the dismissal does not produce any effect. The consequences of such an infringement are limited to compensation for the period not worked and the job is maintained. 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 of Article 54 of Decree No. 151/2001 (mentioned above in Paragraph 5.2.8).

5.2.10 Table on the protection against dismissal during pregnancy and maternity leave

Table 2: Protection against dismissal during pregnancy and maternity leave

Yes/no	Protected period	Exceptions	Specific procedure?
Yes.	Protection is granted during pregnancy, maternity leave, parental leave and for a period of 12 months following the date of confinement.	A working mother can be dismissed in only four exceptional cases: a serious offence by the female worker; cessation of the activities of the company; end of a fixed-term contract; negative outcome following probationary period if the ban on discrimination has not been infringed.	Employers must indicate substantiated grounds for the dismissal in writing. In the event of an unlawful dismissal, the dismissal does not produce any effect. The consequences are limited to compensation for the period not worked; the job is maintained. 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 legitimate exceptions.

5.2.11 Maintenance of income and other employment rights (Article 11(1) and (4) of Directive 92/85)

The protective measures mentioned in Articles 11(1) of Directive 92/85 have been implemented by Decree No. 645/1996, which was later included in Decree No. 151/2001 (Chapter II).

More specifically, Article 7 of Decree No. 151/2001, imposes a ban on performing duties that involve the lifting of heavy items 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 it 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 other jobs are available.

Under Article 12 of the same Decree, the employer must change the working conditions or schedule 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 7 months old).

Article 53 of Decree No. 151/2001 provides for a ban on night work: in these cases, workers are given daytime work, unless this is impossible for the enterprise to arrange.

5.2.12 Case law on the protection against dismissal and the maintenance of income and other employment rights

Some case law has been published regarding the interpretation of the exceptions to the ban on dismissal during pregnancy.[45] On 9 February 2010 the Tribunal of Venice 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 a negative outcome following a probationary period only if they can prove – or if there is objective evidence – that they did not know of the woman's pregnancy; otherwise, they 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;[46] 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.[47]

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.[48]

There are several published cases regarding the blank resignation of working mothers. On 12 December 2005, the Tribunal of Florence stated that if the resignation is not validated, the relationship of employment 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. On 9 September 2006 the Court of Appeal of Florence 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 ruled on 4 January 2007 that Article 55 was enforceable only if the employee knew about her pregnancy when she resigned.

[45] 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.

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

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

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

5.3 Maternity leave

5.3.1 Maternity leave in national law (Article 8(1) and (2) of Directive 92/85)

Maternity leave lasts five months and is compulsory (Articles 16 and 20 of Decree No. 151/2001). Two months can 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 whole of the five months of maternity leave 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(485) of Law 145/2018, which amended Article 16 of Decree No. 151/2001). This applies to both the private and public sectors. 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 regarding the risk of exposing women, particularly those in precarious employment, to possible pressures to keep on working until the birth of the child.

As regards the sharing of maternity leave, working fathers may obtain leave in cases provided for by Article 28 of Decree No. 151/2001. In particular, maternity leave is granted to the father after the birth for its whole length or for the remaining period in special cases, that is: where the mother (who may be a professional 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 maternity leave in place of the mothers in the same special cases (Article 31). The same economic and working conditions, as well as the notional contributions provided for maternity leave, are granted to the father.

5.3.2 Paid maternity leave (Article 11(2)(b), (3) and (4) of Directive 92/85)

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 period of leave, 'notional' contributions (contributions credited free of charge) are considered for pension rights and amounts. There is no ceiling to the allowance.

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

Most collective agreements (such as, for instance, the collective agreements for the chemical industries and the tourism sector) provide for up to 100 % of the maternity allowance to be integrated 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.

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.[49]

5.3.3 Maintenance of employment rights (Article 11(2)(a) of Directive 92/85)

Pregnancy and maternity leave are counted as actual work as regards seniority, annual leave and the '13th month' annual bonus 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

[49] There is also a right to 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).

provision also applies when 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.[50] Furthermore, Law 208/2015 (Article 1(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.[51]

5.3.4 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 1 year old.

5.3.5 Case law on maternity leave

On 13 July 2018 the Constitutional Court ruled that Article 24(3) 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 who have been unemployed for less than 60 days. Under Article 24(3), absences due to illness or an accident at work, leave to care for a sick child, absence due to foster care, or periods of interruption of work in the case of a 'vertical' part-time contract[52] are exceptions and are not to be counted as part of the time limit of 60 days. The Constitutional Court ruled that Paragraph 3, which does not include periods of leave for taking care of relatives with disabilities under 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 relative with disabilities, 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 to ensure that the necessary care for persons with disabilities can be provided by their family. Not recognising the need to care for a relative with disabilities would 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 person with disabilities 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 persons with disabilities to the exceptions expressly laid down by Article 24(3), 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.

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 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 2*bis* of Decree No. 198/2006 and Article 3 of Decree No. 151/2001.[53] The clause provided 'real presence at work' as a criteria for being eligible to receive additional remuneration as an incentive, and did not regard family-related

[50] 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.

[51] Under Article 1(635) of Law 205/2017 (the Budget Act), the expiry of university researchers' fixed-term contracts was postponed for five months, corresponding to the length of compulsory maternity leave.

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

[53] Court of Appeal of Turin, 10.1.2018.

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 (see on this issue, along the same lines of argument, Case C-136/95, *Thibault* [1998] ECR I-2011). 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 criteria mentioned above had to be included in future collective bargaining at the enterprise level. The last of these requirements was prompted by the intervention of the regional equality adviser, as it was a case of collective discrimination. In such cases the advisers can act independently in court.

Another case was 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 independently. This change, which occurred when she returned to work, put her in a disadvantageous condition and, on 11 September 2017, the Tribunal of Ferrara stated that this was not justified by objective reasons. The company was ordered to cease the discriminatory behaviour by eliminating the supervision of the employee's activity, to refund damages and to advertise the judgment both within the firm and in a local newspaper.

Some published cases deal 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.[54]

A judgment by the Tribunal of Florence on 6 February 2014 found gender discrimination where the Health and Insurance Institute, which had to pay 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 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 with 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.[55]

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 behaviour if she does not inform the employer of her pregnancy before recruitment to a fixed-term contract; the legitimacy of the employer's behaviour if a pregnant women is not hired, despite her passing 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 would be assigned to a job that was dangerous for her and her child's health; the illegitimacy of the exclusion of a pregnant worker by an employment exchange; and the illegitimacy of pregnancy tests as a condition of access to work.[56]

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

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

[56] 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.

5.3.6 Table on maternity leave

Table 3: Table on maternity leave

Duration	Obligatory period	Possibility to share maternity leave?	Payment or allowance	Right to return after the end of maternity leave
Five months.	Yes (all of it)	No[57]	80 % of the average overall daily wage.	Yes

5.4 Paternity leave

5.4.1 Paternity leave in national law (recital 26 Directive of 2006/54 and Articles 3(a) and 4 of Directive 2019/1158)

Fathers are entitled to 10 days of compulsory paid paternity leave. Fathers can take this leave in the period from two months before to five months after delivery, in the event of either birth or the perinatal death of the child. This is an individual father's right, which is increased to 20 days if there are twins, and it can be used together with the mother's leave. It can also be used at the same time as the mother's compulsory leave. The duration is expressed in working days.[58] Fathers are also entitled to one day's paid optional leave, (to be taken from the mother's allocation) within five months of the child's birth.

Moreover, 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: if the mother (who may be a professional self-employed mother) dies or becomes seriously ill; in the event of the abandonment of the child; or 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 the notional contributions provided for during maternity leave, are granted to the father.

These types of leave cover those working in both the private and public sectors; part-time workers, fixed-term contract workers and persons with a contract of employment or employment relationship with a temporary employment agency are also covered. Leave is also granted for national or international adoption or fostering. There are no provisions covering the rights of the equivalent second parent.

5.4.2 Paid paternity leave (Article 8(1) and (2) of Directive 2019/1158)

Paternity leave is covered by an allowance of 100 % of the last monthly remuneration and is also to be calculated as length of service as regards retirement requirements, disregarding the length of service of the worker. Five days' notice of the expected date of delivery may be given in writing to the employer by the worker, without prejudice to the most favourable conditions established by collective bargaining on this point (Decree No. 105/2022).

[57] However, in special cases maternity leave is granted to the father after the birth for the whole length of the maternity leave or for the remaining period, that is: where the mother dies or becomes seriously ill; if the mother abandons the child; if the child is in the sole custody of the father.

[58] Article 4, para. 24, Law 92/2012; Article 1, para. 205, Law 208/2015 (Budget Act 2016); Article 1, para. 354, Law 232/2016 (Budget Act 2017); Article 1, para. 278, Law 145/2018 (Budget Act 2019); Article 1, para. 342 Law 160/2019 (Budget Act 2020); Article 1, paras 363 and 364, Law 178/2020 (Budget Act 2021); Article 1, para. 134, Law 234/2021, which turned the compulsory 10 days' paternity leave into a permanent measure; Decree No. 105/2022.

Paternity leave paid in substitution of maternity leave in special cases is covered by an allowance of 80 % of the average overall daily wage. During this leave, nominal contributions are taken into account for pension rights and amounts.
There is no ceiling to these allowances (Decree No. 151/2001). Their amount is higher than that of sick pay.

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

5.4.3 Legal protection of the right to paternity leave (Articles 10, 11 and 12 of Directive 2019/1158)

Under Article 54 of Decree No. 151/2001, the same protection against dismissal provided for during maternity leave is extended to the father, whether natural or adoptive/foster, from the birth or entry into the family of the child until he or she is 1 year old. Dismissal on the grounds of an application for or the taking of paternity leave is therefore null and void, and the special remedy of reinstatement provided by Article 18 of the Worker's Statute is enforceable. Fathers are entitled to the same protection as mothers as regards 'blank resignation', as provided by Article 55(4) of Decree No. 151/2012. The mutual termination of the employment contract or the resignation of a working father must be signed in front of an inspector from the Ministry of Labour during their child's first three years. The same rule applies to adoptive parents or persons who have been given official custody of a child from the date of birth/entering the family.

The same holds true for workers' 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' annual 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.

Discrimination on the ground that workers have applied for or have taken paternity leave is forbidden (Article 1, Decree No. 198/2006).

5.4.4 Case law on paternity leave

A male worker contested his dismissal, claiming that it was discriminatory under Article 35 of Decree No. 198/2006, as it took place within a year of 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 right of workers 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, promotion and working conditions as it would cause sex discrimination. The Court of Cassation confirmed the second instance judgment, which deemed the personal scope of Article 35 to be limited to female workers.[59] 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

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

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 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 differential treatment as men are not in an analogous situation. The Court underlined once again the principle adopted by the Constitutional Court, according to which a different protection based on gender cannot be deemed to be discriminatory in itself. This 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 substantive equality for working women, in line with well-established CJEU case law.[60]

5.4.5 Table on paternity leave

Table 4: Table on paternity leave

Who is entitled?	Duration	Payment or allowance
Father	10 working days	100 % of earnings

5.5 Adoption leave

5.5.1 Adoption leave in national law (recital 27 of Directive 2006/54)[61]

National legislation does not provide for adoption leave for adoptive parents for the purpose of early bonding with the adopted child, in addition to parental leave on the grounds of adoption of a child. However, according to Decree No. 151/2001, parental leave also concerns national and international adoption and legal custody of children; paternity leave is also granted in the case of national or international adoption or fostering; the same provisions on maternity leave and the respective rights and protection are extended to national and international adoption and the official custody of a child.

[60] For example, 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.

[61] Adoption leave is defined at EU level as an individual and non-transferable right to leave of men and women subsequent to the adoption of a child. While in the case of birth there are two distinct rights to create an early bonding with the child, i.e. maternity leave for the delivering mother and paternity leave for the other parent, in the case of adoption there is an only right to leave (adoption leave), which under the EU definition should be the same for each adoptive parent.

5.5.2 Legal protection of the right to adoption leave (Article 16 of Directive 2006/54)

National legislation does not provide for adoption leave for adoptive parents for the purpose of early bonding with the adopted child, in addition to parental leave on the grounds of adoption of a child. All provisions on maternity, paternity and parental leave are extended to national and international adoption, including provisions on protection against dismissal due to exercising the right to leave and the right to return to the same or an equivalent job after leave.

5.5.3 Case law on adoption leave

There is no case law on this issue.

5.6 Parental leave

5.6.1 Parental leave in national law (Article 5 (1), (2) and (4) of Directive 2019/1158)

Parental leave is provided for by Decree No. 151/2001, Articles 32-38 (and following changes).

Parental leave lasts for a total of 10 months for both parents. Each parent cannot take more than 6 months of leave.

Leave 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: this period is long enough, but it may be better to extend it to 14 years, as has been set out by the Family Act (see Section 4.5 above).

Parents can take parental leave simultaneously. If a working father decides to take no less than three months off from work, the total time allowed to both parents is 11 months; this is clearly an incentive for working fathers to take leave (Articles 32 and 36 of Decree No. 151/2001).

The maximum duration of leave is extended to 11 months for single parents and for parents who have been given exclusive custody of the child (Decree No. 105/2022).

The duration of leave is expressed in working days.

The provisions on parental leave apply to all those working in the private and public sectors; part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary employment agency are also covered. There is no work, contributions and/or length of service requirement in order to benefit from parental leave. The right is available to biological parents, national and international adoptive parents and those who are in legal custody of children, but not de facto co-parents. Decree No. 105/2022 has extended the main provisions on parental leave to 'para-subordinated' workers (i.e. self-employed workers who have a status very similar to those of employed workers).

Parental leave is an individual right for each parent. 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.

5.6.2 Period of notice (Article 5(3) of Directive 2019/1158)

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 for hourly use. The worker 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).

5.6.3 Postponement of parental leave (Article 5(5) of Directive 2019/1158)

Parental leave cannot be postponed by the employer. However, Law 228/2012 has 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 legal interpretation called an *interpello* (under Article 9 of Decree No. 124/2004, Interpello No. 13 of 11 April 2016), which reiterated that, where the employer wishes to postpone parental leave, the worker's interests have priority, although this opened up the possibility of monthly agreements with the worker or union representative aimed at reconciling the right to parental leave with the needs of the enterprise.

5.6.4 Flexible take-up of parental leave (Article 5(6) of Directive 2019/1158)

Parental leave can be taken for one continuous period or various periods. The means of application of parental leave on an hourly basis are stipulated by collective agreements. In the event of non-regulation by collective bargaining, even at company level, of the methods for taking parental leave on an hourly basis, each parent can choose between daily and hourly use. Taking leave on an hourly basis is allowed to an extent equal to half the average daily time of the four-week or monthly pay period immediately preceding the one during which parental leave begins (Article 32, Decree No. 151/2001). These are absolute rights of the worker.

5.6.5 Special rules for adoptive parents, parents with a disability and parents of children with a disability or a long-term illness (Article 5(8) Directive 2019/1158)

Parental leave provisions apply to all parents according to the same conditions, including in the case of national or 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, leave cannot be taken when the child comes of age (Article 36 of Decree No. 151/2001).

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. According to Law No. 104/1992 (as modified by Article 3(1)(b) of Decree No. 105/2022), working mothers or, alternatively, working fathers (including adoptive ones) of a child with severe disabilities are entitled to benefit from two hours of time off a day until the child is aged 3, or three days a month, as an alternative to the extension of parental leave to the age of three years. The three days a month of time off to take care of relatives with severe disabilities is extended to partners in a civil union and de facto cohabitants. Moreover, this right is divisible between different caregivers, who can use it in alternation with each other, so as to assure a better balance of family duties. The time off or leave is paid for by the employer, who then deducts the amount from what is owed to the relative welfare agency.

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, which is independent from parental leave. 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).

There are no specific measures for parents with disability as regards parental leave.

5.6.6 Paid parental leave (Article 8(1) and (3) of Directive 2019/1158)

The period of parental leave covered by an allowance of 30 % of the last monthly remuneration is 9 months. Each parent is entitled to an autonomous, non-transferable, right to 3 months of remunerated parental leave, and a further three months can be used by the parents in alternation with each other. Consequently, if both parents take up non-transferrable parental leave and one of them takes up the alternative parental leave as well, the period covered by the allowance is 9 months. Single parents are entitled to a maximum of 11 months of parental leave, and 9 months are covered by the allowance. Parents of children with severe disabilities are entitled to the allowance mentioned above for the three years of parental leave that they can take until the children reach the age of 12.

Article 1(359) of Law 197/2022 increased the amount of the month allowance to 80 % of the last monthly remuneration: parents can take advantage of this increase, alternating with each other, up to a maximum total length of one month per child aged up to six years; this provision was meant to be a temporary measure, but it was made permanent by Article 1(217) of Law No. 207/2024.

Parental leave must be reckoned as length of service and cannot reduce holidays and annual remuneration, except for incentives which depend on the actual performance of the job, unless expressly specified by collective agreements.

Until the child reaches the age of 12, parental leave of longer than nine months is covered by the allowance, provided that the individual income of the person concerned is less than 2.5 times the amount of the minimum pension payable by the INPS (the National Institute for Social Security) (Decree No. 105/2022).

Allowances are paid by the state through INPS. There are no eligibility conditions applicable in national legislation for parental leave. The amount of parental allowance has no ceiling.

The compensation depends on the parental leave taken, so that compensation is only granted if and to the extent that leave is taken.

The compensation is an individual and non-transferable right of each parent, for its whole duration. However, it is up to the parents to choose which one of the two will benefit from the allowance or to what extent; it may be that the allowance is taken entirely by one of the two parents. In Italy, parental leave is essentially used by women. It is quite unusual for fathers to take parental leave. The gender pay gap and the fact that men are often the main breadwinners has a great influence on this. As parental leave benefits are calculated as a percentage of the worker’s pay, it is more convenient for families to lose part of the woman’s pay than some of the man’s pay, as the man’s pay is typically higher than the woman’s pay. As a measure to encourage fathers to take parental leave, the maximum total length of the leave awarded per child has been increased from 10 to 11 months if the father uses at least three months. An allowance of 30 % is too low to encourage the main breadwinner of the family to take the leave. Moreover, the compensation, despite the increases, is not high enough to provide a decent living standard. Therefore, recital 31 of Directive 2019/1158 is not fulfilled.

5.6.7 Legal protection of the right to parental leave (Articles 10, 11 and 12 of Directive 2019/1158)

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. Also, there is no explicit provision that states that workers are entitled to benefit from any improvement in working conditions to which they would have been entitled had they not taken the leave. However, under Article 34 of Decree No. 151/2001, periods of leave count towards the worker's length of service.

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.

The employment relationship is suspended during parental leave, paternity leave, carers' leave and all the other types of leave. During this leave, the continuity of entitlements to social security covered under the different schemes, in particular healthcare, is provided. During periods of parental leave, for the first 12 years of the child's life (or during the first 12 years from the day that the child enters the family in the case of adoption or official custody), 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 children with severe disabilities); for any leave taken over the maximum period of 9 months, notional contribution calculations for pension purposes are reduced, but the amount can be fully supplemented through the redemption of contributions.

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. The consequence is that all remedies and sanctions provided by anti-discrimination legislation are applicable. 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 of Decree No. 151/2001); compensation is also possible in place of reinstatement. More generally, the remedy of nullification is enforceable for discriminatory acts. The revocation of public benefits or even the exclusion, for a certain period, from any further awarding of financial or credit incentives or from any public tender for the employer is provided as a further remedy in the event of established direct or indirect discrimination. Administrative sanctions (fines) are provided for the protection of motherhood and fatherhood.

Finally, the reversal of the burden of proof applies (Article 40 of Decree No. 198/2006.

5.6.8 Case law on parental leave

Most of the cases on parental leave, which are very few, concern the relationship between the leave and how the employer organises their work. For example, on 13 July 2007 the Tribunal of Trieste ruled against parental leave being divided into small fractions because it did not fit with the employer's organisation of their activity, which was of public interest. Conversely, the Council of State ruled that the way in which a firm's work is organised cannot interfere with the enjoyment of parental leave, as this is specifically targeted at the care of children.[62] 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 for the spouse at work.[63]

[62] Council of State, sez. VI, 25-06-2007, No. 3564. See also: Council of State, sez. VI, 08-05-2008, No. 2112.
[63] Court of Cassation, civ., sez. lav., 16-06-2008, No. 16207.

5.6.9 Table on parental leave

Table 5: Table on parental leave

Duration of leave	Right to leave individual and non-transferable?	Paid period	Right to payment or allowance individual and non-transferable?	Payment or allowance
10 months per family (11 if the father takes 3 months)	Yes, for 4 months per parent	9 months per family	Yes, for 3 months per parent	- 2 months: 80 % of earnings if taken before the child is 6 or 30 % otherwise; - 7 months: 30 % of earnings

5.7 Child-related leave in relation to surrogacy

5.7.1 Prohibition of surrogacy

In Italy, pregnancy for others is prohibited by Law No. 40/2004 on medically assisted procreation, which punishes 'with imprisonment from three months to two years and with a fine of 600,000 to one million euro' whoever 'carries out, organises or advertises' surrogate motherhood. The ban was confirmed by the Constitutional Court (Decision No. 272/2017), which considered that the practice of surrogacy 'intolerably offends the dignity of women and profoundly undermines human relationships'.

5.7.2 Child-related leave in relation to surrogacy

Surrogacy is prohibited in Italy.

5.7.3 Case law on child-related leave in relation to surrogacy

There is no relevant national case law on child-related leave in relation to surrogacy.

5.8 Carers' leave

5.8.1 Carers' leave in national law (Articles 3(1)(c), (d) and (e) and 6 of Directive 2019/1158)

Italy has different types of care leave in place.

According to Articles 47 to 52 of Decree No. 151/2001, both parents may, in alternation, take time off from work if a child younger than three becomes ill; this leave can last for the whole duration of the child's illness (without any limits). The parents may also, alternately, take up to five days off from work per annum if a child aged between three and eight becomes ill. In this instance, cohabitation is not required by the legislation. Leave is also allowed, with a higher age limit (6 years rather than 3), when the child has been adopted or a parent has official custody; if the adopted child is aged between 6 and 12 years, the leave is available during the first three years after the child enters the family. The same regulations apply to the civil service. Civil servants, however, enjoy more favourable collective bargaining conditions than workers in the private sector. Under Articles 47 to 52, leave of absence for a sick child is unpaid. 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 or Christmas bonuses. According to Articles 47 to 52 of Decree No. 151/2001, a certification

of the child's illness is required. This certification is sent electronically by the National Health Service physician (or a physician working for an affiliated service) who is treating the minor to the INPS (National institute for Social Security); then, INPS electronically sends the certificate to the employer and the worker involved. There are no other qualifying conditions. The right to this leave is an individual right of each worker, but it is transferrable between parents. Its duration is expressed in working days. Notional contributions are calculated when the child is under the age of 3. These are reduced when the child is between 3 and 8, but the amount can be fully made up through the redemption of contributions.

Article 42(5) of Decree No. 151/2001 states that workers in the private or public sector who take care of a cohabiting spouse with severe disabilities 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. The duration is expressed in calendar weeks (that is, the period taken can be split into periods of less than one year). The disability is defined by the medical commission of the local NHS (or by the INPS, where the region has delegated it). The procedure is commenced by the NHS physician. This request must be accepted within 30 days of the application (Decree No. 105/2022). If there is no cohabiting spouse, then this right belongs to the relatives of the person with disabilities. The extended family and the de facto family are taken into consideration in this regard, i.e. the spouse, cohabitant, mother, father, children, brothers, sisters and relatives up to the third degree. However, there is a hierarchy among the beneficiaries, whereby the most distant relatives intervene in the absence or incapacity of those closest. Cohabitation is necessary only for the spouse. Decree No. 105/2022, equalises the rights of partners in a civil union, to which the measure was already applied, and of the de facto cohabitant of the spouse. The two-year period may be used only once in a person's entire working life. Under Article 42(5) of the Decree, the benefit during this period is the same as the last salary earned, up to a maximum of EUR 43 579 per year, although this maximum is constantly reviewed. The period of leave is covered by notional contributions within a ceiling, but it does not count towards the length of service. The leave is paid for by the employer, who then deducts the amount from contributions owed to the relevant welfare agency. The right to this leave is an individual right of each worker but it is transferrable between beneficiaries.

Article 33 of Law 104/1992 states that workers in the private or public sector who take care of a relative with severe disabilities who is not hospitalised are granted three days of leave a month (also continuous). Both parents, including adoptive parents, of a child with severe disabilities are entitled to this leave and can use it alternately. The leave also applies to the guardian of a person with severe disabilities. Here the extended family and the de facto family are taken into consideration: spouse, cohabitant, mother, father, children, brothers, sisters and relatives up to the third degree. Decree No. 105/2022 extended the three-day-a-month time off to partners in a civil union and de facto cohabitants. Cohabitation is not necessary. Under Article 33, a benefit equal to the claimant's normal wage is paid. The period of leave is covered by figurative or notional contributions. The right to this leave is an individual right of each worker, but it is transferrable between beneficiaries.

Article 4 of Law 53/2000 (as implemented by Ministerial Decree No. 278/2000) provides for two years of unpaid leave for serious family reasons, which can be taken all at once or in parts and may be used only once in a person's entire working life. Here the extended family and the de facto family are taken into consideration: spouse, cohabitant, mother, father, children, brothers, sisters, and relatives up to the third degree. Cohabitation is not necessary. The employer may deny such a leave of absence, provided an adequate explanation linked to organisational or productive reasons is given. The worker must ask the employer for leave and state the reasons for requiring it. The right to this leave is an individual right of each worker but it is transferrable between beneficiaries.

5.8.2 Legal protection of the right to carers' leave (Articles 10, 11 and 12 of Directive 2019/1158)

Rights that have been acquired or that are in the process of being acquired by workers on the date on which the leave starts are not maintained until the end of the leave and workers are not expressly entitled to improvements in working conditions that occurred during their leave, under Article 42(5) of Decree No. 151/2001 (workers who take care of a cohabiting spouse or relative with severe disabilities who is not hospitalised) and under Article 4 of Law 53/2000 (two years unpaid leave for serious family reasons). In such cases, this protection is not expressly set out by legislation, which states that the leave does not count towards the length of service. However, rights acquired and improvements to working conditions are assured in all other cases involving care leave, under Articles 47 to 52 of Decree No. 151/2001 (time off from work when a child under the age of three becomes ill) and Article 33 of Law 104/1992 (concerning workers in the private or public sector who take care of a relative with severe disabilities or children who are not hospitalised).

At the end of their period of leave, workers are entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them under Articles 47 to 52 of Decree No. 151/2001 and Article 33 of Law 104/1992. They are not entitled to this under Article 42(5) of Decree No. 151/2001 or Article 4 of Law 53/2000.

As regards care leave, the protection against discrimination can be applied. Moreover, Decree No. 105/2022 has made some changes regarding leave with respect to Law No. 104/1992 on the assistance, social integration and rights of persons with disabilities: a general ban on discrimination protects workers who benefit from different rights provided under this legislation, both as persons with disabilities and as caregivers.

Dismissal on the grounds of an application for or the taking of care 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. More generally, the remedy of nullification is enforceable for discriminatory acts. The revocation of public benefits or even the exclusion, for a certain period, from any further awarding of financial or credit incentives or from any public tender for the employer is also provided as a remedy in the event of established direct or indirect discrimination. Administrative sanctions (fines) are also provided for.

Finally, the reversal of the burden of proof applies (Article 40 of Decree No. 198/2006).

5.8.3 Case law on carers' leave

Among the case law, the decision of the Tribunal of Pavia of 19 September 2009 is quite interesting. According to this decision, the unpaid leave for serious family reasons under Article 4 of Law 53/2000 must be counted towards the length of service; indeed, the provision 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*, where it was stated that the ban on discrimination on the ground of disability is to be applied to both the person with disabilities and their caregivers.[64]

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

5.8.4 Table on carers' leave

Table 6: Table on carers' leave

National leave and duration	Type of entitlement	Beneficiaries	Situations covered
- Leave to care for a sick child (system 1): the necessary time for a child under three, and five working days per year for a child between three and eight; - Leave to care for a disabled spouse (system 2): two years per career; - Leave to care for a disabled child or relative (system 3): three working days per month; - Leave for serious family reasons (system 4): two years per career	Per worker	- -System 1: children under eight; - System 2: spouse; - System 3: close relatives; - System 4: close relatives	- System 1: sickness; - System 2: severe disability; - System 3: severe disability; - System 4: care or assistance of a person and others

5.9 Time off for *force majeure*

5.9.1 Time off for *force majeure* (Article 7 of Directive 2019/1158)

There are no specific provisions on time off for *force majeure* in the Italian legal system. However, Article 4 of Law 53/2000 provides for leave for death or serious illness, which can be regarded as time off for *force majeure* according to Article 7 of Directive 2019/1158. This may be taken by a private or public sector employee upon the death or serious illness of a spouse or of another relative in the second degree, whether or not they lived or live together, or that of anybody who belongs to the registered family of the employee. Leave consists of the right to take a maximum of three days off work per year. All the wages for the days of leave are paid by the employer, not by the publicly financed social security system. Implementation of the Work-life Balance directive is rare in this regard.

5.9.2 Legal protection of the right to time-off for *force majeure* (Articles 10 and 11 of Directive 2019/1158)

Rights that have been acquired or that are in the process of being acquired by workers on the date on which their leave starts are maintained until the end of the leave, and workers are entitled to improvements in working conditions that occurred during their leave (Article 4 of Law No. 53/2000). At the end of their leave, workers are entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them. Protection against discrimination can apply (Decree No. 151/2001).

5.9.3 Case law on time off for *force majeure*

There is no case law on this issue.

5.9.4 Table on time-off for *force majeure*

Table 7: Table on time-off for *force majeure*

National measure and duration	Type of entitlement	Situations covered
Force majeure leave: three working days per year	Per worker	Death or serious illness of a spouse or a relative up to the second degree

5.10 Flexible working time arrangements (FWAs)

5.10.1 Right to FWAs (Article 3(1)(d) and (f) and 9 of Directive 2019/1158)

Italy has different types of FWA in place. Some of them are related to care reasons; others are not related to care or children-related reasons and are available to all workers. In particular, under Article 1(58) of Law 662/1996 (as modified by Article 73 of Decree No. 112/2008 and Article 16 of Law 183/2010), the public administration can authorise a shift from full-time work to part-time work, within 60 days of the request, on condition that it does not clash with organisational needs. Under Article 6(4) of Decree No. 79/1997, the worker has the right to return to full-time work after two years.

Furthermore, remote working (telework) is provided for in the public sector by Article 4 of Law 191/1998, Presidential Decree No. 70/1999 and the national contractual agreement of 23 March 2000, as an opportunity to ensure savings and higher standards of efficiency and 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 work remotely; 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 criterion only to allow a worker to undertake projects by teleworking where there is a surplus of applications, or for workers with disabilities who find it difficult to reach the workplace and for workers taking care of children under eight or a live-in relative with 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 for the project has elapsed.

Articles 15 to 20 of Law 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. This 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 regarding central issues, such as the duration of the working arrangements, the employer's power of control and management, the 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 provisions are to increase productivity and to promote the reconciliation of work with family life. These provisions were amended by Article 1(486) of Decree No. 45/2018 (the Budget Act for 2019): according to this provision, both public and private employers who sign smart working agreements must give priority to working mothers within three years of the end of the compulsory maternity leave, and to working parents of persons with severe disabilities. The decision of the legislature to entitle only working mothers but not working fathers to priority in accessing smart working is a step backward in what had been the progressive extension to fathers of the mother's right to take care of children. Decree No. 105/2022 has modified this provision, however. In particular, public and private employers signing agreements on smart working will be required to give priority to requests made by workers with children up to 12 years of age, or without any age limit in the case of children with severe disabilities. The same priority is given by the employer to the requests of working caregivers. Moreover, disadvantageous working conditions cannot be applied to smart workers as they are to be considered as a

form of discrimination and consequently null and void. Decree No. 105/2022 also grants priority in access to smart working to workers in the private or public sector taking care of a relative with severe disabilities who is not hospitalised (under Article 33 of Law 104/1992). Protection for the use of these rights is strengthened by an explicit reference to the enforcement of Article 56 of Decree No. 151/2001 on the right to return to the same job, as provided to working parents.

Finally, Article 8(7) of Decree No. 81/2015 provides that private and public workers can apply, once only, for the conversion of the full-time employment relationship into a part-time one, in place of parental leave or within the limits of the leave still due. Here, the employer is always required to proceed with such a conversion within 15 days of the request, so this is an absolute right. Decree No. 105/2022 has extended the priority related to the conversion of the contract from full-time to part-time, as provided to working caregivers, to partners in a civil union and de facto cohabitants. Under this reform, the conversion is protected by the ban on discrimination.

Rights to FWA are relative, except under Article 8(7) of Decree No. 81/2015. Here, the employer is always required to proceed with the conversion within 15 days of the request, so this is an absolute right.

5.10.2 Duration of FWAs (recital 35 and Article 9(1) and (3) of Directive 2019/1158)

The duration of FWA is not subject to limitation, except in two instances. The first of these is under Article 8(7) of Decree No. 81/2015, according to which the worker can apply, once only, in place of parental leave or within the limits of the leave still due, for the conversion of the full-time employment relationship into a part-time one. In this case, the worker is entitled to return to the original working pattern at the end of the agreed period; the worker has no right to request to return to the original working pattern before the end of the agreed period, even on the basis of a change in their circumstances; and the employer does not need to consider and respond to the request for an early return to the original working pattern. The legislation provides that, during the period of leave, the worker and the employer agree, where necessary, on appropriate measures for resuming work, taking into account any provisions of collective bargaining. Secondly, for teleworking authorised by the employer as part of a project geared towards enhancing the quality and efficiency of services through flexible working, under Article 4 of Law 191/1998, Presidential Decree No. 70/1999 and the national contractual agreement of 23 March 2000, a minimum period of teleworking is agreed for the project.

5.10.3 Legal protection of the right to FWAs (Articles 11 and 12 of Directive 2019/1158)

Protection against discrimination can apply here (Decree No. 151/2001).

Dismissal on the grounds of an application for or the taking up of FWAs is illegitimate, and the special remedy of reinstatement provided by Article 18 of the Worker's Statute is enforceable in cases of gender discrimination (Article 54, Decree No. 151/2001); compensation is also possible in place of reinstatement. More generally, the remedy of nullification is enforceable for discriminatory acts.

Finally, the reversal of the burden of proof applies, but only in cases of gender discrimination (Article 40 of Decree No. 198/2006).

5.10.4 Case law on FWAs and legal protection of the right to FWAs

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

5.10.5 Table on FWAs

Table 8: Table on FWAs

National system/s	Absolute or relative right	FWAs covered and workers entitled
- System 1: part-time for carers; - System 2: FWAs for carers	Relative rights (but not complete)[65]	- System 1: part-time for some carers in the case of oncological diseases; - System 2: part-time, flexitime and teleworking for some carers

5.11 Evaluation of implementation

Decree No. 151/2001 on the protection of motherhood and fatherhood, which includes all rules on this subject, and which also implements Directives 2006/54, 2010/18 and 2019/1158, 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 incorporated into Decree No. 151/2001.

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

In relation to the 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 dismissals 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), and to parents' respective rights, is regarded as equating to direct gender discrimination (Article 25 of the Equal Opportunities Code).

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 Law 101/2008, which sets out 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 sets out 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 sectors.

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.

[65] In Italy the employer has to consider and respond to the worker's request, but does not have to provide reasons for a refusal.

Decree No. 151/2001 extends the same provisions on maternity leave and the respective rights and 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.

Decree No. 105/2022 has implemented Directive 2019/1158. However, Italian legislation was already fairly well in line with the Directive. The main problems of the existing legislation concern:

- The equivalent second parent (e.g. a co-mother in a lesbian relationship) is often not entitled to benefits, for example in cases of paternity leave and parental leave.

- With regard to parental leave, the allowance is not set in such a way as to facilitate the take-up of parental leave by both parents. That is, the allowance is too low to encourage the main breadwinner of the family to take the leave and also to provide for a decent living standard.

- Parental leave provisions for parents with a disability are missing.

- As a rule, there are no flexible working arrangements for workers with children and for carers: a right to adjust working time patterns is granted only in limited specific situations. Moreover, in these situations, employers are often not obliged to consider and respond to requests for flexible working arrangements within a reasonable period of time or to take into account the needs of both the employer and the worker. In addition, employers are not required to provide reasons for any refusal of such requests or for any postponement of such arrangements. In all these hypotheses, the worker has no right to request to return to the original working pattern before the end of the agreed period, even where this is justified on the basis of a change of circumstances and the employer is not asked to consider and respond to a request for an early return to the original working pattern.

- Under Article 10 of Directive 2019/1158, notional social security contributions are not always granted or fully granted. In addition, workers are not always entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled had they not taken the leave. Finally, it is not always required by the legislation that rights that are in the process of being acquired by workers when leave is taken must be maintained until the end of such leave; the same goes for any changes arising from national law, collective agreements or practice.

- The penalty system must be strengthened: no sanctions are provided in the case of infringement against rights related to care leave, time off for *force majeure* or FWA.

As regards the main provisions that go further than the requirements of EU Directive 2019/1158, these concern:

- Parental leave: the length of the leave is longer than EU requirements; its provision is on a non-transferable basis, in that just two months out of six can be transferred for each parent; parental leave and the allowance paid during that period are not subject to any qualification periods; there are high-level provisions for parents of children with a disability or long-term illness; there is a one-month long incentive for working fathers to take the leave; the same sanctions system is applied as that which applies to discrimination in relation to any threat to the enjoyment of parental leave and respective rights; and there is continuity in social security coverage, for example as regards pensions.

- Paternity leave: the allowance is higher than required; there are no qualifying conditions to get the allowance.

- Care allowances: the set of care allowances, their length, the compensation provided and the pool of beneficiaries are much more favourable than required by the Directive.

- Decree No. 105/2022 introduced some measures which can be of help in taking the various types of leave. Under Article 7 of Decree No. 105/2022, INPS (the National Institute for Social Security) must activate specific digital services providing working caregivers with information and access to leave and time off within 18 months of the Decree being issued. Information initiatives aimed at promoting the use of time off and leave for family care duties are enhanced by the Presidency of the Council of Ministers (Prime Minister's Office), in accordance with the Minister of Labour, the Minister of the Interior and the Minister for Equal Opportunities, Family and Disability, which also ensures that workers are given complete and timely information on these rights by different elements of the National Health Service. Article 8 of the Decree provides for an annual report on the use of different types of leave, as mentioned above, to be addressed to the Minister of Labour, the Department for Family at the Prime Minister's Office and the Parliament. This ensures wide-ranging monitoring, especially of the impact of caregivers' rights on gender equality in the labour market and improvements in the sharing of care duties, and also of the interaction between different types of leave, including leave for adoption and leave for family reasons granted to self-employed workers.

5.12 Remaining issues

It is worth mentioning the Family Act (Law No. 32/2002) on the reorganisation and improvement of different measures aimed at supporting families, and especially women, in achieving a healthy work-life balance. The Act (of delegation to the Government) mainly aims to promote gender equality within the family by supporting women's participation in the labour market, including through more flexible scheduling, and by providing incentives for the second earner in the family (which is more often the woman in a household).

In particular, Article 3 of the Family Act delegates to the Government the task of issuing different decrees to reform the regulation of parental, maternity and paternity leave in order to strengthen and harmonise these decrees within two years of the delegating act entering into force. Proposals for these decrees may be issued by the Minister for Equal Opportunities and Family and by the Minister of Labour, together with the Minister for Economic Affairs and Finance, the Minister of the Public Administration, and the Delegated Political Authority for European Affairs.

The decrees will have to respect the following criteria:

- The extension of the right to take up parental leave will be limited when the child reaches 14 years of age. Provisions must enable more flexible use of parental leave, compatible with the provisions of collective agreements and also taking into account the specific needs of single parents.

- Parents will be entitled to five hours of remunerated time off to talk with the child's teachers during the school year. The father or a close relative will be entitled to time off from work to assist the mother in cases of specialist medical service for maternity protection.

- Further measures must be provided to favour the extension of this provision to self-employed and professional workers.

Other measures promoting a better balance of care duties within the family relate to changes to the regulation of paternity leave. In particular, the duration of compulsory paternity leave to be taken in the first five months following the birth (currently 10 days) will be extended. This will be made available to all fathers, irrespective of the length of service of the father and his marital status. This applies to employees in both the private and public sectors, under the same conditions, ensuring a reasonable notice period for the employer following collective agreement provisions. Further measures to favour the extension of this ruling to the self-employed and professionals will have to be provided.

On maternity leave, Paragraph 3(b) of Article 3 expressly states that the decrees will have to favour the increase of the allowance, which at present amounts to 80 % of the remuneration of the last month of work before the period of leave, to be covered by the National Institute for Social Security, plus a top-up to 100 %, which is often provided by collective agreements.

Article 4 delegates to the Government the tasks of issuing decrees within two years, reorganising and strengthening different measures aimed at promoting working mothers' participation in the labour market, sharing care duties and improving the balance of working and private life.

No further funds have been allocated to finance the majority of the measures envisaged by the Delegation Act, such as: incentives for employers who grant reversible flexible working conditions to working parents in accordance with national collective agreements; tools for the regulation of housework services, babysitting and care activities for the elderly; and a cut in taxes or contributions payable by employers, which is aimed at facilitating the substitution of working mothers and their return to work or training.

A gradual adjustment of the remuneration for workers taking time off because of illness of the child will be provided.

Collective bargaining for promoting conciliation measures will be supported by a cut in contributions.

The Family Act has been an important first step in an ambitious project of strengthening and reorienting policies to support families with children, helping with the costs of bringing up children and promoting the reconciliation of family and work with a view to gender equality. Nevertheless, the Act still has some shortcomings, which were not addressed during the bill's long parliamentary procedure. For instance, no increase in the parental leave allowance has been provided, and its low amount (30 % of the last monthly remuneration) is one of the main reasons for its scarcely being used by fathers, together with cultural reasons.

Furthermore, the increase in the duration of paternity leave is too uncertain to be assessed for its impact on changing the traditional distribution of roles within the family, and no sanctions have been provided for in the event that the father does not take leave.

The text of the Family Act is still too vague as regards flexibility. Article 4 does not provide for the right to reversible flexible working conditions, but generically refers to incentives for employers who will grant them according to national collective agreements.

Moreover, although sharing care responsibilities stands out in the title of Article 4, no specific measures or criteria seem to directly pursue this objective.

In the end, although Law 32/2022, in contrast with the previous proposed legislation, envisages some incentives to increase female participation in the labour market, the author can confirm that one of the main deficiencies of the reform concerns the fact that it does not abandon the traditional pattern. No real emphasis is put on promoting the sharing of

parental care by incentivising the father's role so that the mother can accept and maintain paid work.

Other relevant provisions have been enacted in Law 178/2020. Article 1(334) provided a fund of EUR 30 million a year for 2021, 2022 and 2023 to be allocated by the Ministry of Labour, to support the enactment of legislative provisions to recognise the social and economic value of family caregivers. Article 1(365) entitles unemployed or working women who are the only breadwinner in the family to an allowance of up to EUR 500 a month if they are taking care of a child with a certified disability of at least 60 %. Over the next few years, there is to be a remarkable and progressive increase in state investment in funds for municipalities to support the development of crèches (Article 1, Paragraphs 791 and 792).

Finally, another important provision in the area of leave is Article 24 of Decree No. 80 of 15 June 2015, implementing Delegation Law 183/2014, which introduced some measures aimed at supporting victims of gender-based 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 Issues related to gender equality and social security

The main gender discriminatory features in occupational funds relate to the survivors' pensions rights of cohabitants and partners, who are often women. Further, it must also be noted 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.

6.1.2 Political and societal debate and pending legislative proposals

Occupational schemes are regulated by Decree No. 252/2005. Decree No. 5/2010 has added Article 30*bis* 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 30*bis* 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 notional 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 9(1)(g). 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.[66]

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 the recovery of notional contributions during care leave and the banning of short-term employees by some funds may be detrimental to

[66] Until 2017, legislation on occupational pensions failed to implement the Recast Directive as regards the pensionable age (Article 9(1)(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 (Law 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.

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

There are no specific difficulties. Security schemes in this area are regarded as occupational social security schemes.

6.9 Evaluation of implementation

As regards the introduction of the prohibition 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 Overview of national acts

The basic national act that contains provisions on statutory social security schemes is Law 335/1995: the principal aims of this law were to balance the budget and harmonise the various pension schemes. The 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 socioeconomic 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[67]; 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.[68] Law 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 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 also important as regards gender equality in the social security system.

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.

7.1.2 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, Law 213/2023 (the Budget Act for 2024) makes it possible, as a temporary measure, to claim an early pension at 62 years of age with 41 years of contributions (known as 'quota 103'). The option of taking this early pension, 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

[67] This was a pension linked to years of contributions, which allowed workers to get their pension before the pensionable age.
[68] Law 243/2004, Law 247/2007, Law 102/2009, Law 214/2011.

and lower pay levels.[69] The same Law postpones, with important modifications, the operation of the 'women's option', according to which women aged 61 (the age is reduced by one year for each child with a ceiling of two years; the age is 58 years for women dismissed from work) and with 35 years of contributions by 31 December 2023, can benefit from an early pension if they are caregivers for a relative with severe disabilities, if they have a reduction in working capacity greater than or equal to 74 %, or if they have been dismissed by businesses in crisis. Early pensions are calculated entirely according to 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.

There are no conditions regarding the affiliation to a scheme or entitlement to statutory benefits that are different for men and women. However, 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. In particular, the increase in minimum insurance and contribution requirements in Italy over 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. The same goes for the economic thresholds for access to benefits; indeed, to qualify for a pension when retiring aged 67, one needs to reach a minimum pension amount equal to the social allowance. A minimum pension amount of at least three times the social allowance must be attained in order to retire at the age of 64 (2.8 times the social allowance for women with one child and 2.6 times the allowance for women with two or more children). In both cases, 20 years of contributions are required. Furthermore, the earnings variations and 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. These types of discrimination are very difficult to demonstrate and prove in the Italian system. This is because the structure of the current pension system proposes a uniform calculation mechanism for all workers, aimed at guaranteeing everyone a benefit proportional to the contributions paid, the retirement age and life expectancy, even if then the system is ill-suited for the characteristics of precarious work. Non-standard workers are also not helped by the abolition of the minimum pension supplement and its replacement with the social allowance (which has more stringent income limits), in the contribution system. The instruments supporting the contributory position in relation to inactive periods, i.e. voluntary contribution, redemption and notional contribution, are also quite weak in the Italian system; moreover, redemption and voluntary contribution are quite onerous.

[69] 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), www.ingenere.it/articoli/quota-cento-opzione-donna-politica-non-ci-vede.

It is worth mentioning here the 2016 Court of Cassation case No. 8564.[70] The Court of Cassation took account of the ECJ decision in joined cases C-395/08 and C-396/08, *Bruno and Others*, to rule that the principle of non-discrimination between part-time workers and full-time workers (referred to in European Directive No. 97/81) implies that the length of contributions useful for determining the date of acquisition of the pension right is calculated for the part-time worker as if he had occupied a full-time position, also taking unpaid periods into consideration in full, given that part-time work is a particular way of performing the employment relationship, characterised by the mere reduction of the normal length of work; therefore, vertical part-timers must be credited with contributions for the weeks when they do not carry out their work activity, for the purpose of gaining access to pension. For the Court of Cassation decision, ECJ decisions C-385/11 and C-527/13 were also extremely important in relation to European Directive No. 79/7.[71] However, for other precarious workers and for the self-employed the problem of the reduction of the contribution record remains.

Advantages as regards old-age pensions are granted to women for the purpose of child rearing.

In Italy, there 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 (before 67 years of age), that is 42 years and 10 months for men and 41 years and 10 months for women (Law 214/2011, known as '*Legge Fornero*'). According to Article 4 of Law 108/1990, in private employment, women who have reached 41 years and 10 months of contributions, cannot be obliged to retire until they reach the pensionable age, however, they can be dismissed first in the round of a redundancy procedure. When women are compelled to retire for the above reasons, they will get one year less contributions than men, which will in turn result in their pension amount being less. The situation is slightly different in public employment. Here, Article 72 of Law 133/2008 states that

> 'with a legitimate decision with reference to organisational needs and selection criteria applied and without prejudice to the functional provision of services, public administrations may, starting from the accrual of the contributions requirement for access to retirement as stated by Article 24 of Law 214/2011 …, terminate the employment relationship and the individual contract … with six months' notice'.

It must be stressed that, according to Article 72, the fulfilment of early pensions requirements is not sufficient for dismissals, and there must also be organisational reasons.

Another early retirement option, called the 'women's option' is provided by Law 213/2023, according to which women aged 61 (the age is reduced by one year for each child with a ceiling of two years; the age is 58 years for women dismissed from work) and with 35 years of contributions by 31 December 2023, can benefit from an early pension if: they are caregivers for a relative with severe disabilities; have a reduction in working capacity greater than or equal to 74 %; have been dismissed by businesses in crisis. The pension is calculated entirely on the contributory system.

Cohabitants and partners are not included in survivors' schemes.

[70] Court of Cassation (Cassazione 29/4/2016, No. 8564) in relation to judgment of 10 June 2010 in joined cases *Bruno and Pettini*, C-395/08 and *Lotti and Matteucci*, C-396/08, ECLI:EU:C:2010:329. See: https://www.tcnotiziario.it/Articolo/Index?idArticolo=339316&tipo=&cat=ULTLAV&fonte=Teleconsul.it%20-%20Ultimissime%20Lavoro.

[71] Judgment of 22 November 2012, *Moreno*, C-385/11, ECLI:EU:C:2012:746, judgment of 14 April 2015, *Cachaldora Fernández*, C-527/13, ECLI:EU:C:2015:215 and judgment of 8 May 2019, *Villar Láiz*, C-161/18, ECLI:EU:C:2019:382.

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.

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.

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, Law 213/2023 postpones the operation of the 'women's option', according to which women aged 61 (the age is reduced by one year for each child with a ceiling of two years; the age is 58 years for women dismissed from work) and with 35 years of contributions by 31 December 2023, can benefit from an early pension if: they are caregivers for a relative with severe disabilities; have a reduction in working capacity greater than or equal to 74 %; have been dismissed by businesses in crisis. The pension is calculated entirely on 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.

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 Law 213/2023 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.

The statutory system is compulsory for all types of workers.

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

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 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. Law 228/2012 made slight amendments to both decrees to avoid an action for non-compliance. In particular, Law 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.

8.2 Personal scope

8.2.1 Scope

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.

8.2.2 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. 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 except 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.

8.2.3 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.

8.2.4 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 (whether the partners are 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 between the self-employed person and their life partner.

8.3 Material scope

8.3.1 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).

8.3.2 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 Law 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 (self-employment) 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).

8.4 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 credit 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 credit 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 vocational training in 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.

8.5 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 Service, 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.

8.6 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 one month 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.[72] 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.

[72] Law 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).

Self-employed women, including self-employed fisherwomen in small-scale coastal and 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.[73] The allowance is paid for five months and amounts to 80 % of the minimum pay for contribution purposes.

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 five 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[74] 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.

Decree No. 105/2022, implementing EU Directive No. 2019/1158 (Work-Life Balance Directive), stated that maternity allowance also covers periods longer than five months in case of maternity at risk, both for professionals and other autonomous (self-employed) workers.

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.

Another provision, Article 1, Paragraph 239 of Law 234/2021 (Budget Act for 2022), concerns self-employed workers with low revenues: in the event that their annual income in the year before the birth of the child is lower than EUR 8 145 indexed to inflation, they can benefit from three additional months of maternity allowance.

Finally, Article 8, Paragraph 4 of Law 81/2017, as modified by Article 4, Paragraph 1(a)(1) of Decree No. 105/2022, provides for three months of paid parental leave, to be taken within the first 12 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); within the same period, the parents have the right, in alternation with each other, to a further three months of leave; the financial benefits for parental leave cannot exceed the overall limit of nine months between both parents.

[73] 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.

[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).

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 Law 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.

8.7 Occupational social security

8.7.1 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.

8.7.2 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.

8.8 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 (self-employed) or 'any other', including entrepreneurship.

8.9 Evaluation of implementation

The Equal Opportunities Code, introduced 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. Law 228/2012 made slight amendments to both decrees to avoid an action for non-compliance. In particular, Law 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. Law 228/2012 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. Following Law 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 an employee relationship between the self-employed person and his/her life partner.

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, which has been completed by Decree No. 105/2022, implementing EU Directive No. 2019/1158 on work-life balance for parents and carers, is, on the whole, fairly in line with EU anti-discrimination law.

8.10 Remaining issues

It is worth mentioning here the Budget Act for 2021 (Law 178/2020). Article 1, Paragraphs 97 to 108, allocated EUR 20 million for 2021, and the same amount for 2022, to support female entrepreneurship, with a special focus on the development of new technologies. Planned measures to be financed include: grants, zero-interest loans, assistance in setting up or running the business, investments in capital, vocational training and educational campaigns.

There are no remaining issues regarding self-employed persons.

9 Goods and services (Directive 2004/113)[75]

9.1 General (legal) context

9.1.1 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 2017 region's conference, where the question of whether the collaborative economy increases or decreases equality was raised.[76]

9.1.2 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. The insurance and financial services sector is the sector where discrimination is most likely to take place and in that respect, the Directive is crucially important in Italy.

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 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).

9.4 Exceptions

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

[75] See e.g. Caracciolo di Torella, E. (2021), *Directive 2004/113EC on Gender equality in goods and services – In search of the potential of a forgotten Directive*, European network of legal experts in gender equality and non-discrimination.

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

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 Law 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 the Law of 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 Presidency of the Council of Ministers (Prime Minister's Office), without any budget allocation. Article 55*novies* adds the promotion of studies, research, vocational training and the 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 and the Violence Against Women Directive (Directive (EU) 2024/1385)[77]

10.1 General (legal) context with regard to the obligation set out by the Istanbul Convention

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.[78]

Law 53/2022 regulates, widens and systematises the collection of data and information on gender-based violence in order to monitor the phenomenon and develop policies aimed at preventing and fighting it.

Under Article 2 of the Act, the Minister for Equal Opportunities will issue directives on the identification of statistical survey needs in this field, and every three years the National Statistic System will conduct a sample survey to estimate different kinds of violence, such as physical, sexual, psychological and economic violence, as well as acts of persecution in relation to behaviour that constitutes or contributes to constituting a crime. These estimates will be published and addressed to the Department for Equal Opportunities.

Regarding data collection obligations in general, public and private entities participating in the national statistical programme will provide the data ensuring the disaggregation and equal visibility of data relating to women and men as well as the use of gender-sensitive indicators.

The annual report of the Minister for Equal Opportunities to Parliament on the use of the Equal Opportunities Fund as regards policies fighting gender-based violence will include information on the surveys on gender violence mentioned above and the surveys on anti-violence centres and shelters, which will also be more detailed as provided by Article 7 of Law 53/2022.

Under Article 3 of the Act, the annual report of the Prime Minister to the Parliament on the activity of the National Statistic System will be supplemented by a report on the enforcement of Article 2.

Article 4 obliges all public health facilities to provide data and news related to violence against women, updating the information system for monitoring emergency healthcare.

Article 5 establishes an integrated data collection system for the Ministries of the Interior and Justice as regards crimes attributable to the phenomenon of violence against women, with particular regard to data that allows reconstructing the relationship between the author and the victim of the crime. Information on complaints, prevention applied by the head of

[77] See for more information: Nousiainen, K. and Chinkin, C. (2015), *Legal implications of EU accession to the Istanbul Convention,* European network of legal experts in gender equality and non-discrimination, available at https://www.equalitylaw.eu/downloads/3794-legal-implications-of-eu-accession-to-the-istanbul-convention; and De Vido, S., Sosa, L. (2021) *Criminalisation of gender-based violence against women in European States, including ICT-facilitated violence*, European Commission, available at: https://www.equalitylaw.eu/downloads/5535-criminalisation-of-gender-based-violence-against-women-in-european-states-including-ict-facilitated-violence-1-97-mb.

[78] See: https://www.istat.it/it/archivio/278024.

the police or by the judicial authority, precautionary measures, orders of protection and security measures, as well as closure measures and judgments will be gathered by this system. This survey will cover every victim of violence and every level of the judicial process.

Finally, under Article. 6, for the list mentioned above, the Register of News of Crimes will include information on the relationship between the offender and the victim, the age and gender of both, the presence at the scene of crime of a child of the offender and/or the victim, the place where the crime occurred, the possible type of weapon used.

The latest collection of data on violence against women led by ISTAT in cooperation with the Department of Equal Opportunities dates back to November 2021.[79] This report provides a reading of gender-based violence in the years of the pandemic, thanks to the use of: unpublished data from the Survey on users of anti-violence centres (CAV), which ISTAT conducted for the first time in 2020; data from calls to the number 1522[80], the public utility number set up by the Department for Equal Opportunities at the Presidency of the Council of Ministers; and data from the police forces, sourced from the Ministry of the Interior. These sources make it possible to evaluate some relevant aspects of the response of the protection system to gender-based violence at the time of the pandemic.

In particular, the Survey on users of anti-violence centres (CAV) reveals that:

- In 2020, more than 15 000 women began the personalised path to exit violence at the anti-violence centres.

- More than 90 % of women in need, around 13 700, turned to a CAV for the first time in 2020.

- 5.6 % of these women began the process of exiting violence in March 2020 and 15 % did so between April and May 2020, overcoming the restrictions imposed due to the health emergency; emergency interventions were in fact been more frequent in these three months.

- When information on the duration of the violence is present (about 10 400 cases), it emerges that for around 7,700 women (74.2 %), violence did not start with the pandemic but pre-existed: 40.6 % of the women had been subjected to violence for more than five years, 33. 6 % for one to five years.

- The response of the CAVs was efficient: 12.6 % of the women were offered the emergency intervention and safety service, 14.2 % could access a path of removal from situations of violence and 18 % were granted support for autonomy. The services most frequently used in 2020 were listening (97.1 %) and access to shelters (82.8 %).

From calls to 1522, it emerges that:

- In the first nine months of 2021, there were 12 305 requests for help to the 1522 number by victims via telephone call or via chat (15 708 in 2020 and 8 647 in 2019). In the first quarter of 2022, compared to the first quarter of 2021, there was a slight decrease in calls (from 7 974 to 7 814; -2 %): a decrease of the same intensity both for contacts by telephone and via chat, which decreased respectively from 6 673 to 6 534 and from 1 301 to 1 280.

- The data shows that the restrictive measures on mobility, adopted to contain the pandemic, amplified women's fear for their own safety. Indeed, in the first nine months of 2020 there was an increase in reports of violence in which the victim felt

[79] See: https://www.istat.it/it/files/2021/11/EFFETTI_PANDEMIA_-VIOLENZA_D_GENERE.pdf.
[80] This is a dedicated telephone line for victims of violence.

that their life, or that of their loved ones, were in danger (3 583 against 2 663 in 2019). Conversely, the easing of restrictions in the same months of 2021 led to a decrease in reports of violence in which the victim perceived imminent danger (2 457 in 2021).

- The easing of restrictive measures due to the pandemic also had a selective effect on the violence reported to 1522. In fact, compared to the same period in 2020, reports of violence suffered by partners decreased (from 58.6 to 53.4 %) and those concerning violence suffered by ex-partners and other family members or other perpetrators outside the family increased.

- The widespread awareness campaign, implemented so as not to make women victims of violence feel alone during the pandemic, also led to the emergence in 2021 of incidents of less serious violence than those reported in 2020.

From the police database, it emerges that:

- There was a sharp drop in reports of ill-treatment, stalking and sexual violence in the months of the lockdown and a new increase in the following months. The decrease in reports of ill-treatment is above all linked to the greater control implemented by partners and family members living together, consequent to confinement at home.

- The restrictive measures against the pandemic have underlined the differences in violence against men and women. Women are increasingly being killed at home, by partners and relatives. Men, on the other hand, are mainly killed by people they don't know, by acquaintances and in the context of organised crime.

- The tip of the iceberg of violence and homicides is however stable over time for women (who are killed with knives, firearms, improvised weapons and, more frequently than men, beatings or in other ways, such as asphyxiation and strangulation).

Other data are issued by the Ministry for Health.[81] In particular, data from the emergency room database shows that, in the three-year period 2017-2019, 16 140 women were reported as having been violented, out of a total number of 19 166 accesses to the emergency department From the emergency department data, it also emerged that, on average, a woman who has suffered violence over the three-year period returns to the emergency room 5 or 6 times .

In 2020 there were around 6 million presentations to the emergency room for women, of which almost 5 500 indicated a diagnosis of violence (9.2 for every 10 000 presentations). The total number of visits for any diagnosis in the year of the pandemic decreased by 40 % compared to 2019, while those diagnosed with violence decreased to a lesser extent (28 %).

In 2021 there were around 7 million presentations to the emergency room for women, of which almost 6 300 indicated a diagnosis of violence (9.3 for every 10 000 presentations).

In the period 2014-2021, the incidence of presentations was very low. At the regional level, there is a very wide range compared to the Italian average, going from 0 in some regions to 10.7 for every 10 000 total presentations in 2014; in 2021 it ranged from 0.3 to 19.8 for every 10 000 total presentations. This suggests a low propensity to recognise the phenomenon of gender-based violence, which indicates a need to implement training initiatives for emergency department personnel.

[81] See: https://www.salute.gov.it/portale/news/p3_2_1_1_1.jsp?lingua=italiano&menu=notizie&p=dalministero&id=6071.

Data from the Report of the Criminal Analysis Service of the Central Criminal Police Directorate,[82] which is current to 20 November 2022, shows that: in the period 1 January - 20 November 2022, 273 homicides were recorded (+2 % compared to the same period in 2021), with 104 women victims (-5 % compared to the same period in 2021 in which 109 women were killed); 88 women were killed in the family/affectional sphere (-6 % compared to the same period in 2021 in which there were 94 victims); of these, 52 were killed by their partner/ex-partner (-16 % compared to the 62 victims in the same period in 2021).

Finally, the National Institute for Accidents at Work and Professional Diseases (INAIL) database shows that, in the five-year period 2017-2021, among female accidents at work (net of COVID-19), the cause of 'violence, aggression and threats', which can come from people outside the company or from colleagues in the same company, represents over 5 % of codified cases, around 20 500 injuries in the entire five-year period (just over 4 000 a year). Among the female workers who have been victims of aggression or violence, almost 60 % carry out health and welfare professions, followed (but at a distance) by teachers and education-training specialists, postal workers, cleaning personnel and surveillance and custody services.[83]

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 Law of 27 June 2013, No. 77. Following Italy's accession to the Istanbul Convention, Decree of 14 August 2013, No. 93 (converted into Law 119/2013) was introduced. The Decree strengthened measures aimed at tackling crimes such as domestic violence, sexual violence, and 'persecutory acts'. Two articles are particularly important as regards the implementation of the Convention: Articles 5 and 5*bis* 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 5*bis* 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 1, Paragraphs 149, 150 and 661-664 of Law 234/2021 slightly modified Decree No. 93/2013. In particular, a national strategic plan for combating gender-based violence will be issued at least every three years by the Prime Minister; moreover, an interinstitutional monitoring unit and an observatory on gender-based and domestic violence against women will be set up at the Department for Equal Opportunities.

Stalking (that is, 'persecutory acts'), was regulated for the first time by Decree No. 11/2009, converted into Law 38/2009, and then strengthened by both Decree No. 93/2013 and Law 69/2019, known as 'the Red Code' against violence.

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 Law 183/2014 introduced some measures aimed at supporting victims of gender-based 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. The leave is remunerated and equal

[82] See: https://www.interno.gov.it/it/stampa-e-comunicazione/dati-e-statistiche/omicidi-volontari-e-violenza-genere.
[83] See: https://www.inail.it/cs/internet/docs/alg-dati-inail-2020-ottobre-pdf.pdf.

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 Law 205/2017 (Budget Act 2018) extended the period of leave available to female victims of gender-based violence who are under a protection programme for domestic workers.

The first GREVIO evaluation for Italy was published in January 2020.[84] GREVIO identified priority aspects that require further action by the Italian authorities to fully comply with the provisions of the Istanbul Convention. These aspects relate to the need to:

- ensure the implementation of the legal provisions on the crime of domestic violence, which is sensitive to the gender connotation of domestic violence against women;

- ensure that the provisions of the Istanbul Convention are implemented without discrimination based on the grounds set out in Article 4, paragraph 3, which would entail, among other things, integrating the prevention of gender-based violence into the activities of national anti-discrimination bodies and into programmes tailored to the specific needs of women who are or may be exposed to intersectional discrimination;

- ensure that policies and measures address equally prevention, protection, investigation and punishment, as required by the principle of due diligence enshrined in Article 5 of the Istanbul Convention;

- take further measures to ensure that policies address violence against women in a comprehensive and integrated manner and that they are implemented and monitored through effective coordination between national, regional and local authorities;

- ensure that adequate financial and human resources are available for measures and policies, while increasing transparency and accountability in the use of public funds and developing appropriate long-term/multi-annual financing solutions for specialised services for women;

- increase support and recognition for independent women's organisations and strengthen the national and local institutional framework for consultation and cooperation with women's organisations;

- provide a solid institutional basis for the bodies responsible for ensuring the implementation and coordination of measures and policies to combat violence against women and continue efforts to enable effective monitoring and evaluation of policies;

- improve data collection to meet the requirements of Article 11 of the Convention;

- strengthen preventive actions in the fields of awareness-raising, education, training of professionals, programmes for perpetrators of violence and in the workplace, while adopting proactive and incisive measures to promote a change in sexist social and cultural patterns of behaviour, based on the idea of the inferiority of women;

[84] GREVIO (2020) First baseline evaluation report: Italy (GREVIO/Inf(2019)18 Italia).

- promote access for victims to general support services adequately distributed throughout the territory that are equipped with the necessary resources and staffed by trained personnel.

Furthermore, GREVIO identified other areas where improvements are needed to fully meet the obligations of the Convention. These include the need to consider amending the criminal offence of sexual violence to be based on the notion of free consent, as provided for in Article 36(1) of the Convention, and to introduce legislation ensuring legal sanctions for sexual harassment in all areas of life. Authorities should also follow up on their commitment to enable swift investigation and prosecution of cases of violence against women, while ensuring that measures taken to this end are supported by adequate funding. Other areas requiring improvements include access to the right of residence for foreign victims, gender-sensitive asylum procedures, reception and accommodation facilities, and support services.

Since then and partly in response to the GREVIO report, the following laws have been enacted.

In 2021, Italy was the first EU Member State to ratify ILO Convention No. 190 concerning the elimination of violence and harassment in the world of work, by Law 4/2021. Overall, the current Italian regulatory framework already appears to be in line with the provisions of the convention.

Decree No. 48/2023, within the framework of the ruling on the basic income, stated that the victims of gender violence who enter a protection programme are considered as a family unit independent from that of the husband for the purposes of access to social or economic benefits provided by the Decree (Article 3(6)). Moreover, under Article 6 of the Decree, they are not required to join or actively participate in all training, work activities, or any other active labour policy promoted by public placement agencies, unlike other beneficiaries of the basic income. At the same time, in order to encourage their participation in the labour market, they may volunteer to follow a personalised inclusion path organised by public placement agencies.

The sharp increase in gender-based homicides in Italy led Parliament to approve Law No. 168 of 24 November 2023, which it did quickly and unanimously. This articulate and complex series of provisions is aimed at speeding up the preventive assessment of the risks faced by potential victims, assuring the effectiveness of the preventive measures, strengthening measures against recidivism, and improving the overall protection of the victims. Law No. 168/2023 mainly modifies provisions of the Criminal Code and Criminal Procedure regarding crimes of gender and domestic violence.

Several provisions are aimed at widening and strengthening the enforcement of warnings from the Quaestor. This measure will also be applied for crimes such as beatings, bodily harm, sexual assault and violence in the private sphere, serious threat, stalking and trespassing, and it can be revoked only after three years following a positive evaluation within recovery paths. Moreover, penalties will be increased when the crime is committed by a cautioned person (Article 1). Article 2 provides for the enforcement of the same special surveillance measures and obligation to stay in the municipality of residence provided by the Anti-Mafia Code. Under Law No. 168/2023, the restraining order, which orders the offender to keep a distance of a minimum of 500 metres from the victim, will be mandatory, together with an enforced surveillance bracelet measure. Stricter measures may be imposed, including imprisonment if the persecutor refuses to wear the bracelet. With the aim of speeding up trials, priority is extended to more cases, including coercion or inducement to marry, permanent facial injury, violation of a removal and restraining order, unlawful dissemination of sexually explicit images or videos, a state of incapacity caused by violence, bodily injury and requests for the application of a personal precautionary measure (Articles 3 and 4). On this point, Article 362-bis of the Code of Criminal Procedure is inserted by Article 7 of the Law, providing a deadline of 30 days for the Public Prosecutor to evaluate

whether the enforcement of an urgent precautionary measure is required for the protection of the victim; then, the Preliminary Investigation Judge has another 30 days to decide on this request. Article 8 requires the General Public Prosecutor at the Court of Appeal to collect data on a three-monthly basis from local Public Prosecutor's Offices regarding compliance with the deadline mentioned above and to report every six months to the Court of Cassation. Another important change concerns the compulsory implementation of specialised judicial offices by the Public Prosecutor (Article 5). With the same aim, within 12 months of the law entering into force, the Minister for Equal Opportunities will issue guidelines to ensure adequate and consistent training of different operators coming into contact with victims of gender-based or domestic violence (Article 6). Further provisions toughen the penalties for infringements of protection orders against domestic abuse (Article 9) and provide for immediate arrest if video, images, telematics or computer applications unequivocally ascertain that distancing or restraining orders have been violated, or that there has been mistreatment in the family or stalking (Article 10). Article 11 broadens and speeds up the implementation of removal orders concerning the family home. These will be enforceable in cases of serious suspicion, and not only in cases where perpetrators are caught red-handed or where there is a serious and present danger to the life or physical integrity of the injured party and it is not possible to wait for the court's decision. In such cases the Public Prosecutor will require confirmation with the Judge within two days of a preliminary investigation, and the Judge will schedule a decision within the same time limit. Article 12 adds the measure of electronic bracelets. Further amendments to the law are provided by Articles 13 and 14, including on the immediate communication to the victims of the enforcement of precautionary measures. Moreover, new provisions require perpetrators of gender-based and domestic violence to attend specific remedial courses at institutions that deal with prevention and psychological assistance in such cases in order to benefit from a suspended sentence (Article 15).

As regards compensation for damages, the position of victims and their relatives, both before and after sentencing, has been strengthened by Articles 16 and 17, which entitle the victim who finds themselves in a state of need, or their relatives, to ask for provisional compensation. Finally, Article 18 provides that, within six months of the law coming into force, the Minister of Justice, together with the Minister for Equal Opportunities, will issue a decree establishing criteria for the accreditation of bodies and associations authorised to organise rehabilitation courses for perpetrators of violence against women and domestic violence and adopting guidelines for the performance of the activities of the same bodies and associations.

Although such articulate and wide-ranging interventions and their quick and unanimous approval by the Parliament certainly mark a positive step in counteracting gender-based and domestic violence, most operators in the sector have reported several critical issues. In particular, the intervention has been deemed to be too weak in two main aspects. Vocational training and educational initiatives are not clearly or fully defined, whereas they ought to be planned and delivered to different subjects with the participation of experts. The financial invariability clause hampers the real enforcement of anti-gender-based violence legislation as well as the effective action of anti-violence centres. Moreover, Law No. 168/2023, does not deal with other important issues such as the secondary victimisation of women in trials and the need to radically change the narrative of violence in the media so as to eliminate speculation regarding sexual violence cases and the secondary victimisation of women.

The Budget Act for 2024 (Law No. 213/2023) contains measures to tackle the increasing levels of gender violence. In particular, under Article 1(191-193), employers hiring victims of gender violence who are unemployed and who benefit from so-called Freedom Income no longer have to pay any contributions over the period 2024-2026. The maximum amount of this cut in required contributions is EUR 8 000 a year, for a period of 24 months (12 months for fixed-term contracts and 18 months in the case of transformation of a fixed-term contract into an open-ended one). Furthermore, an increase to the Fund for Policies

Relating to Families, Youth and Equal Opportunities Rights has been allocated for the period 2024-2026 to support measures to tackle gender violence, in particular the promotion of paths to autonomy and economic independence for victims, vocational training, increasing the so-called Freedom Income, and the purchase and construction of shelter houses for victims of gender violence (Article 1(187-189)). The fund has been further strengthened by the Budget Act for 2025 (Article 1 (221-222), Law No. 207/2024), in order to promote educational interventions and information and prevention courses aimed at students of lower and upper secondary schools relating to the issues of sexual health and relationships and sexual education.

10.1.3 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 in order to investigate the scale and causes of feminicide and violence against women was set up in 2017 at the Senate and then extended in 2020 and 2021. In the first year of work, in 2018, 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 sociocultural change through education, training for the 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. In June 2021 the Commission wrote a report on gender-based and domestic violence in the judicial reality, where it recommended: increasing the effectivity of existing legislation on the issue; an increase of funding; and vocational training for the operators of the judicial system.[85]

Moreover, Law 12/2023 established a parliamentary bicameral - Senate and House of Representatives - commission of inquiry for investigating the phenomenon of gender-based violence, with particular attention to the issue of feminicide; this commission should replace the unicameral 2017 commission.

In the pandemic period, the network of anti-gender violence centres (D.i.Re) noted a decrease in reports of new cases, but a high increase in help requests from women who were already being assisted by an anti-violence centre.[86] In practice, the lockdown measures remarkably worsened women's experience of domestic violence. Indeed, the media increasingly reports cases of violence against women due to enforced cohabiting because of lockdown. The situation is likely to become even more serious considering the predicted effects of the crisis.

In light of this, Article 18*bis* of Decree No. 18/2020 provides for the allocation of EUR 3 million in 2020 to support both public and private refuge houses to counteract domestic violence and to protect women. Furthermore, Article 26*bis* of Decree No. 104/2020 allocated EUR 1 million to support rehabilitation centres for criminals sentenced for gender violence. Finally, under Article 1, Paragraph 1134 of Law 178/2020 (Budget Act for 2021), a fund set up at the Presidency of the Council of Ministers (Prime Minister's Office) to combat gender-based violence will be financed from 2021 until 2023, with EUR 2 million a year. These resources are mainly addressed to the operation of associations fighting against gender violence. Paragraph 27 of Article 1 of the Budget Act for 2021 also allocated EUR 2 million a year from 2021 until 2023 for the creation and the consolidation of specialist psychological support services in prisons for perpetrators of crimes of gender-based violence, with the aim of preventing reoffending. The simple allocation of this fund is likely to be too weak an intervention to be effective.

[85] See: https://www.senato.it/service/PDF/PDFServer/BGT/1300287.pdf.
[86] See: https://www.direcontrolaviolenza.it/violenza-covid19-2867-donne-si-sono-rivolte-ai-centri-antiviolenza-d-i-re-durante-il-lockdown/.

10.2 General context with regard to the obligation set out by the Violence Against Women Directive

10.2.1 Preparatory transposition work

As yet no preparatory work on the directive has been published.

On 27 February 2025, the Senate approved the European delegation bill (A.S. 1258), which is now passed, for second reading, to the Chamber of Deputies. Annex A of this bill mentions Directive (EU) 2024/1385 among the directives which, for the purposes of their transposition into national law, do not require specific principles or criteria for delegation.

10.2.2 National provisions on cyber violence

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.[87] The recommendation has not been disregarded as Law 69/2019, known as 'the Red Code', on the improvement of criminal law and redress protection of victims of violence, was then approved. The Law aims to accelerate legal proceedings regarding domestic violence against women and to improve privacy in these cases. Specific crimes are also introduced for identity injuries and online revenge porn. In addition, compulsory vocational training on these issues is provided for police forces.[88]

10.3 Ratification of the Istanbul Convention

Italy signed the Istanbul Convention on 27 September 2011 and ratified it with the Law of 27 June 2013, No. 77.

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

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

11.1 General (legal) context

11.1.1 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.

11.1.2 Political and societal debate and pending legislative proposals

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

11.1.3 Gender mainstreaming

Gender mainstreaming is not specifically incorporated in law and policy making in Italy. There are no specific guidelines, procedures (such as gender impact assessments) or rules for law and policy makers to follow with regards to gender mainstreaming.

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 Law 205/2017 (Budget 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 3*bis* 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 conditions 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 the case of ascertained criminal liability of the claimant for libel or slander. No case law has been recorded on this type of discrimination.

Article 41*bis* 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 procedures 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.[89]

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

Case law is 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)[90] 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 Civil Procedure Code, 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.

[89] Law 205/2017 (Budget 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.

[90] 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.

As regards the use of quantitative/statistical data, the Equal Opportunities Code goes further than EU law as it requires companies with more than 50 employees to draw up reports every two years on the situation of male and female workers as regards, for example, remuneration (including all kinds of incentives), the percentage of part-time workers, hiring procedures, career paths, professional management training, conciliation measures, company policies on an inclusive work environment; the report must also show procedures to allow workers and unions access to data, which may be used to take legal action under the Code. The report is filed online on the website of the Ministry of Labour, and regional equality advisers are in charge of analysing the results to be transmitted to the territorial offices of the National Labour Inspectorate, the Ministry of Labour, the Department for Equal Opportunities, the National Institute for Statistics (ISTAT) and the National Council for Labour and Economy (CNEL).

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 have been substituted by administrative sanctions or fines. 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;[91] and 10 years for awards of damages under extra-contractual liability, with the right to damages to be proved by the claimant.

As regards sanctions we must finally underline that another punitive measure is provided in combination with the gender equality certification system established by Law No. 162/2021.[92] In all cases where it is ascertained that, during the two years preceding the application for the gender equality certification, the employer refused, opposed or obstructed the exercise of different rights provided by Decree No. 151/2001, Law 104/1992, Law No. 81/2017, and Decree No. 81/2015 to ensure the conciliation of working and care

[91] See Court of Cassation, 8 July 2002, No. 9877.

[92] Law 162 of 5 November 2021 amending the Equal Opportunities Code (Art. 46 bis of Decree No. 198/2006), published in OJ No. 275 of 18 November 2021, provided for a certification system on gender equality which attests different policies and measures undertaken at the enterprise level and aimed at filling gender gap in remuneration and career and can be evaluated to access national and EU funds sustaining investments. In order to promote gender equality, Article 2 of Decree No. 57/2023 states that the highest score to be attributed to companies for the adoption of policies aimed at achieving it must be included in calls for tenders, notices and invitations announced by the contracting parties: this is based on the ground of the possession of gender equality certification.

duties, the gender equality certification cannot be awarded. In most cases this measure adds to 'traditional' ones, such as administrative or penal sanctions which already punished infringements against parents' and carers' rights. In some cases, such as for instance the right to paternity leave, carers' right to take leave to assist a person with severe disabilities, or the right to priority in access to smart working or in switching from full-time to part-time work, the sanction fills a gap, strengthening the effectiveness of these provisions.

Ultimately, Article 3 of Decree No. 105/2022 provides for some amendments to Law 104 of 5 February 1992 on the assistance, social integration and rights of people with disabilities: a special procedure provided by Article 28 of Law No. 150/2011 (including an urgent procedure and the partial reversal of proof) as well as the attempt of conciliation of Article 410 of the Civil Procedure Code become enforceable to disputes regarding different rights provided for persons with disabilities and caregivers.

11.6.2 Effectiveness, proportionality and dissuasiveness

The national legislation on remedies and sanctions 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 (Articles 8 *et seq*, Decree No. 198/2006),[93] 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 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[94] is a member of the EONC and coordinates the Conference of Equality Advisers,[95] 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 (according to 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. As of 15 January 2020, equality advisers have a new tool at their disposal in fighting discrimination and promoting equal opportunities: they are all connected on a digital platform hosted by the Ministry of Labour. The aim of this tool, which can be accessed only by authorised users, is to increase the efficacy of the equality advisers' intervention through the use of technology. In fact, this

[93] See: https://www.lavoro.gov.it/temi-e-priorita/parita-e-pari-opportunita/focus-on/Comitato-Nazionale-Parita/Pagine/default.aspx.
[94] See https://www.lavoro.gov.it/ministro-e-ministero/Organi-garanzia-e-osservatori/ConsiglieraNazionale/Consigliera-nazionale-di-parita/Pagine/default.aspx.
[95] Formerly the 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.

platform is an easy way to share information, personal experiences and good practice and to spread the planning of different events. Moreover, it includes a messenger system, which bypasses traditional (and less smart forms of) communication.

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 Law 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, Article 46 requires companies with more than 50 employees to draw up reports every two years on the situation of workers (male and female) as regards recruitment, vocational training, career opportunities, mobility between categories and grades, other mobility aspects, remuneration, dismissals and retirement. The report is made available to the company's union representatives and to the equality advisers. Smaller companies can submit the same report on a voluntary basis. This can be an important instrument in detecting and providing evidence of discrimination as it summarises the situation of the workers (male and female) in the company. 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, which could 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 case law on gender issues is scarce in Italy.

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 50 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, vocational 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 government bodies would not be able to 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 about the body's independence 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 Law 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

As regards enforcement and compliance aspects, it is worth mentioning Decree No. 77/2021 (converted into Law 108/2021), ruling the complex governance of the national recovery plan financed by the Next Generation EU programme, as it provides for some measures regarding gender equality. Article 47 of the Decree provides that companies participating in

the tenders of the national recovery and resilience plan (PNRR) financed, totally or in part, by the Next Generation EU fund and by the complementary national plan (PCN – aimed at integrating PNRR interventions with national resources) must guarantee gender equality within their workforce, both in business processes and in the activities of the company. Rewards for good practice and penalties for those who do not respect equal opportunities are also provided.

Under Article 47, Paragraph 2, public and private companies employing more than 50 employees must show that they complied with the obligation provided by Article 46 of Decree No. 198/2006 on Equal Opportunities. In particular, in order to participate in the tender, they have to include a copy of the biennial report concerning the situation of male and female employees in every job in the company and certify that it has been submitted to the regional adviser and trade unions. Smaller companies employing from 15 to 49 employees have to submit a similar report to the contracting body, trade unions and regional equality adviser within six months of signing the contract (Article 47, Paragraph 3). In the event that a smaller company of 15 up to 49 employees does not submit the report on male and female working conditions provided by Article 47, Paragraph 3, it will not be allowed to take part in other calls for tenders of the PRNN or the PCN for the following 12 months.

This strengthening of the obligation to submit the report mentioned above might be useful as regards data availability as it includes all aspects of the working relationship; moreover these reports will be also published on the website of the public administration and sent to the Presidency of the Council of Ministers (Prime Minister's Office) and to the Minister for Equal Opportunities.

Under Article 47, Paragraph 4, contracting bodies in calls for tender, invitations and public notices must require that at least 30 % of the recruitment necessary to carry out the provisions of the contract is intended for the employment of women. If the percentage cannot be assured, totally or in part, due to the work covered by the contract, the nature of the project or to competing priorities of universality and cohesion, efficiency, economy and quality of service, as well as optimal use of public resources, the contracting party must give a justification explaining the reason for the impediment. Higher scores in the evaluation of the tender are provided for companies that: in the last three years, have not had acts of or investigations for discriminatory behaviour; in the last three years, have respected gender equality principles and promoted gender opportunities, taking into account women's percentage in recruitment, pay levels and appointment to top positions; and use or undertake to use work-life balance measures for their employees as well as innovative ways of organising work. Penalties will also be imposed in tenders in the event of infringement of provisions regarding gender equality.

Article 47*bis* of the Decree provides that the composition of different public bodies established by the Decree to ensure the governance of the national recovery plan and their administrative structures must comply with the principle of gender equality. This obligation does not apply to bodies composed exclusively of members of the Government and holders of other institutional offices. This amendment is very important as a real promotion of gender equality necessarily goes hand in hand with women's participation in decision-making roles, starting from the structures for the governance of the PNRR.

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

12 Overall assessment

The following main gaps in protection and transposition problems have been mentioned in this report:

- There is no system to monitor positive action measures and their impact or their lack of financing.
- There is no specific protection for transgender, intersex and non-binary persons.
- Domestic legislation lacks an explicit provision on multiple discrimination.
- There is a lack of any specific legal instruments on algorithmic discrimination.
- In relation to job classification, no formalised job evaluation and job analysis systems are available in our legal and industrial relationships arrangements.
- 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.
- Decree No. 105/2022 has implemented Directive 2019/1158; Italian legislation was already quite in line with the Directive, however there are still some problems to be solved in the areas of parental leave and FWA.
- 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.
- As regards Article 9(g) of Directive 2006/54, the law on supplementary funds does not contain any provision which ensures that notional contributions are made (by the employer/the state) on behalf of the employee during her maternity leave/leave for serious family reasons.
- Directive 79/7/EEC has never been specifically implemented in respect of statutory social security schemes.
- Italian legislation does not recognise life partners.
- The implementation of the Recast Directive as regards occupational pension schemes, by Decree No. 5/2010, does not include any provisions on self-employment.
- 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 Law 53/2000 on supporting motherhood and fatherhood, the right to care and vocational training and coordinating the hours of public services in

towns and cities (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, 2010/18 and 2019/1158. Law 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 two fifths. Furthermore, Law 215 of 23 November 2012, Law 13/2014 and Law 65/2014 introduced 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 50 employees to draw up reports every two years on the situation of workers (male and female) as regards recruitment, vocational training, career opportunities, mobility between categories and grades, other mobility aspects, remuneration, dismissals and retirement. The report is made available to the company's union representatives and to the equality advisers. Smaller companies will be enabled to submit the same report on a voluntary basis.

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, despite the fact that gender reassignment is not explicitly provided for by Italian legislation, it can be included under the grounds of discrimination related to gender discrimination.

Other gaps are the lack of explicit provisions in domestic legislation on multiple discrimination and on algorithmic 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 Equal Opportunities Code (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. However, Article 46 of the Equal Opportunities Code relates to the release of information on pay to individuals and other data at the level of firms.

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 (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.

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.

Decree No. 105/2022 has implemented Directive 2019/1158. However, Italian legislation was already fairly in line with the Directive. The main problems of the existing legislation concern:

- The equivalent second parent (e.g. a co-mother in a lesbian relationship) is often not entitled to benefits, such as in the case of paternity leave and of parental leave, for example.

- With regard to parental leave, the allowance is not set in such a way as to facilitate the take-up of parental leave by both parents, that is the allowance is too low to encourage the main breadwinner of the family to take the leave and also to provide for a decent living standard.

- Provisions on parents with a disability as regards parental leave are missing.

- There are no flexible working arrangements for workers with children and for carers as a rule: a right to adjust working time patterns is provided only in limited specific situations. Moreover, in these situations, employers are often not obliged to consider and respond to requests for flexible working arrangements within a reasonable period of time or to take into account the needs of both the employer and the worker. In addition, employers are not required to provide reasons for any refusal of such requests or for any postponement of such arrangements. In all these hypotheses, the worker has no right to request to return to the original working pattern before the end of the agreed period where justified on the basis of a change of circumstances, and the employer is not asked to consider and respond to a request for an early return to the original working pattern, taking into account the needs of both the employer and the worker.

- As regards Article 10 of Directive 2019/1158, notional social security contributions are not always granted or fully granted. In addition, workers are not always entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled had they not taken the leave. Finally, it is not always required by the legislation that rights that are in the process of being acquired by workers when leave is taken are maintained until the end of such leave; the same goes for any changes arising from national law, collective agreements or practice.

- The penalty system must be enhanced: no sanctions are provided in the case of infringement against rights related to care leave, care leave for *force majeure* and FWA.

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 period of leave (even unpaid) is granted to the worker, the choice of giving up the job is difficult, as re-entering the 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 highly qualified, 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 often earn much more than women, and the percentage of pay lost in the event of parental leave is higher for men than for women.

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).

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. Law 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 Law 77 of 27 June 2013. Following Italy's accession to the Istanbul Convention, Decree No. 93 of 14 August 2013, (converted in Law 119/2013) was introduced. The Decree strengthened measures aimed at tackling crimes such as domestic violence, sexual violence, and 'persecutory acts' (stalking). Stalking was regulated for the first time by Decree No. 11/2009, converted into Law 38/2009, and then strengthened by both Decree No. 93/2013 and Law 69/2019, known as 'the Red Code' against violence. Article 24 of Decree No. 80 of 15 June 2015 implementing Delegation Law 183/2014 introduced some measures aimed at supporting victims of gender-based 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 and then extended in 2020 and 2021 in order to investigate the scale and causes of feminicide and violence against women.[96] 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 sociocultural change through education, 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.

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.

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 50 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, vocational training, career opportunities, remuneration, dismissals and retirement.

The legislation on remedies and sanctions can be considered to be reasonably in line with Directive 54/2006/EC in 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,

[96] See: www.senato.it/documenti/repository/commissioni/femminicidio/DocXXII-bis_9.pdf.

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.

Annex I

Gender equality body

1 Body for the promotion of gender equality

Separate gender equality bodies:

1) National Equality Advisor; established: 10 April 1991.
2) Local Equality Advisors in regions, metropolitan cities and local government bodies covering wide areas); established: 10 April 1991.
3) Equal Opportunities National Committee (EONC); established: 10 April 1991.

Legal reference: Act of 10 April 1991, No. 125, Positive actions for gender equality at work (now repealed); Decree of 11 April 2006, No. 198, Code of Equal Opportunities between men and women, Articles 8-20, 36, 37.

The bodies have accessible and publicly visible national, local or regional offices. They conduct outreach actions to local areas or communities. They also have procedures in place to identify and respond to the access needs of specific complainants (e.g. people with disabilities, people with caring responsibilities, people who speak different languages or people with literacy issues). The response by equality advisors to specific access needs, in particular, is satisfactory: as they are hosted by local government bodies and by the Ministry of Labour, the access facilities are compulsory in their premises.

The bodies have adequate visibility, through websites and dedicated phone numbers, email and social media (Facebook, Twitter, Instagram, LinkedIn and so forth). Moreover they organise and take part in events, such as mentoring courses, professional courses and workshops, meetings, seminars and conferences, and all this helps their visibility.

As of 15 January 2020, equality advisors have an extra tool at their disposal in tackling discrimination and promoting equal opportunities. They are all connected on a digital platform on the Minister of Labour's official site. The aim of this facility, which can only be accessed by authorised users, is to increase the efficacy of the equality advisors' interventions by using technology. The platform is an easy way to share information, personal experiences and good practice and to disseminate information about different events.

Moreover, a messenger system has been set up which bypasses traditional (and less smart forms of) communication. The tool provides useful support to the Network of Equality Advisors provided by Decree No. 198/2006. For the EONC, on the other hand, dealing with the public is not part of its remit.

Website: http://www.lavoro.gov.it/ministro-e-ministero/Organi-garanzia-e-osservatori/ConsiglieraNazionale/Consigliera-nazionale-di-parita/Pagine/default.aspx.

However, a restyling and updating of the official site of the National Equality Advisor, including web references and links to the activities of local advisors, would help to spread news and information about gender equality issues to a broader public.

2 Political, economic and social context of the body

The most significant episode of interference in the governance of the equality bodies happened in 2008 and was only resolved in 2015 with Decree No. 151. At the end of 2008, a decree from the Labour Minister, in agreement with the Department for Equal Opportunities, removed the National Equality Advisor from office. She had been appointed in January 2008 by the previous Government. Her removal took place as a consequence of

a 'spoils system' procedure, carried out under Article 6 (1) of Act no. 145/2002. This provides that the senior managers of both the public administration and the state-controlled institutions who are appointed in the six months preceding the end of the legislature can be confirmed, annulled, modified or renewed within six months of the vote of confidence in the Government (the Government is chosen by parliament, which is called a vote of confidence).

The Government decree expressly stated that the National Equality Advisor is not an independent body, as this officer is appointed by the Government. It further stated that the appointment had a fiduciary and discretional character and not merely a technical one. Consequently, the Decree removed the Advisor on the basis that the Advisor was not 'in line' with the Government's policies. The National Equality Advisor appealed against the Government decree. However, the decree was confirmed by both the Administrative Court (TAR, decision of 19 June 2009) and the State Council (decision no. 5031 of 29 July 2010).

Meanwhile, the Government received a reasoned opinion from the European Commission on the possibility for equality advisors to provide independent assistance to victims of discrimination when carrying out judicial procedures (infringement procedure no. 2006/2535 as regards Directive 2002/73/EC) and a 'request for explanation' on the specific point of the Equality Advisor's independence in relation to the removal of the National Equality Advisor. Only in 2015 was the attack against the independence of equality advisors halted. In fact, Article 43 (1) of Decree No. 151/2015 excluded equality advisors from the spoils system and since then they can no longer be removed from office exclusively on the ground of a change in Government.

However, Decree No. 151/2015 may be regarded as a step backwards in relation to the public financing of equality bodies, despite the declared intentions of the Government to overcome the serious problems of funding that had been gradually cut almost to zero in the past. Indeed, Article 18 of Decree No. 198/2006 (as modified by Decree No. 151/2015), which regulates the Fund for the Activities of Equality Advisors, is not as clear as before on the financing of the remuneration/allowance for Local Equality Advisors.

Furthermore, it no longer provides economic support for the Conference of Equality Advisors and does not make any mention of expenses for the activities of Local Equality Advisors, including trial expenses, which local government bodies can hardly meet. In other words, the financing of the advisors' activities is no longer allocated by the State, but by local bodies which often suffer from a shortage of economic resources. This gap seriously undermines the functioning of the advisors. It also impacted negatively on the number of sex discrimination cases brought to court, which is always very low and often depends on the intervention of equality advisors.

The activities of the National Equality Advisor seem to be the most stably financed. Moreover, it can rely on the Ministry of Labour to continue independent research projects and publish independent reports on gender discrimination at work. Meanwhile, the Equal Opportunities National Committee (EONC) is no longer supported by the technical bodies, which have been abolished, and will probably no longer be able to use experts, as no specific allocations for its functioning are provided and it must not incur further costs.

The public debate on equality bodies is mainly focused on their financing and their independence. Despite the intervention of Decree No. 151/2015 and the fact that the law states that equality bodies will perform independent activities, it is in fact up to the Minister of Labour and local government bodies to set the conditions for the organisation and the functioning of the equality advisor staff.

3 Institutional architecture

In Italy, the equality bodies do not form part of a body with multiple mandates. They are all specifically targeted at the promotion of gender equality.

4 Status of the body – general independence and resources

4.1 Status of the body

Equality advisors and the EONC do not have a separate or other legal status or personality. It is up to the Minister of Labour or local government bodies to set the conditions for the organisation, functioning and financing of the equality advisor offices and of the EONC.

The National Equality Advisor is appointed by the Minister of Labour in conjunction with the Department of Equal Opportunities. The Local Equality Advisors are appointed by the Minister of Labour, following the designation of the local government bodies where they are set up – that is regions, metropolitan cities and local governmental bodies covering wide areas. In order to select the local advisors, the local government bodies carry out a comparative evaluation and the candidates are required to demonstrate specific competences and multiple years of experience of working in the areas of female labour, equal opportunities legislation and the labour market.

The EONC is established within the Ministry of Labour and consists of: the Minister of Labour or a delegate with the functions of President; six members designated by workers' trade unions and six members designated by employers' trade unions; two members designated by cooperative movement associations; 11 members designated by women's associations; and the National Equality Advisor. The EONC members are appointed by the Ministry of Labour, who also appoints the deputy president of the Committee.

The EONC and the equality advisors are financed by the Ministry of Labour or by the local government bodies where they have been set up. In particular, each local government body (region, or the bodies mentioned above) that appoints a Local Equality Advisor allocates the resources for the advisor's functioning and possible allowance and must decide (within its spending power) any possible remuneration for time off work to which equality advisors are entitled. It is not fully clear whether the funds for the activities of the National Equality Advisor, provided by Article 18 of Decree No. 198/2006, would cover these costs if local bodies are unable to meet them. Article 16 of Decree No. 198/2006 provides for agreements between the Ministry of Labour and the local bodies to set the conditions for the organisation and functioning of the advisor's role, but nothing is stated about financing responsibility.

In contrast, the activities of the National Equality Advisor and the allowance they can request for the entire mandated period are covered by the above-mentioned Article 18 fund and governed by a Decree of the Minister of Labour. This also establishes the amounts to be awarded, including expenses and leave. It is also up to the Minister of Labour to set the conditions for the organisation and functioning of the National Equality Advisor's office.

The EONC and the equality advisors have no power to recruit and manage staff: it is up to the Minister of Labour or to the local government bodies to set the conditions for their organisation and functioning.

Equality advisors are financed and organised by the Ministry of Labour or the local government bodies where they are set up. This implies that they are accountable to the bodies that host them as they depend economically on the Ministry/local bodies that set them up. The same applies to the EONC, as it is set up, organised and financed by the Labour Ministry central office.

4.2 Independence of the body

As regards the EONC, independence is not expressly stipulated in the law, but it can be derived by way of interpretation. Nevertheless, the EONC president and deputy president are decided by the Minister of Labour. Some doubts about the body's independence are also

raised by the fact that its functioning, organisation and financing depend on the Ministry of Labour.

Equality advisors have been excluded from the 'spoils system', provided by Article 6(1) of Act No. 145 of 15 July 2002, which means they cannot be removed from office exclusively on the ground of a change in Government (Article 14 Decree No. 198/2006, as modified by Article 32 of Decree No. 151/2015). Moreover, Decree No. 5/2010, which implemented Directive 54/2006/EC, stipulates that the National Equality Advisor shall conduct independent surveys, publish independent reports and make recommendations on the implementation of gender equality. The public notes of the Ministry of Labour have always recognised the autonomy and functional independence of the National Equality Advisor.

However, equality advisors are financed and organised by the Ministry of Labour or the local government bodies where they are set up. This implies that they are, to say the least, economically dependent on the bodies that host them.

4.3 Resources

Each local body that appoints a Local Equality Advisor allocates the resources for the advisor's functioning and possible allowance and must decide (within its spending power) any possible remuneration for time off work to which equality advisors are entitled. It is not fully clear whether the funds for the activities of the National Equality Advisor, provided by Article 18 of Decree No. 198/2006, would cover these costs in cases where local bodies are unable to meet them. Article 16 of Decree No. 198/2006 provides for agreements between the Ministry of Labour and the local bodies to set the conditions for the organisation and functioning of the advisor's role, but nothing is stated about financing responsibility.

The activities of the National Equality Advisor and the allowance they can request for the entire mandated period are covered by the above-mentioned Article 18 fund and governed by a Decree of the Minister of Labour. This also establishes the amounts to be awarded, including expenses and leave.

It is also up to the Minister of Labour to set the conditions for the organisation and functioning of the National Equality Advisor's office. However, this funding has not been renewed since 2015. The National Equality Advisor therefore does not receive any funding for any concrete project activity; the fund has been renewed only for the amounts necessary to pay the allowances and reimbursement of expenses for the National Equality Advisor's role.

Financing the equality advisors' activities is thus a serious problem since Decree No. 151/2015, which abolished the State financing and entrusted it to local government bodies. In fact, local bodies often suffer from a shortage of economic resources. The Ministry of Labour also issued a circular on this, dated 22 February 2016, reminding the local institutions to comply with the regulatory commitments relating to the appointment of equality advisors and the provision of support, both structural and operational, for their operation.

Nevertheless, this problem needs to be addressed to assure the equality advisors' real and uniform functioning in all regions, metropolitan cities and other local governmental bodies. This is also a request included in the last *National Equality Advisor annual reports on the activities of the advisors* (latest issue available is for 2022: https://www.lavoro.gov.it/sites/default/files/ministro-e-ministero/CNP-RAPPORTO-ATTIVITA-2022.pdf).

We do not have data on the annual budget of the bodies, the share of the annual budget dedicated to the equality bodies mandate and the total number of staff of the bodies. We only know, from the last *National Equality Advisor annual reports on the activities of the*

advisors quoted above, that 68 % of the local advisors had some funding to carry out their activities. Of these, 14 % just had 'old' financing from the abolished national fund. We also know from the same source that 88 % of the operating advisors have offices, 84 % have equipment and 83 % have staff.

5 Grounds and fields covered by the body

The ground the designated bodies have a mandate to deal with is gender, especially equal treatment and opportunities between men and women at work, in the labour market, in professional training and as regards occupational pensions. The EONC and equality advisors do not deal with other grounds of discrimination, such as intersectional discrimination.

6 Competences of the body and their independent exercise

6.1 Independent assistance to victims

In Italy equality advisors have the competence to provide independent assistance to victims. This consists of legal counselling and advice and the possibility to propose and promote conciliation agreements (Articles 36, 37 and 15 Decree No. 198/2006). The EONC does not have the competence to provide assistance to victims. This competence is effectively exercised in an independent manner in practice. Evidence of this can be found in the National Equality Advisor's annual reports on the activities of the advisors, which are published on the National Equality Advisor's website: https://www.lavoro.gov.it/ministro-e-ministero/rapporto-sullattivita-delle-consigliere-nazionali-di-parita-lanno-2022 (the latest issue available is for 2022).

The 'assistance to victims' competence is not exercised by a third party.

6.2 Independent surveys and reports

In Italy the EONC and the equality advisors have the competence to conduct independent surveys and publish independent reports. This is expressly stated for National Equality Advisors (Article 15 (2) Decree No. 198/2006); while for the other bodies it can be derived through an interpretation of the norms governing their tasks (Articles 10 and 15 of Decree No. 198/2006). This competence is generally exercised in an independent manner in practice.

In 2008 there was a case of Government influence on the activities of the National Equality Advisor, when the Advisor was removed from office by the new Government because she was considered not to be in tune with its policies. However, in 2015, Article 43 (1) of Decree No. 151/2015 excluded equality advisors from the spoils system and since then they can no longer be removed from office exclusively on the ground of a change in Government.

There is nevertheless a threat to the bodies' independence in the fact that gender equality bodies are financed and organised by the Ministry of Labour or the local government bodies where they are set up. This implies that they are, to say the least, economically dependent on the bodies that host them. This is particularly true for the EONC.

The EONC is required to formulate a programme by February each year, where it states both the guidelines for the promotion of equal opportunities by the Ministry of Labour for the following year and the targets and typology of positive action projects to be promoted and financed by the Ministry of Labour (Article 10 (c) Decree No. 198/2006). Article 15 (2) of Decree No. 198/2006 states that the National Advisor plans the priorities for action and interventions, in compliance with the annual planning of the Ministry of Labour. The Local Equality Advisors do not have a strategic plan. These documents are not published.

Legislation does not provide for an annual work plan for the EONC and the equality advisors.

The Local Equality Advisors are required to present, by December each year, a report on activities carried out, according to a template issued by the Ministry of Labour. The report is presented to the local government bodies where they are set up and to the Ministry of Labour. If the Advisors fail to fulfil this obligation within by March, they are removed from office by the Ministry of Labour, following a warning to the local government body (Article 15 (6) Decree No. 198/2006). Local Equality Advisors' reports are not published.

The National Equality Advisor is required to present to the Ministry of Labour and the Department for Equal Opportunities, by March each year, a report on activities carried out by the Advisor and by the Conference of Equality Advisors. The report is also written on the basis of the Local Equality Advisors' reports. If the Advisor fails to fulfil this obligation by June, they are removed from office by the Ministry of Labour (Article 15 (7) Decree No. 198/2006). The National Equality Advisor report is published on its website: https://www.lavoro.gov.it/ministro-e-ministero/rapporto-sullattivita-delle-consigliere-nazionali-di-parita-lanno-2022 (the latest issue available is for 2022).

The EONC does not have an annual report.

Based on the annual reports from the equality advisors and the EONC annual strategic plan, and after hearing the opinion of the Department for Equal Opportunities, the Minister of Labour presents a report to the Parliament every two years on the results of the implementation of equality legislation at work (Article 20 Decree No. 198/2006).

The quality of the planning cycle implemented by the designated body is not good enough as far as we can see. Only the National Equality Advisor's annual report is normally published. The Local Advisors' reports are not easily available, nor are the EONC's or the National Equality Advisor's annual strategic plan. It is therefore very difficult to evaluate planning by the equality bodies in Italy.

6.3 Recommendations

In Italy the EONC and the equality advisors have the competence to issue independent recommendations. This is expressly stated for the National Equality Advisor as regards discrimination at work (Article 15 (2) Decree No. 198/2006), while for the other bodies it can be derived through interpretation of the norms governing their tasks (Articles 10 and 15 of Decree No. 198/2006).

This competence is effectively exercised in an independent manner in practice. Evidence of this can be found in the National Equality Advisor's annual reports on the activities of the advisors, which are published on the National Advisor's website: https://www.lavoro.gov.it/ministro-e-ministero/rapporto-sullattivita-delle-consigliere-nazionali-di-parita-lanno-2022 (the latest issue available is for 2022).

Nevertheless, there is a threat to independence in the fact that the gender equality bodies are financed and organised by the Ministry of Labour or the local government bodies where they are set up. This implies that they are, to say the least, economically dependent on the bodies that host them. This is particularly true for the EONC.

We have no data available on recommendations.

6.4 Prevention, promotion and awareness-raising

The EONC is responsible for increasing public awareness of the necessity to promote equal opportunities for women in the professional sphere and in professional training. It also formulates a programme each year in order to set targets for positive actions and to monitor their implementation, as well as the enforcement of equality principles, especially at work

and after pregnancy, in the area of reconciliation between family and professional life and in relation to pensions.

It can also propose solutions to collective disputes and is entrusted with the task of stimulating social dialogue and dialogue with non-governmental organisations on equality issues and exchanging information with the EU bodies that operate in the field of equal treatment. The EONC is also required to check the implementation of Italian legislation on gender equality and to produce good practice codes. It promotes the adequate representation of women in public bodies competent in employment and professional training matters and it can request information from public employment offices on the occupational situation within enterprises. (Articles 8-11 decree No. 198/2006).

Equality advisors, following their respective territorial competence, participate in central and local employment commissions, equality commissions, local partnership commissions, and monitoring committees of social EU funds (regulation No. 1303/2013); monitor gender under-representation; promote equal opportunities in the ambit of active employment policies (including professional training) and the consistency of territorial development plans with European directives on equal opportunities; collaborate with labour offices and labour inspectorate services to detect infringements of equality, equal opportunities and anti-discrimination legislation (equality bodies can also ask labour inspectors to obtain information on working conditions in a company); disseminate good practice, information and cultural education on equal opportunities and various forms of discrimination; and collaborate with local bodies. In the exercise of their functions, they are public officials and have the duty to report to the judicial authorities any crimes they become aware of in the course of exercising their duties.

All these competences are generally exercised in an independent manner in practice.

It is worth recalling here the collaboration between the National Equality Advisor and the Labour Inspectorate. An agreement between the two entities was signed on 6 June 2018 and updated the agreement of 2007, after the recent reform of the Labour Inspectorate by Decree No. 149/2015. Both parties committed themselves to increased cooperation in tackling gender discrimination through several actions such as: prompt examination of cases reported by equality advisors; exchange of statistical data; joint examination of the biannual report on the working conditions in relation to gender in enterprises employing more than 50 workers (provided by Article 46 of the Code of Equal Opportunities); exchange of good practice and measures to combat discrimination and monitoring of the results; organisation of professional training on gender equality for both local equality advisors and labour inspectors; the promotion of meetings, at national or local level, to examine specific cases to remove discrimination or particular situations of inequality in the domain of workers, unions, employers' representatives and the Department of the Minister of Labour.

Both the National Labour Inspectorate and the National Equality Advisor are committed to disseminating the agreement and to inviting Local Equality Advisors and local labour inspectorates to contribute to the initiative by signing operative agreements which take the local situation into consideration. Moreover, under Article 10, Paragraph 1(h) of Decree No. 198/2006, the EONC can ask the local labour inspectorate to obtain gender-differentiated data from the workplace in respect of hiring, vocational training and career opportunities.

Examples of engagement with civil society organisations:

1) An agreement was signed on 30 June 2010 between the Minister of Labour, the National Board of Labour Consultants and the National Association of Labour Consultants, with the assistance of the National Equality Advisor, for the promotion of substantive equality between male and female workers in the labour market, taking into account the national and European legislative framework. The agreement provided for a number of initiatives such as: the promotion of conferences on non-

typical jobs and the relevant social security measures, with special attention to justified absences from work; the realisation of specific research on measures to cut the cost of labour so as to enable employers and employees to exploit all available resources (i.e. different job contracts, professional training, tax and social contribution breaks and positive action); the endorsement of 'ethical work' through widespread information on non-typical jobs and 'continuous and coordinated collaborations' or 'on-the-job projects' and the use of 'job vouchers' for marginal activities; the promotion of professional training to help women re-entering the employment market after long periods of maternity leave; collaboration on drafting the rules for co-financed projects on professional training for care services; experimenting with the provision of crèches at places of self-employment; and the creation of a 'women's space' in the media to deal with the main items of interest such as childcare services and balancing private and working life.

2) The Charter for Equal Opportunities and Equality at Work was launched in Italy in 2009 following similar successful initiatives promoted in France and Germany. This involved a task force on equal opportunities where trade unions, the Network of Equality Advisors, employers' associations, secular and religious associations and the relevant Minister and local authorities can join forces and make the most of their combined strengths and capacities.

3) Article 46 of Decree No. 198/2006, as amended by Law 162/2021, provides for a compulsory biennial report in all job categories for enterprises employing more than 50 workers. The report covers 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. Smaller companies will be enabled to submit a similar report on a voluntary basis. The report will be filed online on the website of the Ministry of Labour and regional equality advisors will be in charge of analysing the results to be transmitted to the territorial offices of the National Labour Inspectorate, the Ministry of Labour, the Department for Equal Opportunities at the Prime Minister's Office, the National Institute for Statistics (ISTAT) and the National Council for Labour and Economy (CNEL). A list of defaulting companies will be made publicly available on the website of the Ministry of Labour. Procedures are provided to allow workers and unions to access data, which may be used to take legal action under the Code of Equal Opportunities. An administrative sanction may be applied by the Labour Inspectorate in the event that a report is incomplete or presents false data. Failure to submit a report after a reminder from the Labour Inspectorate is punishable with an administrative sanction; if non-compliance lasts for more than 12 months, any contributory benefits enjoyed by the company are ordered to be suspended for one year.

6.5 Other competences

National and regional trade unions, employers and professional training centres can promote positive actions and ask for financial support in this as provided for by law. A priority in the reimbursement of costs for positive action plans is laid down for those adopted on the basis of collective agreements between employers and trade unions. The EONC has a political role in setting the objective of positive action projects to be financed and takes part in the Commission for the evaluation and financing of positive action projects, promotes positive action and monitors the results (Article 10 (c), (d), (o), (p) Decree No. 198/2006).

Equality advisors promote positive action (Article 15 (b) Decree No. 198/2006).

7 Legal standing of the body

In Italy, the equality advisors do 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, for instance as amicus curiae. Moreover, National and Regional Equality Advisors can act directly on behalf of victims in cases of collective discrimination, even where the employees affected by the discrimination are not immediately identifiable. Local Equality Advisors can also proceed when delegated by an individual employee or can intervene in a process initiated by the latter (Articles 36 and 37 Decree No. 198/2006). There is no record of case-law. The mechanism works quite well and many cases are brought to the courts thanks to the interventions of equality advisors.

The EONC has no legal standing.

8 Dispute resolution

8.1 Quasi-judicial functions

In Italy, the equality advisors and the EONC are not quasi-judicial institutions. There is no separate quasi-judicial body/institution competent to decide on discrimination cases.

8.2 Amicable settlements

In Italy, equality advisors do have the competence to propose and promote conciliation agreements (Articles 36, 37 and 15, Decree No. 198/2006). The process is led by the judge or by the conciliation commission at the local labour directorate. The equality advisors may formulate observations to this separate entity.

More precisely, National and Regional Equality Advisors can propose a conciliation agreement in case of collective discrimination (even where the employees affected by the discrimination are not immediately identifiable), before going to court, requesting the person responsible for the discrimination to present a plan to remove the discrimination within 120 days. If the plan is considered to be adequate to remove the discrimination, at the request of the equality advisor the parties sign an agreement which becomes a writ of execution through a decree from the judge (Article 37, Decree No. 198/2006). Advisors can also propose conciliation agreements according to ordinary procedures when delegated by the victim (Article 36, Decree No. 198/2006).

9 Procedural safeguards

There is no procedural safeguard provided by law.

10 Data collection by the body

10.1 Registration of complaints and decisions

In Italy, the equality advisors register the number of discrimination complaints made. These data are available to the public.

All the data we have from the equality advisors can be found in the *National Equality Advisor annual reports on the activities of the advisors*, which is published on the National Advisor's website: https://www.lavoro.gov.it/ministro-e-ministero/rapporto-sullattivita-delle-consigliere-nazionali-di-parita-lanno-2022 (the latest issue available is for 2022).

The latest report shows that equality advisors received a total of 1 560 requests relating to individual discrimination in Italy in 2021, of which they handled 463. The data on requests

and cases taken on reveals a notable decline compared to 2020, probably because of the effect of the employment crisis caused by the pandemic.

Almost all the cases handled were resolved just with an intervention by the advisors, with a favourable outcome in 85 % of cases. Appeals to court were almost non-existent (only one case in the North, which ended favourably for the appellant). There are also very few conciliations (29 cases, almost all in the North, with only three negative outcomes for female workers).

Among the outcomes for cases not taken on are: information, reorientation to other offices, opinions and case dismissals. From these data it emerges that the issues of reconciliation of work and family life are confirmed as the main sources of discrimination throughout the country. This is followed by discrimination related to maternity and paternity, harassment, access to work, and problems related to smart working.

The cases of collective discrimination reported to the advisors are very limited: 128 cases, over half of which were brought by groups, organisations and associations. This confirms the trend recorded in the previous survey in 2020, compared to which the reports of individual users have increased, while cases detected ex officio by regional advisors are decreasing. A total of 105 cases of collective discrimination were handled. This is a much higher incidence than those for individual discrimination. The collective discrimination cases mainly relate to problems in accessing work and sexual harassment.

10.2 Equality data collection

In Italy, the equality bodies do not collect general equality data.

Annual reports from ISTAT (National Institute of Statistics) are public and may also contain general equality data.

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